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NEW PLRB RULING: WHAT PUBLIC EMPLOYERS MUST DISCLOSE DURING UNION INVESTIGATIONS

We wish to bring to your attention a recent decision of the Pennsylvania Labor Relations Board (PLRB) concerning an issue we are asked about on a regular basis. *Utility Workers Union of America, Local 191 v. Wilkinsburg-Penn Joint Water Authority* addresses when an employer is obligated to respond to an information request from a union.

In this case, at the request of the union president, the Wilkinsburg-Penn Joint Water Authority initiated an investigation into the conduct of the Human Resources director during a meeting that took place with a bargaining unit member concerning a safety issue. The union president, upon receiving notice of the initiation of the investigation, sent the executive director of the authority an email requesting a copy of any documentation relating to the investigation. The union made multiple requests for the information and the employer repeatedly stated that it would not provide the information unless and until disciplinary measures were taken and that, because the investigation concerned a violation of workplace policies or discrimination laws that were not related to the administration of the collective bargaining agreement, it was not required to provide the information requested.

The PLRB provided a clear statement of the rules that apply to information requests from a union, stating that public employers have a statutory duty to provide information when requested by a union if the information is relevant to the performance of the union's duty to negotiate, administer or police the collective bargaining agreement. The test to determine the relevancy of the information requested is liberal and is satisfied if the information requested by the union could be "potentially relevant or probably relevant" to the union's representation of its members. The fact that a union does not have a pending grievance does not nullify its right to information. However, where no grievance is pending, the information sought must at least relate to a matter which arguably on its face would be governed by the collective bargaining agreement. Information sought by the union which directly involves matters of negotiable wages, hours and working conditions of represented employees is presumptively relevant. Information that is presumptively relevant must be provided unless the employer shows that the information is not relevant or cannot reasonably be provided.

One of the defenses raised by the employer in this case was that it had no obligation to provide information developed during its investigation. The PLRB has recognized there is an exception to the general rules requiring disclosure of relevant information during an investigation. Statements the employer receives from witnesses do not need to be turned over to the union while an investigation is ongoing. The employer, however, must provide the name of witnesses who provided statements. Once an investigation is concluded, if disciplinary action was imposed and the union filed a grievance or is considering filing a grievance, witness statements are considered relevant and must be provided.

The PLRB also concluded that the union's right to information is not absolute if the requested information is confidential in nature. In cases where an employer claims that information is confidential, the employer has the burden of showing a legitimate claim of confidentiality which outweighs the union's interest in gaining access to the information and the employer must engage in meaningful good faith bargaining with the union to accommodate its confidentiality interests with the union's need for requested information. Finally, the board has held that an unreasonable or inexcusable delay in providing relevant information can be a violation of an employer's obligations.

Clients who have questions regarding issues discussed in this article, or any employment law matter, should feel free to call us at 215-345-9111.

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