IronTiger Logistics, Inc. *and* International Association of Machinists and Aerospace Workers, AFL–CIO. Case 16–CA–027543

January 9, 2018

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS PEARCE AND MCFERRAN

On March 25, 2015, the National Labor Relations Board issued a Decision and Order in this proceeding, in which it found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to timely respond to the International Association of Machinists and Aerospace Workers' request for presumptively relevant information.[1] Upon a petition for review and cross-petition for enforcement of the Board's Order, the United States Court of Appeals for the District of Columbia Circuit on May 20, 2016, remanded the case to the Board for further proceedings consistent with the court's opinion.[2]

On July 28, 2016, the Board notified the parties that it had accepted the court's remand and invited them to file statements of position with respect to the issues raised by the remand. The Respondent filed a statement of position.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

For the reasons stated below, we reverse our previous decision.

The case centers on the Union's supplemental request for information from the Respondent concerning freight delivery assignments to unit truck drivers. On May 11, 2010, the Union asked the Respondent to provide additional information about a previously provided list of approximately 10,000 loads carried by the Respondent's drivers. Specifically, the Union requested: (1) the name of the Respondent's driver dispatched for each load; (2) the destination and mileage of each load; and (3) all e-mails, faxes and other documentation from the Respondent's customers "to support the loads" dispatched to the Respondent's drivers. The Respondent did not respond to the initial request, or to a July follow-up request, until September 27; at that time, it asked the Union to substantiate the relevance of certain information and asserted, among other things, that the information sought was irrelevant and that the Union's requests amounted to harassment.

In the underlying decision, the Board affirmed the judge's finding that the requested information about the unit employees' assigned loads related to their terms and conditions of employment and was therefore presumptively relevant. Although the Board found that the Respondent later rebutted the presumptive relevance of the information, the Board nevertheless found a violation based on the Respondent's failure to "timely respond [] *in some manner*" to the Union's request for the presumptively relevant information, either by furnishing the information or timely presenting the Union with its reasons for not doing so. 359 NLRB at 237 (emphasis in original), as affirmed in 362 NLRB No. 45.

Upon review, the court rejected this finding. The court concluded that the third item in the information request, which sought communications from the Respondent's customers, did not relate to unit employees and, therefore, the court "could not imagine" why such information could be considered presumptively relevant. The court also highlighted the union representative's statement made the day after the request, and relied on by the judge, that conceded that all of the information sought was irrelevant.[3] The court emphasized that, in finding the union's request to be irrelevant, the judge was "faced with exactly the same information the company had on May 13."[4] In light of these conclusions, the court remanded the case to the Board to explain why the requested information was presumptively relevant.[5]

We have reviewed the case and the Respondent's statement of position in light of the court's decision, and we accept the court's interpretation of the facts and of the administrative law judge's decision. Given the judge's unexcepted-to finding that on the day after requesting the information at issue the Union conceded its irrelevance when agreeing that the request was "bullshit," we conclude that the Respondent was not obligated to do anything more. A respondent's obligation with respect to information requests is triggered by requests for relevant information, and the presumption of relevance can be rebutted. *United Parcel Service*, 362 NLRB No. 22, slip

[1] 362 NLRB No. 45 (2015), affg. 359 NLRB 236 (2012).

[2] 823 F.3d 696 (D.C. Cir. 2016).

[3] The Respondent characterized the requested information as "bullshit" and the union representative agreed, but said that he nevertheless needed it.

[4] 823 F.3d at 700.

[5] The court further indicated that, upon remand, the Board should consider the Respondent's argument that the Union was seeking to harass the Respondent by asking for burdensome and irrelevant material, and the implications of a rule that would permit a Union to harass an employer by "burdensome requests for irrelevant information" only because it can be said to relate to bargaining-unit employees. Id. at 700–701.

op. at 2–3 (2015); *Beverly California Corp.*, 326 NLRB 153, 157 (1998), enfd. in part and vacated in part 227 F.3d 817 (7th Cir. 2000); *Columbia University*, 298 NLRB 941, 945 (1990). Accordingly, the Respondent did not violate the Act by failing to timely respond to the Union's request.[6]

ORDER

The Board's prior Order in this proceeding, reported at 362 NLRB No. 45, affg. 359 NLRB 236, is vacated, and the complaint is dismissed in its entirety.

[6] In light of this finding, we need not pass on the presumptive relevance of any specific information sought or on the Respondent's claim that the information request was burdensome and constituted harassment. For the reasons stated above, Member Kaplan agrees that the complaint can be dismissed without addressing the issues of presumptive relevance or harassment, although he views the evidence as strong support for the Respondent's claim of harassment.

Dated, Washington, D.C. January 9, 2018

Marvin E. Kaplan, Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD