

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

State Employment Relations Board,

Complainant

v.

Cleveland Building and Construction Trades Council,

Respondent.

CASE NUMBER: 93-ULP-06-0304

OPINION

POHLER, Chairman:

This unfair labor practice case comes before the State Employment Relations Board ("SERB") upon the filing of exceptions to the Hearing Officer's Proposed Order issued on June 29, 1995, and the filing of responses to the exceptions. For the reasons below, we find that the Cleveland Building and Construction Trades Council did not commit an unfair labor practice by refusing to provide certain requested information that was irrelevant or unnecessary for negotiation regarding wages, hours, terms and conditions of employment of the employees in the bargaining unit.

I. BACKGROUND

On June 11, 1993, the City of Cleveland ("City") filed an unfair labor practice charge with SERB against the Cleveland Building and Construction Trades Council ("CBT"). Pursuant to Ohio Revised Code ("O.R.C.") § 4117.12, the Board conducted an investigation and found probable cause to believe that a violation had occurred. Subsequently, a Complaint was issued alleging the CBT violated O.R.C. § 4117.11(B)(3) by refusing to supply information requested by the City for purposes of negotiating a collective bargaining agreement. This case was coordinated with *SERB v. City of Cleveland*, Case No. 93-ULP-06-0344.

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A hearing was conducted on October 5, 1994, before a SERB hearing officer. All parties filed post-hearing briefs. On June 29, 1995, a Hearing Officer's Proposed Order was issued. The City and the Complainant filed exceptions to the proposed order on August 2 and 4, 1995, respectively. The CBT filed its response to the exceptions on August 25, 1995.

II. DISCUSSION

The issue in this case is whether the CBT's refusal to supply the information requested by the City was a violation of O.R.C. § 4117.11(B)(3). Under O.R.C. § 4117.11(B)(3) it is an unfair labor practice for an employee organization to refuse to bargain collectively with an employer. O.R.C. § 4117.01(B) defines "to bargain collectively" as "to perform the mutual obligation of the public employer, by its representatives, and the representatives of its employees to negotiate in good faith" In *In re Franklin County Bd of County Commrs*, SERB 87-010 (5-21-87), SERB recognized the duty to furnish information as part of the duty to bargain in good faith. The Board stated, "[T]he collective bargaining process requires that the bargaining agents have adequate information about the immediate subject at issue for the process to function properly . . ." *Id.* at 3-35.

It is well settled that an employer's duty to bargain in good faith includes the duty to supply the employee organization with requested information that will enable the employee organization to negotiate effectively and to perform properly its other duties as bargaining representative. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 100 L.R.R.M. 2728 (1979); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 64 L.R.R.M. 2069 (1967); *NLRB v. Truitt Manufacturing Co.*, 351 U.S. 149, 38 L.R.R.M. 2042 (1956). This obligation parallels an employee organization's duty to supply information requested by the employer as part of the employee organization's duty to bargain in good faith. *See Taylor Forge & Pipe Workers v. NLRB*, 234 F.2d 227, 38 L.R.R.M. 2230 (1956); *Machinists, District 10 (Square D Co.)*, 224 NLRB No. 18, 92 L.R.R.M. 1202 (1976).

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A broad disclosure rule is crucial to full development of the role of collective bargaining contemplated by the statute. Unless each side has access to information enabling it to discuss intelligently and deal meaningfully with bargainable issues, effective negotiation cannot occur. See *General Electric Co. v. NLRB*, 466 F.2d 1177, 81 L.R.R.M. 2303 (6th Cir. 1972); *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61, 59 L.R.R.M. 2433 (3rd Cir. 1965). Accordingly, the standard for assessing the relevancy of requested information to a bargainable issue is a liberal one, much like the standard applied in discovery proceedings. See *NLRB v. Acme Industrial Co.*, *supra* at 437 n.6; *NLRB v. Rockwell-Standard Corp.*, 116 NLRB No. 23, 65 L.R.R.M. 1601 (1967) *enforced*, 410 F.2d 953, 71 L.R.R.M. 2328 (6th Cir. 1969); *NLRB v. Yawman & Erbe Manufacturing Co.*, 187 F.2d 947, 27 L.R.R.M. 2524 (2nd Cir. 1951) (*per curiam*).

Some information is considered so central to the "core of the employer-employee relationship" that it is deemed presumptively relevant. A request for such data must be honored and, unless the requested party specifically demonstrates a lack of relevancy, the refusal to disclose constitutes a violation of the duty to bargain in good faith. *International Tel. & Tel. Corp. v. NLRB*, 159 NLRB No. 145, 62 L.R.R.M. 1339 (1966), *enforced*, 382 F.2d 366, 65 L.R.R.M. 3002 (3rd Cir. 1967), *cert. denied*, 389 U.S. 1039, 67 L.R.R.M. 2231 (1968); *Curtiss-Wright Corp. v. NLRB*, *supra*; *NLRB v. Rockwell-Standard Corp.*, *supra*.¹

The first question in a disclosure case is one of relevance: information must be divulged only if it is relevant to a party's legitimate need. *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863, 94 L.R.R.M. 2923 (9th Cir. 1977). "Relevant" information is related to the party's function as bargaining representative and reasonably necessary to perform that function. *Curtiss-Wright Corp. v. NLRB*, *supra*; *Proctor & Gamble Mfg. Co. v. NLRB*, 603 F.2d 1310, 102 L.R.R.M. 2126 (8th Cir. 1979); *San Diego Newspaper Guild v. NLRB*, *supra*.

¹With respect to requests for information not central to the performance of bargaining duties, the requesting party must make a showing of relevancy based on particular circumstances. *NLRB v. Acme Industrial Co.*, *supra*; *NLRB v. Truitt Mfg. Co.*, *supra*; *Curtiss-Wright Corp. v. NLRB*, *supra*.

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A dichotomy has developed between data bearing directly on mandatory bargaining subjects and other kinds of information. Information in the first category, pertaining to wages, hours, terms and conditions of employment, is presumptively relevant, and must be disclosed unless the requested party proves a lack of relevance. *San Diego Newspaper Guild v. NLRB, supra; Western Massachusetts Electric Co. v. NLRB*, 573 F.2d 101, 98 L.R.R.M. 2851 (1st Cir. 1978). On the other hand, when information not ordinarily pertinent to collective bargaining, such as information concerning non-unit employees, is requested, relevance is not assumed. Instead, the requesting party must affirmatively demonstrate relevance to bargainable issues. *San Diego Newspaper Guild v. NLRB, supra; Prudential Insurance Co. of America v. NLRB*, 412 F.2d 77, 71 L.R.R.M. 2254 (2d Cir. 1969); *Curtiss-Wright Corp. v. NLRB, supra*.

The NLRB and the courts have held that the requesting party is entitled to information concerning non-unit employees if the requesting party demonstrates that the requested information is relevant to bargainable issues. See *Brooklyn Union Gas Co.*, 220 NLRB No. 38, 90 L.R.R.M. 1479 (1975); *NLRB v. Rockwell-Standard Corp., supra; Press Democrat Publishing Co. v. NLRB*, 629 F.2d 1320, 105 L.R.R.M. 3046 (9th Cir. 1980). Courts have generally responded to requests for information about non-bargaining unit employees by shifting the burden of showing relevance to the party requesting the information in the first instance, not by increasing the threshold for finding relevance. See, e.g., *E.I. DuPont de Nemours and Co. v. NLRB*, 744 F.2d 536, 117 L.R.R.M. 2497 (6th Cir. 1984); *Press Democrat Publishing Co. v. NLRB, supra; NLRB v. Pfizer, Inc.*, 763 F.2d 887, 119 L.R.R.M. 2947 (7th Cir. 1985).

Under *Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 78 L.R.R.M. 2974 (1971), an employer generally has no duty to bargain over practices that do not involve bargaining unit employees. However, an employer does have a duty to bargain over unit employees' terms and conditions of employment and any other matters that "vitally affect" those terms and conditions. *NLRB v. U.S. Postal Service*, 18 F.3d 1089, 145 L.R.R.M. 2705 (3rd Cir. 1994). Only matters that concern current employees'

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terms and conditions of employment, or matters that "vitally affect" those terms and conditions, are mandatory subjects of bargaining. *Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co., supra*. The U.S. Supreme Court stated more than speculative or insubstantial effects must be shown for a matter involving individuals outside the employment relationship to be a mandatory subject of bargaining. *Id.*

In summary, the duty to furnish information is part of the duty to bargain in good faith. The test for when such duty arises is whether the information requested is relevant and necessary for the requesting party to negotiate effectively the collective bargaining agreement. Where the requested information involves a mandatory subject of bargaining regarding the employees in the bargaining unit, there is a presumption of relevance. If the requested information involves non-unit employees, the burden is on the party requesting the information to show that the requested information vitally affects the bargaining unit employees.

The CBT is under an obligation to provide the City with requested information that is relevant and necessary to the collective bargaining process. *Local 13, (The Oakland Press Co.), 233 NLRB No. 144, 97 L.R.R.M. 1047 (1977) enforced, 598 F.2d 267, 101 L.R.R.M. 2036 (D.C. Cir. 1979)*. The sole issue, therefore, is whether the requested information is relevant and necessary to the collective bargaining process.

The first item on the City's information request is copies of all apprenticeship programs and any related materials that provide for increased employment opportunities for women and minorities. None of the bargaining unit employees are in apprenticeship programs. Any material that has to do with the apprenticeship programs is not relevant or necessary to the bargaining unit employees' conditions of employment. Thus, this request for information does not involve wages, hours, terms and conditions of employment of the bargaining unit employees and the CBT's refusal to provide this information was lawful.

The second item on the City's information request is any written materials, formal or informal, which dealt with employment opportunities for residents of the City. Again, this

item is not relevant or necessary to the bargaining unit employees' wages, hours, terms and conditions of employment. General employment opportunities for all residents of the City of Cleveland involve not only non-unit employees, but persons who are not City employees at all. Clearly employment opportunities for any resident of the City without any qualifications cannot be relevant in any meaningful sense to concrete terms and conditions of employment of the specific employees in the specific unit at issue. Here again, the request for information involved non-unit employees as well as persons who are not employed by the City. Thus, this request for information does not involve wages, hours, terms and conditions of employment of the bargaining unit employees and the CBT's refusal to provide this information was lawful.

The third item on the City's information request is copies of certain Equal Employment Opportunity forms and any related federal or state forms for apprenticeship programs for the last three years that have been filed. Again, none of the bargaining unit employees are in any apprenticeship programs and whatever forms are related to such programs are not relevant or necessary to the collective bargaining negotiations for terms and conditions of employment of the employees in the unit at issue. Thus, this request for information does not involve wages, hours, terms and conditions of employment of the bargaining unit employees and the CBT's refusal to provide this information was lawful.

The last item in the City's information request is a complete and comprehensive breakdown identifying the number of minorities, women, and City residents in each building trades union. The CBT is composed of thirty-five (35) unions. Only fourteen (14) individual unions represent employees in the bargaining unit. Thus, most of the building trade unions do not even represent any members who are in the bargaining unit at issue. The fourteen (14) unions representing employees in the bargaining unit have total membership of approximately fifteen thousand to twenty thousand (15,000 - 20,000) individuals. Only one hundred twenty (120) of those workers are in the bargaining unit at issue. Thus, the requested breakdown is clearly overbroad. A breakdown of the kind requested in a building trades union that does not have any membership in the bargaining unit at issue cannot be relevant or necessary for collective bargaining negotiation for the employees in the bargaining

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unit. Moreover, the CBT gave the City the breakdown requested regarding the employees in the bargaining unit. Again, the information requested here but not provided by the CBT involves non-unit employees as well as persons who are not City employees. Thus, this request for information does not involve wages, hours, terms and conditions of employment of the bargaining unit employees and the CBT's refusal to provide this information concerning individuals outside of the bargaining unit was lawful.

The City argues that the requested information is relevant to hiring procedures since the City depends on the employee organization's referral system for hiring. The argument of the City is not persuasive. While it is true that whenever the City needs to hire a trade person it turns to the employee organization referral system, the City can and does dictate whom it wants to hire and rejects candidates not complying with the qualifications it has requested. The hiring preferences of the City are minorities and city residents. The record shows that seventy-eight percent (78%) of all referrals made by the CBT on the City requests between May 1, 1990 and April 30, 1993 were minorities and all were City residents. One-third of the unit itself is minorities and all of it is City residents except for those individuals who were already in the bargaining unit when the City began to hire only City residents. The collective bargaining agreement between the City and the CBT does not include an exclusive hiring hall.

The City also argues that while it is true that the contract allows it to hire journeymen outside the employee organization's referral system, the most qualified employees are those who went through the apprenticeship programs. Thus, the apprenticeship programs are actually the major source of hiring employees. As a result, argues the City, how the apprenticeship programs operate is important to the City. This argument is also not persuasive. First, it stretches the concept of relevancy beyond any reasonable meaning. Second, the City did not provide any direct evidence that anything is wrong with the current existing apprenticeship programs. The apprenticeship programs, established by private employers and the CBT under their various collective bargaining agreements, are scrutinized and supervised by the Joint Apprenticeship and Training Committees. The committees are regulated by federal law under the Bureau of Apprenticeship Training and are partly funded

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by state and federal government grants with all the strings attached to such grants. These are programs regulated pursuant to the Equal Employment Opportunity laws and rules of the federal government. In the absence of any direct evidence to the contrary, the programs must be presumed to be in compliance with the applicable state and federal laws.

Information requests during collective bargaining negotiations are not to be used as a tool to achieve a goal that is not relevant to the wages, hours, terms and other conditions of employment of the employees in the bargaining unit involved in this case.

In summary, the four matters in the City's request for information are not relevant or necessary for its negotiation regarding the wages, hours, terms and conditions of employment of the employees in the bargaining unit. All of the requested information involves non-unit employees and persons who are not even the City's employees. The City has not shown how any of the requested information vitally affects the bargaining unit employees. The CBT has no duty to furnish this information. Hence, the CBT's refusal to furnish the requested information is lawful and does not violate O.R.C. § 4117.11(B)(3).

III. CONCLUSION

For the reasons above, we find that the Cleveland Building and Construction Trades Council did not commit an unfair labor practice by refusing to provide certain requested information that was not relevant or necessary for negotiation regarding wages, hours, terms and conditions of employment of the employees in the bargaining unit.

Pottenger, Vice Chairman, and Mason, Board Member, concur.

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