UNITED STATES OF AMERICA 
BEFORE THE NATIONAL LABOR RELATIONS BOARD 
REGION 19 

In the Matter of )
) Case No:  19-CA-279935 
MV TRANSPORTATION, INC. )
and )
COMMUNICATION WORKERS OF )
AMERICA LOCAL 7800 )

RESPONDENT’S POST HEARING BRIEF

I.  INTRODUCTION

The evidence shows that MV Transportation, Inc. (“MV” or “Company”) did not violate Sections 8(a)(1) or (5) or the National Labor Relations Act (the “Act”) as alleged. Indeed, the facts show that the Union’s request for the “financials” of MV’s contract with its customer Microsoft was not relevant and, therefore, MV was not required to produce any part of its customer contract. The evidence also shows that MV worked with the Union to attempt to accommodate its request for information. However, the Union rejected all of MV’s proposals. In short, the evidence shows that MV did not violate the Act and that the Complaint should be dismissed.

II.  BRIEF SUMMARY OF BACKGROUND FACTS

A. MV’s Operations and Revenue Contract With Microsoft

MV provides transportation services across the United States pursuant to various contracts with public and private entities. Relevant to this matter, MV has a contract with Microsoft to provide shuttle services at Microsoft’s campus in Redmond, Washington. [Tr. pp.
Patrick Domholdt is MV’s Director of Labor Relations for the Redmond facility. [Tr. pp. 77-78.]

Mr. Domholdt explained at the hearing its contract with Microsoft is made up of several parts. [Tr. pp. 79-82.] Mr. Domholdt explained that first portion of the contract is a made up of standard contract language such as scope of work, conflict of interest and other such provisions. [Tr. p. 79]. He further explained that there are exhibits (A through H) that contain specific terms of service that is expected to provide. [Tr. pp. 79-80.] A redacted copy of MV’s contract with Microsoft is found at Joint Exhibit 10.

Mr. Domholdt testified at the hearing, that MV is subject to a non-disclosure agreement and contractual confidentiality requirements as part of its contract with Microsoft. [Tr. p. 80; JX 10 and 11.] Mr. Domholdt explained that as a condition of bidding on the Microsoft contract MV (and all other bidders) were required to enter into the NDA that prohibits it from disclosing information related to the contract. Once MV was awarded the contract by Microsoft, the NDA was incorporated into the service agreement, which also had additional confidentiality requirements. [Tr. pp. 80-82; JX 10 and 11.]

Mr. Domholdt testified that financial data related to MV’s Microsoft contract is contained in Exhibit C of the agreement. [Tr. p. 81.] According to Mr. Domholdt, that Exhibit is 33 pages long and contains a significant amount of financial information related to the Company’s operation with Microsoft, that vast majority of which is not related to labor costs. [Tr. p. 81.] By example, Mr. Domholdt explained that the information includes such items as fuel cost, labor costs, operating cost, vehicle pricing, management fees, and technology subscriptions to name a few examples. [Tr. pp. 80-83.]
B. The Union

The Communication workers of America, Local 7800 represents shuttle drivers (among other employees) at MV’s Redmond facility. [Tr. pp. 19, 83.] The are approximately 400 employees in the bargaining unit represented by the Union. [Tr. p. 19.] The Union has represented this group since approximately 2011. [Tr. p. 19.] The Union’s president is Arthur G. Clemens. [Tr. p. 18.] Jeanne Stewart is a Staff Representative for the Union. [Tr. pp. 57-58.] MV and the Union are parties to a collective bargaining agreement (“CBA”). [Tr. p. 20.] The current CBA expired in June 2020 and the parties agreed to an extension of the agreement. [Tr. pp. 20, 24, 83.] The parties are currently in negotiations for a successor agreement. [Tr. pp. 20, 24.]

C. The Union’s First Information Request and MV’s Response

On October 30, 2020, the Union sent MV a request for information via email. [Tr. pp. 25-26, 83-84; JX 3.] Among 14 categories of items requested, the Union asked MV to provide its current service contract with Microsoft. [Tr. p. 27, 83-84; JX3.] On November 5, 2020, Mr. Domholdt responded to the Union’s information request via email. [Tr. pp. 27; JX 4.] With respect to the Union’s request for a copy of MV’s contract with Microsoft, Mr. Domholdt replied:

In response to the Union’s request for the current contract between Microsoft and MV Transportation, the Employer believes that such information is confidential information and MV is precluded from sharing such contract without violating the terms of an NDA. The parties’ contract has a confidentiality provision which precludes MV from disclosing information contained within the current contract as it is confidential information and subject to a nondisclosure agreement. To the extent that the Union is looking for specific information in the current contract between Microsoft and MV Transportation please let me know what specific information the Union is looking for so that we can attempt to reach an accommodation. If the Union can provide us with the information that they are seeking than we can determine if this information is contained within the current contract. If such information is contained within the current contract we can work
with the Client to determine whether this information could be provided without MV Transportation violating the confidentiality provisions contained within the current contract and/or the Employer’s nondisclosure agreement.

[JX 4.]

Mr. Clemens testified at the hearing that the Union did not respond to Mr. Domholdt’s November 5th email. [Tr. pp. 28, 42-44.] The Union did not raise the issue of the Microsoft contract again until July 2021.

D. The Union’s Second Information Request and MV’s Response

The parties resumed bargaining in June 2021. [Tr. p. 86.] On June 16, 2021, the parties had in-person negotiations at the Union hall. [Tr. pp. 29, 86-87.] During that session, the Union presented MV with a wage proposal for the bargaining unit. [Tr. pp. 29, 44, 87; JX5.] Mr. Clemens testified that the Union proposed a $10 per hour increase across the board for all job classifications for the first year and a $5 per hour increase each year for the subsequent 2 years of the new contract. [Tr. pp. 44-45.] The Union’s proposal effectively raised the base wage rate for each classification in the bargaining by more than $20 per hour over the life of the contract. [Tr. pp. 87-89.] Mr. Clemens testified that upon receiving Mr. Domholdt told the Union representatives that the proposal was “ridiculous and that [MV] had no money for raises.” [Tr. pp. 30-31.]

Mr. Domholdt testified that while he was shocked by the Union’s wage proposal, he never told the Union that MV did not have money for raises. [Tr. pp. 89-90.] Mr. Domholdt further explained that Microsoft does not provide MV with any specific amount of money for raises for the bargaining unit, nor does Microsoft approve or deny what, if any, level of raises MV may negotiate with the Union. [Tr. pp. 89-90.] Mr. Domholdt credibly testified that the decision regarding what MV pays its employees is left to MV’s discretion. [Tr. pp. 89-90, 92-96.]
The parties met again on June 21, 2021, via Zoom. [Tr. p. 32.] During this session, MV presented the Union was a counter-proposal on wages. [Tr. pp. 32, 46, 91; JX 6.]

On July 2, 2021, Ms. Stewart sent Mr. Domholdt requesting “a copy of Microsofts [sic] Financials regarding their contract with MV Transportation.” [Tr. pp. 33, 62-63; JX 7.] Ms. Stewart stated in her email that “[a]t the last bargaining meeting it was stated that Microsoft didn't include any raises for the contract so we would like proof regarding this.” [Tr. p. 33; JX 7.] The Union did not indicate what it meant by “Microsoft’s Financials” it was seeking at that time, or at any other time.

On July 13, 2021, Mr. Domholdt responded to Ms. Stewart’s email requesting Microsoft’s financials. [JX 8.] In his email, Mr. Domholdt explained:

MV will not be providing the contracts between Microsoft and MV Transportation as the contracts are confidential and proprietary information. MV and Microsoft have agreed to strict non-disclosure agreements which do not allow for the dissemination of the information that the Union is requesting. The Company does not believe that the Union is entitled to this information under the National Labor Relations Act due to the confidential/proprietary nature of this information. How would the Union like to proceed based on the above response and my previous email?

[JX 8.]

Following Mr. Domholdt’s response on July 13, 2021 the Union cancelled the remaining bargaining sessions and filed the instant ULP the following day. [Tr. pp. 34-35; JX 8.] The Union has refused to schedule any further contract negotiations until MV provides the “Microsoft financials.” [Tr. pp. 34-35.]

The Union never explained to MV what it meant by “Microsoft financials” and/or what specific financial data it needed for bargaining. [Tr. pp. 47-50, 65-66, 91-92; JX 8.] At the hearing Mr. Clemens testified that the Union was seeking the “financial portion” of the contract
between MV and Microsoft. [Tr. p. 39.] When questioned on cross-examination as to what that meant he said he was “[r]eferring to increases in pay for MV from Microsoft.” [Tr. p. 39.] Mr. Clemens conceded, however, that the Union was not seeking financial information related to such things as MV’s fuel and maintenance costs in its contract with Microsoft. [Tr. pp. 39-40.] Ms. Stewart testified at the hearing that the Union was seeking information related to the amount of raises that might have been built into the Microsoft contract. [Tr. p. 66.] She conceded, however, that the Union never told MV that it was seeking that information. [Id.]

E. Discussions Regarding Accommodation

Following the filing of the underlying charge, MV has engaged in discussions to find an accommodation for the Union to review information it believed was needed for bargaining in the Microsoft contract. [Tr. pp. 51-54, 96-98.] To achieve that result, MV offered to have the Union come to the Redmond facility and manually review its Microsoft contract and ask the Company any questions it may have about the information. [Id.] The Union rejected MV’s proposal. [Id.] MV then offered to share the information with the Union via a Zoom meeting. [Id.] The Union rejected that proposal as well. [Id.]

III. DISCUSSION

Pursuant to Section 8(a)(5) of the Act, each party to a bargaining relationship is required to bargain in good faith. Part of that obligation is that both sides are required to furnish relevant information upon request. NLRB v. Acme Industrial Co., 385 U.S. 432 (1967). This duty is statutory and exists regardless of whether there is a collective-bargaining agreement between the parties. American Standard, 203 NLRB 1132 (1973).

The employer’s duty to provide relevant information exists because without the information, the union is unable to perform its statutory duties as the employees’ bargaining
agent. Like a flat refusal to bargain, “[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a per se violation of the Act” without regard to the employer’s subjective good or bad faith. Brooklyn Union Gas Co., 220 NLRB 189, 191 (1975); Procter & Gamble Mfg. Co., 237 NLRB 747, 751 (1978), enf'd. 603 F.2d 1310 (8th Cir. 1979).

In determining possible relevance, the Board does not pass upon the merits, and the labor organization is not required to demonstrate that the information is accurate, not hearsay, or even, ultimately reliable. Postal Service, 337 NLRB 820, 822 (2002). Information concerning employees in the bargaining unit and their terms and conditions of employment, is deemed “so intrinsic to the core of the employer-employee relationship” to be presumptively relevant. Disneyland Park, 350 NLRB 1256, 1257 (2007); Sands Hotel & Casino, 324 NLRB 1101, 1109 (1997). Presumptively relevant information must be furnished on request to employees’ collective-bargaining representatives unless the employer establishes legitimate affirmative defenses to the production of the information. Metta Electric, 349 NLRB 1088 (2007); Postal Service, 332 NLRB 635 (2000).

When the requested information does not concern subjects directly pertaining to the bargaining unit, such material is not presumptively relevant, and the burden is upon the labor organization to demonstrate the relevance of the material sought. Disneyland Park, supra, at 1257; Richmond Health Care, 332 NLRB 1304, 1305 fn. 1 (2000). To determine relevance, the Board uses a “liberal, discovery-type standard” that requires only that the requested information have “some bearing upon” the issue between the parties and be “of probable use to the labor organization in carrying out its statutory responsibilities.” Public Service Co. of New Mexico, 360 NLRB 573, 574 (2014); Postal Service, 332 NLRB 635, 636 (2000). The Union’s burden to
establish relevance of information requests concerning employees outside the bargaining unit is “not exceptionally heavy.” A-1 Door & Building Solutions, 356 NLRB 499, 500 (2011). An articulation of general relevance, however, is insufficient. E. I. Dupont de Nemours & Co. v. NLRB, 744 F.2d 536 (6th Cir. 1984); F.A. Bartlett Tree Expert Co., 316 NLRB 1312, 1313 (1995). The Union must demonstrate a reasonable belief supported by objective evidence that the requested information is relevant, unless the relevance of the information should have been apparent to the Respondent under the circumstances. Disneyland Park, supra at 1258 (2007).

Here, General Counsel alleges that MV violated Section 8(a)(1) and (5) of the Act by failing to furnish the Union with a copy of Microsoft’s financials regarding its revenue contract with MV. As an initial matter, the General Counsel failed to establish what, if any, information in the “Microsoft financials” is relevant, much less presumptively relevant, to the bargaining unit employees. Mr. Domholdt testified at the hearing that the financial information in MV’s contract with Microsoft consists of approximately 33 pages of financial data that deal with a wide range of items related to the performance of its services, that vast majority of which is not related to overall labor costs. [Tr. p. 81.] By example, Mr. Domholdt explained that the information includes such items as fuel cost, labor costs, operating cost, vehicle pricing, management fees, and technology subscriptions to name a few examples. [Tr. pp. 80-83.]

Moreover, the evidence shows (and the Union concedes) that the Union did not tell MV what financial information from the Microsoft contract it wanted MV to provide. Instead, the Union simply stated that it wanted financial information because MV stated at the bargaining table that its Microsoft contract did not have raises built-in for employees. Mr. Domholdt credibly testified at the hearing that he (nor anyone else from MV) ever made such a statement to the Union. Even assuming Mr. Domholdt made such a statement, which he did not, MV was not
required to produce financial data about its contract with Microsoft that does not pertain to unit employees’ wages and benefits—if any.

_G4S Secure Solutions (USA), Inc. and Waste Treatment Security Guards Union 161, 369 NLRB No. 7_ involved facts similar to the instant case. In that case, the union requested a copy of the service contract between the employer and its client. The Board determined that the union failed to establish that the employer’s contract with its customer was presumptively relevant and, therefore, the employer did not violate Sections 8(a)(1) or (5) of the Act by failing to provide the customer contract to the Union. The Board did, however, uphold the ALJ’s decision that the employer violated the act by not providing the union with information about running the contract that did pertain to unit employees’ wages and benefits.

Similar to _G4S Secure Solutions_, the General Counsel has failed to demonstrate that all of the Microsoft financials in MV’s contract are relevant and were required to be produced. Moreover, the evidence shows that MV did provide wage information related to bargaining unit employees in its contract to the Union. Specifically, in his July 13, 2021, email to the Union, Mr. Domholdt specifically told the Union MV could “confirm that the revenue contract between MV and Microsoft provides for a 3% increase for drivers' wages and 2.5% increase for hourly employees’ wages on July 1st.” [Jt. Ex. 8.] The Union, however, refused to accept the information provided by MV and demanded that MV provide a copy of the financials from MV’s current and previous contracts with Microsoft. [Id.] Ms. Stewart testified that continued to demand the “financials” because the Union does not “always the company’s word for stuff…” [Tr. pp. 72.73]. The Board, however, has consistently held that mere suspicion by a union is not sufficient to show that request for information is relevant. _See Shoppers v. Food Warehouse_, 315 NLRB 258, 259 (1994); _Postal Service_, 310 NLRB 701, 702 (1993). Accordingly, the Union’s
blanket suspicion that the information MV provided to the Union regarding wage increases is not sufficient to show that its request for ALL of MV’s financials in its Microsoft contract was relevant and required to be produced.

Finally, MV immediately notified the Union that the Microsoft contract, including the “financials” were confidential. The undisputed evidence shows that MV is subject to a NDA and confidentiality requirements in its contract with Microsoft. [JX. 10-11.] The evidence also shows that MV attempted to work with the Union to provide it with information it believed it needed. In response to the Union first request for the entire Microsoft contract in November 2020, Mr. Domholdt asked the Union to identify what specific information it was looking for so that MV could attempt to provide it. The Union, however, failed to respond to Mr. Domholdt’s communication and/or identify what information it was seeking from the Microsoft contract.

IV. CONCLUSION

Based upon the totality of the evidence, the Complaint should be dismissed in its entirety.

DATED this 8th day of March, 2022.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the National Labor Relations Board’s Rules and Regulations, I served the foregoing Respondent’s Post Hearing Brief as follows:

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DATED this 8th day of March, 2022.

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