

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

VENUE TRADING CO. d/b/a
TRADE SHOW SUPPLY

and

CASE 12-CA-074022

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES,
LOCAL 835, AFL-CIO

John F. King, Esq.,

for the Acting General Counsel.

Thomas Royall Smith, Esq. (Jackson Lewis LLP),

for the Respondent.

Toby M. Lev, Esq. (Law Offices of Toby M. Lev),

for the Charging Party.

DECISION

Statement of the Case

ROBERT A. RINGLER, Administrative Law Judge. On August 13, 2012, this case was tried in Orlando, Florida. On February 7, 2012, the International Alliance of Theatrical Stage Employees, Local 835, AFL–CIO (the Union) filed the underlying charge.¹ The resulting complaint alleged that Venue Trading Co. d/b/a Trade Show Supply (Trade Show or the Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) by failing to provide certain relevant information to the Union regarding their usage of in-house employees to perform bargaining unit work.

¹ The charge, which was mailed on February 8, 2012 (see (GC Exh. 1)), and served upon Respondent on the same date (see Board’s Rules, Sec.102.14)), was timely served within the 6 month period set forth under Sec. 10(b). See *New York Presbyterian Hospital*, 354 NLRB No. 5 (2009) (Sec. 10(b) does not run from the date that an information request is made (i.e. September 8, 2011), but, from the date that Respondent unequivocally refuses to furnish the information (i.e. in or about November 2011)). Moreover, I do not credit Christopher Griffin’s, who is Respondent’s President, self-serving and implausible claim that Respondent never received the charge.

On the entire record, including my observation of the demeanor of the witnesses, and after thoroughly considering the parties’ briefs, I make the following

Findings of Fact

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I. Jurisdiction

At all material times, Trade Show, a corporation, with a place of business in Orlando, Florida (the facility), has been an exhibit services provider. Annually, it purchases and receives at the facility goods valued in excess of \$50,000 directly from points located outside of the State of Florida. Based upon the foregoing, it admits, and I find, that it is an employer engaged in commerce, within the meaning of Section 2(2), (6), and (7) of the Act. It further admits, and I find, that the Union is a labor organization, within the meaning of Section 2(5) of the Act.

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II. Alleged Unfair Labor Practice

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A. Introduction

Trade Show constructs, warehouses, installs, and dismantles trade show and convention exhibits within the greater Orlando region. It also rents exhibition equipment, and prints signs and related materials. It is a signatory to the Union’s Exhibitor Appointed Contractor Collective-Bargaining Agreement.² See (GC Exhs. 3–4). Its current agreement with the Union extended from September 1, 2011, to August 31, 2014 (the 11–14 CBA).³ (GC Exh. 4).

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B. 11-14 CBA

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1. Hiring Hall Arrangement

Under the 11–14 CBA, the Union refers, through its hiring hall, employees to perform the following duties at Trade Show’s jobsites (unit work):

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[E]recting and dismantling of display booths and/or exhibits, modular systems, pegboards, tack boards, drape hung or rigged, carpeting, furniture, platforms, I.D. signs within the booth, handling and placing of pipe, bases, drape, table draping, floor marking, waste baskets, aisle banners, signage, table risers rigging and the installation, operation, dismantling of lighting, sound, projection, and audio-visual equipment [subject to limited exceptions] [and] on-site freight

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(GC Exh. 4 at Sec.1.02).

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² Under Sec. 8(f) of the Act, construction industry employers may grant recognition to unions, without regard to the establishment of its majority status. See *John Deklewa & Sons*, 282 NLRB 1375 (1987), *enfd. sub nom. Iron Workers Local 3 v. NLRB*, 843 F. 2d 770 (3d Cir. 1988).

³ Its prior agreement ran from September 1, 2007, to August 31, 2011. (GC Exh. 3).

2. Trade Show’s Usage of Staff Employees and the Union’s Hiring Hall

5 Unlike most hiring hall arrangements, Trade Show is not required to use the Union’s hiring hall to satisfy its total demand for unit work. It may, instead, use up to 15 in-house employees to perform unit work, before seeking hiring hall referrals.⁴ (Id. at Sec.1.03). In-house employees, who perform unit work, are called “staff employees.”⁵

10 The 11–14 CBA states that it “extends to all Staff employees,” and indicates that Trade Show will give the Union “a list” of such employees. (Id. at Secs.1.01, 8.07). It also regulates staff employees’ health and retirement benefits and provides that:

15 If the Employer provides health insurance for Staff employees, the Employer shall not be responsible for the hourly contribution to the IATSE Health & Welfare Fund for these employees. If the Employer provides retirement benefits for Staff employees, the Employer shall not be responsible for the hourly contribution to the IATSE Annuity Fund for these employees.

20 (Id. at Sec.11.04). The 11–14 CBA is, however, silent regarding other key staff employee issues, and neglects to concretely describe their wages and other terms and conditions of employment.

C. Initial Information Request

25 On November 29, 2010, the Union sent the following information request to Trade Show concerning staff employees and their usage:

This letter is prompted by concerns that the hiring provisions of our collective bargaining agreement are not being fully complied with.

30 Unfortunately, we have discovered that some of our signatory employers are using persons outside the referral hall for bargaining unit work and misidentifying those persons as “staff” employees. As we all are aware, our agreement permits the use of staff employees. However, a worker must work exclusively for that contractor to qualify as a staff employee. Calling a temporary worker a “staff”
35 employee and working them within Local 835's jurisdiction violates our agreement. It also deprives workers on the referral list with work and compensation provided for in the agreement

⁴ Once the 15-person cap is reached, Trade Show must “request one worker from the Union for each . . . additional Staff employee.” (Id. at Secs. 1.021, 1.03).

⁵ The 11–14 CBA defines staff employees as “exclusive to one (1) employer.” (GC Exh. 4 at Sec.1.02). Griffin testified that staff employees work solely for him, and do not include temporary agency workers. Frank Bernstein, Division Manager for MC Squared, a signatory to the 11–14 CBA, defined a staff employee as “an employee that works for me full-time that I use occasionally out on the trade show floor.” (Tr. 174).

To assist us in enforcing our agreement, we ask for the following information:

The names and dates of work for persons employed as “staff” workers within the jurisdiction of Local 835 during the last 90 days

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(GC Exh. 6).

D. Trade Show’s Response

10 On December 7, 2010, Trade Show replied:

[We] . . . employ. . . 24 staff employees As part of our . . . privacy policy, [however], we do not provide personal employee information

15 (GC Exh. 7).

E. Second Information Request

On September 8, 2011,⁶ the Union tendered this information request:

20 The union is requesting the following information for all staff employees . . . for the period beginning September 1, 2008 to August 31, 2011.

- 25 1. The names and addresses of staff employees
- 2. The[ir] hire dates
- 3. The termination date of each staff employee
- 4. The[ir] wage rates
- 5. Proof of Health insurance for each staff employee.
- 6. Proof of a retirement plan for each staff employee.
- 30 7. The total number of hours worked by each staff employee . . . for years ending August 31, 2009, and 2010, and 2011. . . .

(GC Exh. 8).

F. First Unfair Labor Practice Charge and Connected Withdrawal

On October 14, Union filed an unfair labor practice charge concerning Trade Show’s failure to respond to its September 8 information request. (GC Exh. 10). On November 15, Trade Show sent the following dispatch to the Union:

40 In compliance with our IATSE contract section 8.07 (i.e. "The Employer will provide to the Union a list of its Staff employees"), please find the attached list of IATSE members that we've employed from 9/01/08 through 08/31/11. Also attached is a list of [20] Trade Show Supply employees ("staff employees") that
45 . . . perform exhibit and I&D work at various convention venues in Florida

⁶ All dates herein are in 2011, unless otherwise stated.

5 **[The Union’s] . . . request for detailed information [i.e. addresses; hire and termination dates; wage and benefit information; and hours worked] regarding "all Trade Show Supply staff employees" goes beyond the scope of information that we are required to provide**

(GC Exh. 10) (emphasis added). Following the Union’s receipt of this partial reply, it withdrew its charge, in order to afford Trade Show additional time to respond. (GC Exh. 17, 31–32).

10 **G. February 7, 2012 – Re-Filed Unfair Labor Practice Charge**

On February 7, 2012, the Union re-filed the unfair labor practice charge. (GC Exh. 1). Trade Show responded to the charge, by filing a position statement with the Board, which denied its obligation to provide the requested information. (GC Exh. 14).

15 **1. Union’s Rationale**

Union Business Agent Richard Vales explained that he requested staff employee information, on the basis of his suspicion that Trade Show was not paying staff employees the health insurance benefits required by the 11–14 CBA, and potentially evading its hiring hall obligations by using temporary employees to perform unit work. Specifically, he stated:

20 [On] the show floor, . . . workers come up to me asking me [whether] . . . workers working under Trade Show Supply blue shirts . . . [had a] steward [Although] they pretty much kept under the 15[,] . . . it just raised a red flag because when I do walk on the show floor, I . . . [saw] different faces. [As a result, I was] . . . prompted . . . to find out who is working for them, [and] how long they worked for them. [It’s] . . . part of the contract that if they work . . . over 1,000 hours, they should be paid under the journeyman rate. And plus if the Company has not paid on health insurance . . . [, then] they have to make contributions into our health insurance.

30 (Tr. 76–77). Regarding the potential usage of temporary employees, he added that:

35 My concern was [that] . . . they [are] hiring these people on a show-by-show basis [instead of using the Union’s hiring hall]. So, . . . , if they have a large show coming in, [and] they don't have enough staff, they bring extra people from . . . labor pool . . . [or a] friend to friend. And then once the show is over, . . . they let them go.

40 (Tr. 77). He averred that his information request was designed to confirm that Trade Show was following the 11–14 CBA. He noted that their hiring hall referrals paled, in relation to similarly situated employers.

2. Trade Show’s Position

Griffin testified that the requested information was confidential and irrelevant. He alleged that the Union never previously sought to represent staff employees and, therefore, abandoned their right, if any had ever existed, to represent them now. He added that the Union never complained about the usage of staff employees, when the 11–14 CBA was negotiated. See (R. Exh. 2).

III. Analysis

Trade Show violated Section 8(a)(5), when it failed fully respond to the Union’s September 8 information request.⁷ Generally, an employer must provide requested information to a union representing its employees, whenever there is a probability that such information is necessary and relevant to its representational duties. See *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). This duty encompasses the obligation to provide relevant collective bargaining and grievance-processing materials. See *Postal Service*, 337 NLRB 820, 822 (2002).

Information, which concerns unit terms and conditions of employment, is “so intrinsic to the core of the employer-employee relationship” that it is presumptively relevant. See *U.S. Information Services*, 341 NLRB 988 (2004). Information about persons outside the bargaining unit, however, does not enjoy a presumption of relevance. *Caldwell Mfg. Co.*, 346 NLRB 1159 (2006). Nevertheless, the burden to establish the relevance of extra-unit information requests is “not exceptionally heavy.” *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), *enfd.* 715 F.2d 473 (9th Cir. 1983). In such cases, the Board uses a broad, discovery-type of standard to assess relevance. *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994). Moreover, the sought-after evidence need only have a bearing upon the disputed issue. See *Pfizer, Inc.*, 268 NLRB 916 (1984).

The Union established the relevance of its September 8 information request.⁸ On September 8, the Union requested, for the period beginning September 1, 2008, to August 31, 2011: names and addresses of staff employees; their hire and termination dates; their wage rates; their proof of health insurance and retirement plans; and the total number of annual hours worked by each staff employee. (GC Exh. 8). The Union sought this information, in order to assess whether Trade Show was complying with the 11–14 CBA’s: limitation on temporary employees; cap on staff employee usage; and wage and benefit provisions. The Union’s rationale was previously communicated to Trade Show. See (GC Exhs. 5-6).

⁷ These allegations are listed under pars. 6 through 9 of the complaint.

⁸ This relevance analysis is based upon the debatable assumption that staff employees are outside the unit, and actually required a showing of relevance. Given that the 11–14 CBA expressly states that it “extends to all Staff employees,” and regulates their health and retirement benefits, they might arguably be unit employees, whose connected information was presumptively relevant. See *U.S. Information Services*, *supra*.

A. Limitation on Temporary Employees

Given that the 11–14 CBA narrowly defines a staff employee as “exclusive to one (1) employer,” and Griffin conceded that temporary agency workers are not considered staff employees, the Union’s request for staff employee contact information, wage, and other personnel information would have permitted it to independently investigate whether Trade Show was improperly using temporary agency employees to perform staff employee duties, instead of requesting referrals from the Union’s hiring hall. Vales’ suspicions about this issue were based upon jobsite observations and employee reports. See *Magnet Coal, Inc.*, 307 NLRB 444 fn. 3 (1992), enfd. mem. 8 F.3d 71 (D.C. Cir. 1993) (information requests can be based upon hearsay).

B. Staff Employee Cap

Inasmuch as Trade Show was only permitted to use up to 15 staff employees at a jobsite before seeking hiring hall referrals, contact information, and tenure dates would have permitted the Union to independently investigate Trade Show’s compliance with this rule. Vales credibly testified that he grew concerned about this issue because Trade Show’s hiring hall referrals seemed to be fewer than expected, and on the basis of his own jobsite observations and employee reports.

C. Wage and Benefit Provisions

The Union requested staff employee wage and benefit information, in order to evaluate whether it should file a grievance about these matters. Concerning benefits, the 11–14 CBA required Trade Show to make Union benefit contributions on behalf of staff employees, absent a showing of alternative coverage. See (GC Exh. 4 at Sec. 11.07). The requested health and benefit information would have permitted the Union to evaluate Trade Show’s compliance with this provision. Regarding wages and hours worked, although the 11–14 CBA was silent as to staff employees’ wages, Vales contended that they should have been paid in the same manner as other hiring hall referrals, which was in accordance with their hours of unit work performed. See (GC Exh. 4 at Art. 12). Thus, the requested wage and hour information would have allowed the Union to determine whether staff employees were paid in accordance with its contractual theory, and otherwise evaluate a potential grievance. Although the Union’s position on wages lacked express contractual support and might eventually prove unsuccessful, it was nevertheless entitled to evaluate whether to pursue such a grievance.⁹ See *Raley’s Supermarkets & Drug Centers*, 349 NLRB 26 (2007).

D. Conclusion

The Union was entitled to seek information about the staff employees. It sought this information in order to enforce the 11–14 CBA, and gauge how the usage of staff employees affected the unit’s workload. The Board has repeatedly supported a union’s right to request information about workers outside of a unit, who are potentially diverting work from a represented unit. See, e.g. *Lenox Hill Hospital*, 327 NLRB 1065, 1098–1069 (1999) (use of

⁹ While the fact that the Union never previously represented staff employees in a vigorous manner might diminish its prospects for arbitral success, it was still entitled to review this information.

5 extra–unit workers to supplant unit work was relevant); *W-L Molding*, 272 NLRB 1239 (1984) (subcontractor usage); *Peterbilt Motors Co.*, 357 NLRB No. 13, slip op. at 2–3 (2011) (work performed by unrepresented employees at other facilities); *Magnet Coal, Inc.*, 307 NLRB 444 fn. 3 (1992), enfd. mem. 8 F.3d 71 (D.C. Cir. 1993) (agency employee usage); *Globe Stores*, 227 NLRB 1251, 1253–1254 (1977) (managers performing unit work). The Union’s request, therefore, satisfied the Board’s “broad, discovery-type of standard,” and Trade Show violated the Act by withholding such information.

10 Conclusions of Law

1. Trade Show is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

15 2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is, and, at all material times, was the limited exclusive bargaining representative of the following appropriate unit:

20 All employees of Trade Show, who install and dismantle trade show exhibits within the jurisdiction of the Union, as described under its September 1, 2011 to August 31, 2014 collective bargaining agreement with the Union, excluding all other employees, supervisors and guards as defined in the Act.

25 4. Trade Show violated Section 8(a)(1) and (5) of the Act by failing and refusing to provide information requested by the Union, which was relevant to its representational duties.

5. The unfair labor practice set forth above affects commerce within the meaning of Section 2(6) and (7) of the Act.

30 Remedy

35 Having found that Trade Show committed an unfair labor practice, it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Accordingly, it shall be ordered to furnish the Union with the information requested in its September 8, 2011 letter. It shall also distribute appropriate remedial notices electronically via email, intranet, internet, or other appropriate electronic means to its employees, in addition to the traditional physical posting of paper notices, if it customarily communicates with employees in this manner. See *J Picini Flooring*, 356 NLRB No. 9 (2010).

40 On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended¹⁰

¹⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

Venue Trading Co. d/b/a Trade Show Supply, its officers, agents, successors, and assigns, shall

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1. Cease and desist from

a. Failing and refusing to provide the Union with requested information that is relevant and necessary to its performance of its duties as the limited exclusive collective-bargaining representative of employees in following appropriate unit:

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All employees of Respondent, who install and dismantle trade show exhibits within the jurisdiction of the Union, as described under its September 1, 2011 to August 31, 2014 collective bargaining agreement with the Union, excluding all other employees, supervisors and guards as defined in the Act.

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b. In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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2. Take the following affirmative action necessary to effectuate the policies of the Act

a. To the extent that it has not already done so, Respondent shall provide the Union with the information requested in its September 8, 2011 letter.

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b. Within 14 days after service by the Region, physically post at its Orlando, Florida facility, and electronically send and post via email, intranet, internet, or other electronic means to its employees who were employed at its Orlando, Florida facility at any time since September 8, 2011, copies of the attached Notice marked “Appendix,”¹¹ if it normally communicates with its employees in this manner. Copies of the Notice, on forms provided by the Regional Director for Region 12, after being signed by Respondent’s authorized representative, shall be physically posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where Notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the Notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current and former employees employed by it at the facility at any time since September 8, 2011.

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c. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that it has taken to comply.

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¹¹ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

Dated Washington, D.C. September 20, 2012

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Robert A. Ringler
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to provide the International Alliance of Theatrical Stage Employees, Local 835, AFL-CIO (the Union) with requested information that is relevant and necessary to its performance of its duties as the limited exclusive collective-bargaining representative of employees in the following unit:

All employees of Venue Trading Co. d/b/a Trade Show Supply, who install and dismantle trade show exhibits within the jurisdiction of the Union, as described under our September 1, 2011 to August 31, 2014 collective bargaining agreement with the Union, excluding all other employees, supervisors and guards as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights set forth above.

WE WILL, to the extent that we have not already done so, provide the Union with the information requested in its September 8, 2011 letter.

VENUE TRADING CO.
d/b/a TRADE SHOW SUPPLY
(Employer)

Dated: _____ **By:** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

South Trust Plaza, 201 East Kennedy Boulevard, Tampa, FL 33602-5824
(813) 228-2641, Hours: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (813) 228-2455.