



NECA Guidance on Responding to Union Requests for Information

The National Labor Relations Act does not specifically cover every aspect of the relationship between signatory contractors and the union, rather, the National Labor Relations Board was established to interpret the law and develop the rules, regulations, and policies that would be used to implement the law. The law clearly establishes a duty to bargain in good faith between the employer and the union, and the NLRB has defined bargaining to include the exchange of information, saying that as part of its “duty to bargain,” an employer must supply a union with information, requested in good faith, necessary for both the negotiation and enforcement of the collective bargaining agreement. This has not been done in the form of a single declaration or list of the information that must be provided, but has evolved through case law. For ease of reading, specific citations have been left out of this paper, but are available.

Note that there is no requirement that there be a pending grievance (or negotiations) before the union can request the information.

An employer commits an unfair labor practice, in violation of Section 8(a)(5) of the Labor Management Relations Act, if it refuses to supply relevant information which the union requires for the enforcement of the agreement.

The National Labor Relations Board has stated that information about the mandatory subjects of bargaining, such as wages, benefits, hours, and working conditions (including safety) are presumptively relevant and must be provided on request, without the need on the part of the union to establish specific relevance or necessity.

Other information may also be required of the employer if it meets the NLRB's low threshold that “the union can show that it is relevant to the performance of its duties.” In a grievance, almost any information regarding the grievance could be considered relevant.

Requested information must be provided without undue delay or the employer must have a reason for the delay.

If the request is unclear, the employer may ask for the union to clarify it before responding. If the request is extremely broad or would impose an onerous burden on the employer, he may seek to have the union modify the request, or he may respond to the best of his ability to the extent it encompasses the necessary and relevant information.

With each response, the employer should include a statement that says the employer believes it has fulfilled its obligation with this response, putting the burden on the union to notify

the employer if it feels the response was incomplete. This will serve the employer well if the union goes to the NLRB and complains that the employer has been unresponsive.

An employer is not necessarily obligated to give the union the information in the exact form that the union requests or to do clerical work for the union regarding information the union already possesses, as long as what the employer provides contains the essence of the information the union seeks. On the other hand, the employer cannot refuse to provide the information simply because the union can get it from another source. For example, if the union requests information on what the employer contributed to the local pension fund on behalf of the bargaining unit members in the last two years, it may be sufficient to provide the local with copies of the monthly payroll reports for that period. The employer may not necessarily be required to extract and total the information from the reports. On the other hand, it would not be sufficient for the employer to say that since the third party administrator has those records, the union should ask the TPA.

Generally, any request from the local union for information about the employees it represents must be answered. Requests for information regarding non-bargaining unit employees are usually not considered relevant, and need not be fulfilled, although there may be situations where such information is relevant. Requests concerning the employer's general business operations and overall financial situation are not relevant, unless the employer has opened the door by claiming a financial inability to pay what the union is requesting (either in negotiations; as an ongoing claim that the contractual rate of pay is too high; or in an attempt to avoid a make-whole remedy to a grievance). If bargaining unit workers participate jointly with non-bargaining unit employees in certain benefit programs, or in company profit sharing programs, then information relating to those programs and the other employees may be relevant. If the employer believes that the request is not relevant and that therefore there is no need to provide the information, the employer should nonetheless notify the union of its determination, not simply ignore the request.

A claim of confidentiality is a poor defense. The NLRB would weigh the need for confidentiality of the records against the union's need for the information. Since the union is usually asking for information about individuals it represents, their expectation of privacy is low in the first place. Full names and social security numbers, as well as hours worked and gross wages, are regularly reported to the union on monthly payroll reports, so such information is hardly confidential. However, the employer can offer compromises that, if reasonable, the union should accept.