Labor Relations Bulletin
FROM THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION
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Overview: Request for Information (RFI)

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.

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. Responding to a RFI with the answer "no, the information requested is not presumptively relevant" in some cases may suffice for the requirement to respond. This does not prohibit the union from pursuing an unfair labor practice to prove their request is indeed valid.

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. Should an employer feel the date a union requests the information by is unreasonable, a general timeframe is recommended to be provided of when it can be accommodated, if at all.

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, they may seek to have the union modify the request, or they may respond to the best of their 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.

Best Practices for Responding to a Request for Information

- ***Designate an authorized agent***. The employer should designate in writing to the union the person(s) at the company who are authorized to receive and respond to any matter related to a request for information. It is also recommended the employer request the NECA Chapter Executive be included on all correspondence.
  - This centralizes the process, prevents lower-level supervisors unaware of the legal obligations from being put in unfavorable positions, and prevent the union from playing "gotcha" requests by putting multiple requests to multiple individuals at a company and then citing information was not received.
- ***Log the request and set a deadline to respond***. Upon receipt of the request for information, immediately log it and set a deadline to respond. The log should include:
  - The date it was received as the stated date and received date are often not the same.
  - The manner in which it was received (email, regular mail, certified mail).
  - Plan to respond by the date, even if the response is to tell the union more time is needed.
- ***Consider the method by which data is provided***. All forms of data can be subject to the obligation to provide information. This includes:
  - Paper – copies of files, lists, employee records
  - Electronic – emails, PDFs, spreadsheets, and software native data files
  - If the data does not exist in a format that can be copied, such as a request for "past practice" on an item, then the employer does not have an obligation to create a document to respond to that information request.

- ***Classify the requests***. The employer should break down the requests into three categories. The NECA Labor Relations department can review if a specific request for information falls under each category.
  - ***Category 1:*** This is information that concerns the terms and conditions of employment of employees working in the bargaining unit. This is the "presumptively relevant" information the employer must provide.
  - ***Category 2:*** Information that does not pertain to wages, hours, or other terms of employment. This is not "presumptively relevant" and does not need to be automatically turned over.
  - ***Category 3:*** This information is confidential and may also fall under Category 1 or Category 2. Classified information should be carefully considered before sharing, if appropriate.

- ***Evaluate the employer's burden***. Once the request has been evaluated, these questions will help guide a response:
  - ***Question 1:*** Is the information currently maintained and accessible by the employer?
    - If **yes**, go to question 2.
    - If **no**, can the employer obtain it with relative ease?
      - » If **yes**, go to question 2.
      - » If **no**, inform the union in the response that the employer does not have access to the information, and the information is not easily obtainable. Consider requesting more time, a narrower scope, or the union share in the cost of producing.
  - ***Question 2:*** Is the information in a format requested by the union?
    - If **yes**, go to question 3.
    - If **no**, will it be unduly burdensome to put it into a format as requested by the union?
      - » If **no**, go to question 3.
      - » If **yes**, inform the union in the response that the employer does not have the information in the format requested and it would be unduly burdensome to convert the information into that format.
  - ***Question 3:*** How difficult would it be to assemble the information?
    - *Easy* – this includes lists and other stored information.
    - *Moderate* – this includes personnel files that must be retrieved or assembled by hand. Assess the timeline and resources the employer would need to complete this.
    - *Difficult* – this is highly burdensome to assemble and likely contains large amounts of data in numerous places over a span of time.
    - *Impossible* – this information does not exist and can't be accessed.

    It is important to be honest in this assessment because a claim for burdensome delays, if found disingenuous, could be an unfair labor practice.

- ***Prepare a written response to the union***. Once the employer has categorized the information and evaluated the burden of responding, the employer should prepare an appropriate response.
  - ***Presumptively relevant / easy to gather information:*** The employer should send this information with a brief cover letter stating the information request to which the letter is responding and listing the information enclosed.
  - ***Presumptively relevant / moderate or difficult to gather information:*** The employer's response regarding this information can vary depending on the resources and time needed to gather it.
    - State the date the employer anticipates providing it.
    - Ask the union to narrow the request if needed. If the scope is not narrowed, offer to bargain with the union over associated costs of gathering the information.

- ***Presumptively relevant / impossible to gather information:*** The employer should describe any information that is presumptively relevant but impossible to obtain and discuss with the union alternative options that would provide the union with the requested information.
- ***Presumptively relevant / confidential information:*** If the request seeks information that is confidential, the employer should honestly evaluate the information and seek an accommodation with the union.
- ***Not presumptively relevant information:*** The employer should send a response stating the union has refused to tell the employer the purpose of the information, and under the circumstances the employer will not provide the information.

■ ***Respond to the information request in writing***. The employer should always respond to the union's request for information in writing. An oral response is insufficient. By responding in writing, you can more carefully craft what you want to say and how you want to say it. It is also easier to prove both the content of the response and when it occurred when it is in writing.

Even if the employer is not legally obligated to provide the requested information (such as an RFI where all of the information requested is confidential), there is no situation in which an employer should not provide a documented response.