

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: August 17, 2017

TO: Ronald K. Hooks, Regional Director
Region 19

FROM: Jayme L. Sophir, Associate General Counsel
Division of Advice

SUBJECT: International Longshore & Warehouse Union, 536-2545-3100
Local 19 (SSA Marine) 536-2548-0000
Case 19-CB-186889 536-2581-3314

The Region submitted this case for advice as to whether International Longshore and Warehouse Union, Local 19 (“Local 19”) violated Section 8(b)(1)(A) of the Act by failing to provide copies of Local 19’s labor relations committee and membership meeting minutes in response to the Charging Party’s numerous requests for such information where Local 19 permitted the Charging Party to view heavily redacted copies of these records. We conclude that these records contain hiring-hall referral and access information that would help the Charging Party ascertain the validity of his belief that he has been treated unfairly. We further conclude that the Charging Party’s course of conduct with Local 19 demonstrated his reasonable belief that he was being treated unfairly. Finally, we conclude that Local 19 has not demonstrated a substantial countervailing interest in refusing to provide the information that would outweigh the Charging Party’s legitimate interest in the information he requested. Thus, we conclude that Local 19 violated Section 8(b)(1)(A) by failing to provide unredacted copies of the requested labor relations committee and membership meeting minutes to the Charging Party.

FACTS

Local 19 operates an exclusive hiring hall in Seattle, Washington. Local 19 and several other ILWU locals are certified as the exclusive bargaining representatives for longshoremen and other cargo-handling employees employed by the employer-members of the Pacific Maritime Association (“PMA”). The PMA is a multi-employer association comprised of companies that operate steamships, stevedores, and marine terminals in California, Oregon, and Washington, including SSA Marine (“Employer”) in the Port of Seattle, Washington. Each local union, including Local 19, operates an exclusive hiring hall for the respective port within their jurisdiction. The PMA and the several local ILWU local unions are parties to a collective-bargaining agreement that, by its terms, expires July 1, 2019.

Pursuant to the parties' collective-bargaining agreement, each local maintains a Joint Port Labor Relations Committee ("JPLRC") with the PMA for its respective port that is comprised of an equal number of local union and PMA-designated representatives who each have an equal vote. The JPLRC is tasked with "maintain[ing] and operat[ing] the dispatching hall," "exercis[ing] control of the registered lists of" employees, and "investigat[ing] and adjudicate[ing] all grievances and disputes." Under Section 17.15 of the parties' CBA, the JPLRC's grievance procedure is "the exclusive remedy with respect to any disputes arising between Local 19 or any person working under the Agreement . . . and no other remedies shall be utilized by any person with respect to any dispute involving this Agreement until the grievance procedure is exhausted." Each port's JPLRC meets monthly.

The Charging Party, a Class A journeyman longshoreman, is a member of Local 19 and has been registered as a longshoreman for thirteen years. The Charging Party frequently is dispatched by Local 19's hiring hall as well as the hiring hall maintained by ILWU Local 23, which is the exclusive hiring hall for the Port of Tacoma, Washington. Under the collective-bargaining agreement, members of one local union are permitted to work as travelers out of other local unions' hiring halls.

The Charging Party and a group of several other dissident members of both Local 19 and Local 23 routinely associate with Jim Tessier, a self-described "independent labor consultant" and former employer representative for the PMA and former member of the JPLRC. Tessier has represented union members in claims against both the PMA and Locals 19 and 23 in employment, discrimination, and labor relations matters. Tessier also maintains a website¹ that is highly critical of the PMA and the ILWU's international and local leadership. Although the website takes a hostile tone toward Local 19's leadership and publicizes Tessier's clients' and associates' disputes with Local 19 and Local 23, it does not appear to advocate decertifying or changing the bargaining representative.

A. The Charging Party and Employee 1 are suspended from using Local 23's hiring hall for six months.

On April 4, 2016,² the PMA lodged a complaint with Local 23 against the Charging Party alleging that the Charging Party left a job early without securing a replacement. On April 12, the Charging Party appeared before Local 23's Executive Board to answer questions concerning the PMA's April 4 complaint. At that meeting,

¹ <http://longshore-labor-relations.com/>

² All dates hereinafter are in 2016, unless otherwise noted.

a motion was made to find the Charging Party guilty with a penalty of suspending him from using Local 23's hiring hall for a period of six months. At the JPLRC meeting on April 27, the Charging Party was found guilty and suspended from using the Local 23 hiring hall for six months. Earlier in April, another employee ("Employee 1"), also a Class A journeyman longshoreman who is a member of Local 19 and an associate of both the Charging Party and Tessier, was also suspended from use of Local 23's hiring hall by Local 23's JPLRC for six months for two lineup violations³ that winter.

B. The Charging Party requests copies of Local 23's JPLRC meeting minutes.

Upon learning of his suspension from Local 23's hiring hall in late April, the Charging Party drove to Local 23's offices to obtain copies of the minutes from the Local 23's Executive Board meetings and JPLRC meetings and was told that his request would take two to three weeks to process.

On June 20, the Charging Party returned to Local 23's offices to obtain the minutes he had previously requested and was told that the person he needed to speak to was not available. After leaving the Local 23 offices, the Charging Party left a voice mail for Local 23's president. Later that day, the Charging Party received two separate phone calls from a Local 23 business agent and Local 23's president accusing the Charging Party of bullying Local 23 office staff and informing him that Local 23 would be referring the matter to his local, Local 19. Local 23 states that it faxed the relevant Local 23 JPLRC minutes to Local 19 several weeks later, although there is no indication that this was communicated to the Charging Party.

Later on June 20, a member of Local 19's JPLRC contacted the Charging Party in response to questions that the Charging Party had previously posed about the procedure used to determine the penalty for Employee 1's lineup violation. Rather than discussing procedure, however, the Local 19 JPLRC member told the Charging Party that he had heard that the Charging Party was bullying Local 23's staff that day and that there was going to be a conversation about those complaints.

On June 28, Tessier filed an amended charge in Case 19-CB-175084 alleging that Local 23's failure to provide the Charging Party the Local 23 JPLRC minutes violated

³ A lineup violation occurs when a member seeks to obtain dispatch from the hiring hall ahead of someone else when they are not entitled to do so for any variety of reasons.

its duty to furnish members of its hiring hall with information.⁴ At some point in July, the Charging Party again contacted Local 23 to complain about not receiving the requested minutes even though several weeks had passed. The Charging Party never received a response to his inquiries.⁵

C. The Charging Party attempts to secure the minutes from Local 19's JPLRC meetings and its membership meetings

On September 14, the Charging Party called Local 19's president. The Charging Party wanted information about a grievance filed against Employee 1 in March for a violation of hiring-hall rules in January. The Charging Party told Local 19's president that he believed a Union official was behind the grievance and that an unfair labor practice charge had been filed over the matter.⁶ Local 19's president responded that the Charging Party had a sworn obligation to not go outside Local 19 with his complaints. The Charging Party went on to ask for Local 19's JPLRC minutes from January thru September. Local 19's president asked the Charging Party what he was looking for and the Charging Party refused to tell him. The conversation devolved into an argument after the Charging Party alleged that he had

⁴ Case 19-CB-175084 was initially filed on April 25 alleging that the fines that Local 23 had issued to Employee 1 for his lineup violations were unlawful.

⁵ During the Region's investigation in Case 19-CB-175084, the Charging Party learned that Local 23 claimed that it had faxed the requested minutes to Local 19. On August 29, Local 19 admitted to the Charging Party that it had received the minutes several days earlier. Later that day, the Charging Party went to Local 19's office and retrieved the Local 23 JPLRC minutes he had requested. On October 31, the Region issued complaint in Case 19-CB-175084 against Local 23. The complaint alleged, inter alia, that Local 23 unlawfully refused to furnish JPLRC minutes to the Charging Party in a timely manner and discriminatorily refused to refer the Charging Party and Employee 1 for work by suspending them from Local 23's hiring hall for six months due to their lack of membership in Local 23. The Region found no merit to allegations against Local 19 arising out of the same course of conduct. On March 22, 2017, the Region entered into an informal bilateral settlement with Local 23 that fully settled the allegations in that complaint. On July 26, 2017, the Region partially revoked the settlement agreement in that case and issued complaint alleging that Local 23 had still failed to provide the Charging Party with the requested information and that it also recently refused to provide information to another hiring hall user.

⁶ In its consideration of Case 19-CB-175084, the Region determined that the fine issued against Employee 1 by the Local 19 JPLRC as a result of his January hiring-hall rules violation was not unlawful.

heard a member of Local 19's JPLRC tell another union member that the Charging Party had to be kept from getting an official position with Local 19. Later that day, Local 19 president spoke to the Charging Party again and told him that Local 19 would call the Charging Party when the relevant JPLRC minutes were ready.

On September 20, the Charging Party, Employee 1, and two other union members went to Local 19's hall to view the JPLRC meeting minutes that the Charging Party had requested. Local 19's president and two members of Local 19's JPLRC were present (including the JPLRC member that the Charging Party had allegedly heard conspiring to keep the Charging Party from obtaining an official position within Local 19). Local 19 officials informed the Charging Party and his group that he would be allowed to view the requested JPLRC minutes in the presence of Local 19's president and the Local 19 JPLRC members, but would not be permitted to make or keep a copy. The copies of Local 19's JPLRC minutes that Local 19 permitted the Charging Party to view were voluminous (over three hundred pages) and heavily redacted. Local 19 had fully redacted each member's name and membership number for all entries within the JPLRC minutes.

While the Charging Party and his group were looking through the JPLRC minutes, the Charging Party and his group also stated that they wanted to see Local 19's membership meeting minutes for the same period because they were concerned that one of Local 19's JPLRC members present that day had been permitted to file an untimely grievance against Employee 1 over his alleged violation of hiring hall rules. Local 19 president handed the Charging Party's group unredacted copies of Local 19's membership minutes, but the Charging Party's group was told that they were not allowed to take home the minutes they viewed nor make copies of them. The conversation devolved into an argument between Local 19's president and the Charging Party. Eventually one of the two members of Local 19's JPLRC stated that he had filed the March grievance against Employee 1. The Charging Party retorted that Local 19 was in error because he believed that union-filed grievances against union members were time-barred after thirty days. The Charging Party told the Local 19 officials that he wanted to see Local 19's minutes concerning the application of the thirty-day grievance rule. As the Charging Party and his group prepared to leave Local 19's offices, the Charging Party alleges that one of the members of the JPLRC accused the Charging Party of having recording devices in his briefcase and the argument escalated. The Charging Party's group ultimately left Local 19 offices and filed a police report over the altercation over the Charging Party's briefcase.⁷

⁷According to the police report, none of the witnesses corroborated the Charging Party's allegation that he was physically accosted by the JPLRC member.

On September 22, the Charging Party sent a formal written request for copies of any minutes pertaining to the thirty-day rule on grievances. The next day, the Charging Party submitted a written information request to Local 19 for copies of all Local 19 JPLRC meeting minutes from February through August. The Charging Party specifically requested that the copies be unredacted.

On November 3, the Charging Party again requested that Local 19's president show him membership minutes referencing the thirty-day rule. Local 19's president again told the Charging Party he would look into it. To date, Local 19 has never provided the Charging Party with copies of the requested Local 19 JPLRC meeting minutes or Local 19 membership meeting minutes.

D. Local 19's October 6 JPLRC meeting

On the morning of October 6, the Charging Party and Employee 1 went to the PMA building to attend Local 19's monthly JPLRC meeting. The Charging Party was there for resolution of a pay shortage claim he had made in July, and Employee 1 was there to defend himself against an employer-filed complaint alleging that he had overslept during a work shift. The Charging Party and Employee 1 requested to attend each other's hearings on their complaints, but the members of Local 19's JPLRC and Local 19 president told them that they were prohibited from doing so or from sitting in for any portion of the JPLRC meeting until their individual complaints were heard. Throughout the day, the Charging Party and Employee 1 had several confrontations with members of Local 19's JPLRC and Local 19's president and were told at least once that they were disgraces to Local 19. The Charging Party and Employee 1 were not permitted to make their case to Local 19's JPLRC in their individual matters until the close of the business day.

About a week later, the Charging Party contacted Local 19's president to check on the status of his pay shortage claim. Local 19's president told the Charging Party that Local 19's JPLRC had found no merit to the Charging Party's claim. The Charging Party requested the minutes from Local 19's October 6 JPLRC meeting and Local 19 president told him that he would look into it. On October 13, at a Local 19 membership meeting, Local 19's president made several comments about Local 19's cost in defending unfair labor practice charges before the Board. Local 19's president went on to remind all members in attendance that their exclusive remedy for disputes between Local 19 and its members was the grievance procedure outlined in Section 17.15 of Local 19's collective-bargaining agreement with the PMA.⁸

⁸ On December 19, Tessier, on behalf of the Charging Party, filed Case 19-CB-190139 alleging that Local 19 violated Section 8(b)(1)(A) by Local 19 president's and other Local 19 officials' comments to the Charging Party and other union members on

E. Contents of the requested Local 19 JPLRC and membership meeting minutes

During the course of the Region's investigation, the Region obtained copies of the redacted Union JPLRC meeting minutes and unredacted copies of Local 19's membership meeting minutes covering January thru August.⁹ The JPLRC meeting minutes are voluminous and involve a large variety of matters between the PMA, Local 19, and individual members. Although the JPLRC routinely hears complaints brought to it by employees, both against the PMA and Local 19, the vast majority of the JPLRC's business appears to revolve around PMA and Union-initiated complaints against employees for violating work or hiring-hall rules. The JPLRC minutes evidence that the PMA and Local 19 decide not only whether the employee committed the infraction but also the employee's punishment, which can include suspension or deregistration from Local 19's hiring hall. The minutes contain occasional references to employees' having "medical excuses," but the vast majority of issues brought before the JPLRC do not go into any specificity as to what the medical issues may be. Finally, due to the redaction of both the employees' names and union membership numbers, it is impossible, on the face of the documents, to determine employees' classifications or seniority with Local 19 from the redacted JPLRC meeting minutes.

The membership meeting minutes routinely memorialize issues pertaining to a variety of subjects, including administration of the hiring hall. These subjects include the announcement of new and proposed hiring-hall rules, including dispatch procedures for available jobs, and reports from Local 19's JPLRC members concerning new or upcoming work opportunities that will be dispatched through the hiring hall.

F. The parties' positions

The Charging Party and his associates assert that the Charging Party is entitled to unredacted copies of Local 19's JPLRC meeting and membership meeting minutes without demonstrating the relevancy to the Charging Party. The Charging Party

August 25, August 29, September 8, September 14, and October 13 that Local 19 members should not file charges with the NLRB and that their exclusive remedy for any dispute with Local 19 was Section 17.15 of the collective-bargaining agreement. The Region issued complaint in that case on May 24, 2017. The administrative hearing is currently scheduled for October 24, 2017.

⁹ The copies of the minutes provided to the Region came from the Charging Party, who obtained copies from a friend (another employee member of Local 19) who apparently received them from Local 19 upon request.

references two prior cases from 2004 and 2005 filed in the Region against Local 23 requesting identical documents as support for this position.¹⁰ The Charging Party has also asserted that he needed access to documents on behalf of Employee 1 for whom he was acting as an agent in order to determine whether the complaint filed against Employee 1 by Local 19 was fairly filed.

Local 19 asserts that it has no duty to turn over either set of minutes to the Charging Party because he did not establish relevancy. Local 19 further states that it has a duty to protect the privacy of employees discussed in the minutes, particularly since some of the mentioned employees have either been disciplined or have been placed in drug or alcohol rehabilitation programs. Finally, Local 19 argues that the Charging Party's association with Tessier creates specific privacy concerns because Tessier has previously posted documents on his website that Local 19 provided to the Charging Party.

ACTION

We conclude that the records that the Charging Party requested contain hiring-hall referral and access information that would help him ascertain the validity of his belief that he has been treated unfairly. We further conclude that the Charging Party's course of conduct with Local 19 demonstrated his reasonable belief that he was being treated unfairly. Finally, we conclude that Local 19 has not demonstrated a substantial countervailing interest in refusing to provide the information that would outweigh the Charging Party's legitimate interest in the information he requested. Accordingly, we conclude that Local 19 violated Section 8(b)(1)(A) by failing to provide unredacted copies of the requested labor relations committee and membership meeting minutes to the Charging Party.

The duty of fair representation includes the obligation to provide employees with requested information pertaining to matters affecting their employment.¹¹ Employees are entitled to that information so that they can ascertain their rights and

¹⁰ In both of these cases, Cases 19-CB-09106 and 19-CB-09269, the Region issued complaint against Local 23 for failing to provide copies of its JPLRC meeting minutes. Both of those complaints were resolved via informal settlement agreements that required Local 23 to "timely provide hiring hall users with access to and copies of the JPLRC minutes."

¹¹ See, e.g., *Letter Carriers Branch 529 (Postal Service)*, 319 NLRB 879, 881 (1995). (holding that union breached its duty of fair representation by refusing to provide employee with documents related to her grievance settlement).

determine whether the union is properly carrying out its responsibilities as their statutory bargaining representative.¹²

Normally, when a union refuses to supply information requested by a represented employee, the Board applies a balancing test, weighing whether the “employee has a legitimate interest in the information, whether expressed or obvious,” and if so, whether the union has raised a “substantial countervailing interest’ in refusing to provide the information.”¹³ In several cases, the Board has broken down this balancing test to look at whether the employee had a legitimate general interest in obtaining the documents, whether the asserted interest was effectively and reasonably communicated to the union, as well as whether the union raised any substantial countervailing interests in refusing to provide the employee with documents, the ability of the union to provide the documents, and the relative ease in complying with the request.¹⁴ Requests the Board has found legitimate include requests for an accounting of grievance settlements,¹⁵ collective-bargaining agreements,¹⁶ an individual’s own grievance files,¹⁷ and an arbitration decision disposing of the employee’s grievance.¹⁸ Where the requested document has no

¹² See *Letter Carriers Branch 47 (Postal Service)*, 330 NLRB 667, 667 n.1, 668 (2000) (finding that employee could not know whether he would file a grievance or an unfair labor practice charge against the union until he had reviewed the overtime-desired list and determined his overtime rights under the contract), *enforced mem.*, 254 F.3d 316 (D.C. Cir. 2000); *Law Enforcement and Security Officers Local 40B (South Jersey Detective Agency)*, 260 NLRB 419, 420 (1982) (holding that employee could not know whether he was entitled to medical expense reimbursements until he reviewed union health and welfare plans).

¹³ *Postal Service*, 362 NLRB No. 103, slip op. at 6 (May 29, 2015) (quoting *Mail Handlers Local 307 (Postal Service)*, 339 NLRB 93 (2003)).

¹⁴ See, e.g., *Food & Commercial Workers Local 1657 (Food World)*, 340 NLRB 329, 329 (2003); *Mail Handlers Local 307 (Postal Service)*, 339 NLRB at 93 n.6 (citing *Letter Carriers Branch 529*, 319 NLRB at 881).

¹⁵ *Auto Workers Local 909 (General Motors Corp.-Powertrain)*, 325 NLRB 859, 859 (1998).

¹⁶ *Postal Service*, 362 NLRB No. 103, slip op. at 1 n.1.

¹⁷ *Letter Carriers Branch 758 (Postal Service)*, 328 NLRB 952, 952 (1999).

¹⁸ *Food & Commercial Workers Local 1657 (Food World)*, 340 NLRB at 329.

bearing on the terms and conditions of employment of the employee, the Board will find the union has no duty to produce it.¹⁹

Where a union operates an exclusive hiring hall, it “wield[s] additional power . . . by assuming the employer’s role [and] its responsibility to exercise that power fairly increases rather than decreases.”²⁰ Thus, in the hiring-hall context, employees have a legitimate interest in hiring-hall records because often those records provide the only way to determine whether the employee is being fairly treated. Although the Board has not articulated a standard to determine what constitutes a hiring-hall record, it has found hiring-hall users are entitled, upon request, to referral lists,²¹ dispatch records,²² hiring-hall rules,²³ side lists for travelers,²⁴ and the names, phone numbers, and addresses of other employees on the lists.²⁵ Animating these decisions

¹⁹ See *International Union of Operating engineers Local 18 (Precision Pipeline)*, 362 NLRB No. 176, slip op. at 8–9 (Aug. 20, 2015) (holding that a pre-job labor management report was not the source of any terms and conditions of employment); *Mail Handlers Local 307 (Postal Service)*, 339 NLRB at 93 (finding employee was not entitled to statements of union’s witnesses where, *inter alia*, employee had consented to final and binding settlement of his grievance and could take no further action).

²⁰ *Breining v. Sheet Metal Workers Int’l Assoc. Local U. No. 6*, 493 U.S. 67, 89 (1989).

²¹ See, e.g., *Operating Engineers Local 627*, 359 NLRB 758, 764 (2013), incorporated by reference in 361 NLRB No. 93 (Nov. 5, 2014), *enforced mem.*, 635 F. App’x 480 (10th Cir. 2015).

²² See, e.g., *Teamsters Local 519 (Rust Engineering)*, 276 NLRB 898, 898 (1985); *Operating Engineers Local 825 (Building Contractors)*, 284 NLRB 188, 188–89 (1987).

²³ See, e.g., *Service Employees Local 9 (Blumenfeld Enterprises)*, 290 NLRB 1, 3 (1988).

²⁴ See *Electrical Workers Local 357 (Newtron Heat Trace, Inc.)*, 343 NLRB 1486, 1486 n.1 (2004), *petition for review denied sub. nom. Ciekliniski v. NLRB*, 225 F. App’x 727 (9th Cir. 2007).

²⁵ See, e.g., *Electrical Workers Local 24 (Mona Electric)*, 356 NLRB 581, 581 (2011); *Carpenters Local 102 (Millwright Employers Assn.)*, 317 NLRB 1099, 1099 (1995) (concluding, contrary to the ALJ, that employees had no right to the social security numbers of other employees on the lists).

is the Board's sensitivity to providing hiring-hall employees with information that "would help [them] ascertain the validity of [their] belief" of unfair treatment.²⁶

However, the Board has wavered on whether users are entitled to these documents as a matter of right or if employees must first demonstrate a reasonable basis for believing they are being discriminated against or otherwise improperly disadvantaged. For instance, in *Bartenders' and Beverage Dispensers' Union, Local 165*, the Board ruled, over Member Fanning's dissent, that an employee was entitled to hiring-hall lists and rules despite the record being "naked" of evidence of discriminatory treatment.²⁷ Similarly, in *Operating Engineers Local 513 (Various Employers)*, the Board affirmed an ALJ's decision finding that the union had a duty to provide referral information to a hiring-hall user despite the fact there was no reasonable basis for the user to think he was being discriminated against.²⁸ However, in *Boilermakers Local 197 (Northeastern State Boilermaker Employers)*, the Board concluded that a hiring-hall user "reasonably believed there had been a violation of the hiring hall's referral procedure" and thus was entitled to the records.²⁹

In some more recent decisions, the Board has acknowledged the existence of this conflict in the case law without resolving what the appropriate standard should be. In *Operating Engineers Local 12 (Nevada Contractors Assn.)*, the Board affirmed an ALJ's decision that absent some good reason advanced by the union, hiring-hall information "should be made available without the necessity of laying a foundation."³⁰ At the same time, the Board noted in a footnote that "[e]ven applying a more stringent standard articulated in some cases, we agree with the judge that the Charging Party here has shown a 'reasonable belief' that the Respondent treated him

²⁶ *Stage Employees IATSE, Local 720 (Tropicana Las Vegas, Inc.)*, 363 NLRB No. 148, slip op. 1 n.1 (Mar. 30, 2016).

²⁷ 261 NLRB 420, 423 (1982).

²⁸ 308 NLRB 1300, 1303 (1992).

²⁹ 318 NLRB 205, 205 (1995). *See also Carpenters Local 35 (Construction Employers Assn.)*, 317 NLRB 18, 18 n.1 (1995) (Member Browning disagreeing with *Operating engineers Local 513* and concurring only on the basis that the user reasonably believed he had been discriminated against).

³⁰ 344 NLRB 1066, 1068 (2005).

unfairly.”³¹ Somewhat confusingly, in *Stage Employees IATSE, Local 720 (Tropicana Las Vegas, Inc.)*, the Board affirmed an ALJ’s decision that solely applied the “reasonable belief” standard, but in a footnote suggested that even under “a more stringent standard,” the charging party had met his burden.³² We note that we have found no case ruling that the absence of a reasonable belief resulted in no duty to furnish. Absent such a decision, the Region should argue that hiring-hall users are entitled to hiring-hall information as a matter of right.

Under either standard, once a lawful request is made, the union has the burden to show why refusing to produce the documents is necessary to vindicate a legitimate union interest.³³ The Board has dismissed as insufficient union claims that the requestor would use the information for internal election purposes³⁴ or to harass other employees,³⁵ that making copies would be burdensome,³⁶ that employees expect their addresses and phone numbers to be private,³⁷ that the request itself was in bad

³¹ *Id.* at 1066 n.1 (citing *Boilermakers Local 197*, 318 NLRB at 205).

³² 363 NLRB No. 148, slip op. at 1 n.1 (Mar. 30, 2016). *See also* *Operating Engineers Local 627*, 359 NLRB 758, 764 (2013) (affirming ALJ’s decision that found violation under either standard), *incorporated by reference in* 361 NLRB No. 93 (Nov. 5, 2014), *enforced mem.*, 635 F. App’x 480 (10th Cir. 2015).

³³ *See* *Boilermakers Local 197*, 318 NLRB at 205 (citing *Carpenters Local 608*, 249 NLRB 747, 755–57 (1986), *enforced*, 811 F.2d 149 (2d Cir. 1987).

³⁴ *Carpenters Local 17 (Building Contractors)*, 312 NLRB 82, 84–85 (1993) (citing *Carpenters Local 608*, 279 NLRB 747, 757 (1986)) (noting that Board has been “liberal” in requiring production of hiring-hall lists even if the requestor might have other reasons for requesting them in addition to wanting to determine the legitimacy of referrals).

³⁵ *Stage Employees IATSE, Local 720*, 363 NLRB No. 148, slip op. at 10–11 (finding no evidence that employee would use information to harass or that production would chill union membership).

³⁶ *See, e.g.,* *Service Employees Local 9 (Blumenfeld Enterprises)*, 290 NLRB at 3 (finding that union had not proved that a request for six months of dispatch records was unduly burdensome); *Teamsters Local 282 (General Contractors)*, 280 NLRB 733, 735 (1986) (holding that union had failed to show that compiling a list that did not already exist was unduly burdensome), *enforcement denied on other grounds sub nom. Kudla v. NLRB*, 821 F.2d 95 (2d Cir. 1987).

³⁷ *See, e.g.,* *Stage Employees IATSE, Local 720*, 363 NLRB No. 148, slip op. at 11–12.

faith and simply meant to harass the union,³⁸ and even that employees had given numbers that were “not their home phone numbers.”³⁹ The Board has also rejected union claims that the expense involved in producing photocopies of records would be burdensome.⁴⁰ Although a union may charge a reasonable fee for photocopies, exclusive hiring hall users are entitled to make photocopies of hiring hall records upon request.⁴¹ In one of the few cases where the Board found the union had a legitimate interest in not producing certain hiring-hall information, the request was for a physical book that was in use at that moment for making dispatches but was otherwise open to inspection, and for a version of a referral list that included names instead of identification numbers, where the union had good reason to leave the names off the list and the names of the employees could be discovered by other means.⁴²

Initially, we conclude that Local 19’s JPLRC meeting and membership meeting minutes are hiring-hall records. Pursuant to the parties’ collective-bargaining agreement and as evidenced by the redacted copies of the JPLRC minutes, one of the JPLRC’s principal objectives is to administer members’ access to Local 19’s exclusive hiring hall. Although the JPLRC decides issues that do not implicate Local 19’s administration of its hiring hall, such as the Charging Party’s pay shortage claim, the JPLRC does routinely hear both employer- and Union-initiated complaints against members for both on-the-job misconduct and violations of Local 19’s hiring-hall rules. In adjudicating these issues, Local 19 or the PMA are empowered to request that members are suspended from using the hiring hall or even have their registrations with the hiring hall revoked. Moreover, the JPLRC meeting minutes deal with a variety of subjects that the Board has previously found to constitute hiring-hall records—the records contain the details of how Local 19 implements access to the hiring hall and, in turn, to employment on PMA-covered jobs and vessels. These records are the best possible source of information to “help ascertain the validity of

³⁸ *Operating Engineers Local 12*, 344 NLRB at 1068–69.

³⁹ *Teamsters Local 519*, 276 NLRB at 901.

⁴⁰ *Carpenters Local 35*, 317 NLRB 18, 18 n.1 & 24 (1995).

⁴¹ *Id.* at 24.

⁴² See *Electrical Workers Local 3 (Fairfield Electric)*, 331 NLRB 1498, 1500–01 (2000) (holding that the union legitimately kept the names off of the list, using ID numbers instead, because it prevented employers from “cherry picking”).

[members'] reasonable belief that the [Union] was operating the hiring hall improperly."⁴³ Furthermore, both the JPLRC minutes and Local 19's membership meeting minutes contain information pertaining to available work opportunities for users of the hiring hall, including the status of upcoming work, similar to job numbers that the Board has previously found to constitute hiring-hall records.⁴⁴ Finally, Local 19's membership meeting minutes contain proposals for and formal readings of new rules that affect employee dispatch from the hiring hall.⁴⁵ Thus, because the JPLRC minutes and the membership meeting minutes constitute hiring-hall records, the Charging Party has a legitimate interest in obtaining them both as a matter of right and because, as discussed below, he demonstrated a reasonable belief he was being treated unfairly.⁴⁶

In that regard, the Charging Party and Employee 1 reasonably believed that they had been unfairly suspended from Local 23's hiring hall and had filed unfair-labor-practice charges against both Local 23 and Local 19 for those suspensions.⁴⁷ And Local 19's repeated contacts with the Charging Party in August, September, and October demonstrate an increasingly acrimonious relationship between the Charging Party and Local 19's leadership, culminating in Local 19 leadership's declaration that

⁴³ *Stage Employees IATSE, Local 720*, 363 NLRB No. 148, slip op. 1 n.1.

⁴⁴ *Id.* slip op. at 1 & n.1.

⁴⁵ *See Operating Engineers Local 627*, 359 NLRB at 764, incorporated by reference in 361 NLRB No. 93 (Nov. 5, 2014); cf. *Plumbers Local 198 (Jacobs/Wiese)*, 268 NLRB 1312, 1319–20 (1984) (affirming an ALJ determination that a union's failure to publish changes to hiring-hall rules constitutes 8(b)(1)(A) violation).

⁴⁶ Although portions of the JPLRC meeting minutes could be construed as records relating to grievance files and subject to the five-factor balancing test under *Letter Carriers Branch 758*, 328 NLRB 952 (1999), we conclude that Local 19's direct role in adjudicating employee claims and meting out discipline for on-the-job conduct in conjunction with the PMA implicates Local 19's heightened duty of fair representation in the hiring-hall context. *See Breininger v. Sheet Metal Workers Int'l Assoc. Local U. No. 6*, 493 U.S. at 89.

⁴⁷ Compare *Operating Engineers Local 12 (Nevada Contractors Assn.)*, 344 NLRB at 1066 n.1, 1068 (noting that the hiring-hall user demonstrated a reasonable belief of unfair treatment where he had a history of filing Board charges against the union) with *Bartenders' and Beverage Dispensers' Union, Local 165*, 261 NLRB at 423 (Member Fanning, dissenting) (noting the complete absence of evidence suggesting bad faith or discriminatory conduct in the union's dealings with the hiring-hall user).

the Charging Party is a disgrace to the Union. Furthermore, Local 19's leadership has made consistent allegedly unlawful statements to the Charging Party and his associates regarding their right to resort to the Board to resolve their disputes with the Union. In short, even under the stricter standard the Board sometimes applies, the Charging Party's entire course of conduct with Local 19 during the relevant period, combined with Local 19 leadership's hostile attitude toward the Charging Party, demonstrates his reasonable belief that he was being unfairly treated. Local 19, therefore, owes the Charging Party a duty to furnish the requested information absent a substantial countervailing interest.

Local 19 has not demonstrated such an interest. First, Local 19 argues that the Charging Party is not entitled to either the JPLRC minutes or Local 19's membership meeting minutes because he has not established their relevancy. However, as described above, the Charging Party is entitled to them both as a matter of right and because he has established a reasonable belief that he was being treated unfairly; the Board has held that hiring hall records *are* relevant if they will help a member determine whether he is being treated fairly in the operation of the hiring hall.⁴⁸

Local 19 also asserts that the Charging Party's history of passing Local 19 documents along to Tessier, who then posts that information on his website, justifies its refusal to provide the requested copies. This argument is similarly unavailing. The Board has long-recognized the right of union dissidents to obtain hiring-hall records. In *Carpenters Local 608 (Various Employers)*, the Board adopted an ALJ's conclusion that a union's refusal to provide a group of known dissident employees with requested copies of hiring hall records was unlawful, despite the fact that the dissident employees routinely published newsletters critical of the union and its leadership and would speak up against union leadership at membership meetings.⁴⁹ The ALJ concluded that, as long as the request for information was based on a reasonable concern about hiring hall discrimination, any additional motive of using the information for campaign purposes would not privilege the union to deny the request.⁵⁰ In the instant case, the Charging Party made a reasonably based request for information relevant to his concerns about hiring hall discrimination, and there is no evidence that those requests were made in bad faith or simply to harass the Local

⁴⁸ See, e.g., *Stage Employees IATSE, Local 720*, 363 NLRB No. 148, slip op. 1 n.1.

⁴⁹ 279 NLRB at 747, 750–51, 757.

⁵⁰ *Id.* at 757.

19.⁵¹ Thus, Local 19's presumption that the Charging Party will provide Tessier the copies of the JPLRC and membership meeting minutes for publication on Tessier's website is not a substantial countervailing interest sufficient to outweigh the Charging Party's right to the documents.⁵²

Finally, Local 19 was not justified in redacting all names and membership numbers from the JPLRC meeting minutes. Hiring-hall users are permitted access to the names and phone numbers of other hiring-hall users.⁵³ Local 19 has raised no particular countervailing interest in refusing to provide this information other than the members' general right to privacy in disciplinary and medical matters. With regard to employee discipline, the redaction of the employee names and membership numbers undermines the purpose of the Charging Party's information request: to ascertain whether he has been disciplined fairly in relation to other members.⁵⁴ Just as names and phone numbers are necessary for union members to determine whether hiring hall operations are fair, names and membership numbers in this case will aid the Charging Party in determining whether employee discipline resulting in loss of access to the hiring hall is being administered fairly. Without any means of

⁵¹ See *Operating Engineers Local 12*, 344 NLRB at 1068–69 (dismissing union's argument that member was requesting information for the purpose of harassing the union despite the member's numerous unfair-labor-practice charges filed against the union regarding a multitude of prior information requests).

⁵² We further note that Local 19 allowing the Charging Party to view, but not copy, some of the requested minutes does not satisfy its duty to provide the requested information. See *Carpenters Local 35*, 317 NLRB at 18 n.1 & 24 (members are entitled to copies of hiring hall records on request).

⁵³ *Electrical Workers Local 24 (Mona Electric)*, 356 NLRB at 581, 587. See, e.g., *Carpenters Local 102 (Millwright Employers Assn.)*, 317 NLRB 1099, 1099 (1995) (holding that prohibiting copying of phone numbers from hiring hall records violates Act; noting however that employees had no right to the social security numbers of other employees on the lists); *Bartenders, Local 165*, 261 NLRB 420, 423 (1982) (adopting an ALJ decision rejecting the union's argument that the data contained in its hiring-hall records was confidential where the records reflected the names and telephone number of applicants, reasoning that the information was readily available and would cause no harm to the applicant if released).

⁵⁴ We have been unable to locate any Board case where hiring halls records also include information about employee disciplinary actions decided jointly by a union and an employer.

identifying the individuals in the records, the Charging Party's efforts to ascertain whether Local 19 has treated him fairly will be in vain. On the other hand, Local 19 would likely be permitted to redact information pertaining to members' specific medical issues, because of the high degree of confidentiality associated with such information.⁵⁵

Accordingly, the Region should issue complaint, absent settlement, alleging that Local 19 violated its duty of fair representation by failing to provide the Charging Party with copies of the requested hiring-hall records.

/s/
J.L.S.

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⁵⁵ Cf. *Johns-Manville Sales Corp.*, 252 NLRB 368, 368–69 (1980) (holding that employer did not violate duty to furnish information in refusing to supply union with names of employees with lung disease because “there exists a legitimate aura of confidentiality” in such information). We note, based on our review of the JPLRC minute meetings, that a mere reference to an employee having a “medical excuse” would likely not warrant redaction of the employee’s name.