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Full Disclosure: Hospital Forced To Give Union Confidential Business Information

March 13, 2018 | | National Labor Relations Board,Labor And Employment

David J. Pryzbylski
Partner

The dreaded information request. Unionized companies generally have a duty to provide unions with "relevant" information upon request under the National Labor Relations Act (NLRA), and the National Labor Relations Board (NLRB) – at least under the prior administration – has taken an expansive view of the types of information a company must provide to a union. A new case demonstrates that this is still an area where employers can get tripped up – even with the advent of the "Trump Board."

Historically, the NLRB has defined "presumptively relevant information" to include information that pertains to employees' "terms and conditions" of employment (*e.g.*, wages, benefits, discipline, etc.). A company typically has to provide such information to a union upon request with limited ability to block disclosure.

When a union requests information that is not directly related to terms and conditions of employment, such as an asset purchase agreement related to a potential transaction or other purely business information, an employer may be able to limit or decline furnishing such information completely depending on whether the union can establish that the requested information is relevant to its bargaining responsibility for its members. In addition, to the extent the employer claims potentially relevant information is "confidential" or some other grounds for withholding, a company has a duty to bargain with a union to see whether an accommodation can be reached to protect the employer's interests but also get the union what it believes it needs (*e.g.*, a partial production with redactions, entering into a confidentiality agreement, etc.).

The recent NLRB case Delaware County Memorial Hospital illustrates the peril a company can face if it fails to meet its duties under the NLRA in this context. There, a union requested a copy of an asset purchase agreement, in its entirety, related to a hospital at which it represented employees. The union wanted a full copy of the agreement because it wanted to engage in effects bargaining related to the consummated transaction and its potential effect on its members. The hospital did not want to provide the union with certain portions of the agreement because it contained confidential business information. The employer failed, however, to engage in bargaining with the union regarding a potential accommodation, such as only producing non-confidential portions of the agreement.

The NLRB found the hospital's failure to engage in "accommodative bargaining" with the union violated the NLRA. The board then ordered the hospital to produce *the entire asset purchase agreement* – including portions that contained confidential business information – as a remedy for the

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violation. While the employer may have been able to bargain an accommodation with the union, the board majority effectively ruled the company lost its potential right to limit disclosure due to its failure to engage in accommodative bargaining with the union over the issue.

While the NLRB has, in some instances, placed limits on unions' rights to information from a company, this case serves as an important reminder that there often are many legal nuances in this context that must be accounted for when employers are evaluating if, when, and how to respond to union information requests.