From:	(b) (6), (b) (7)(C)
To:	Ohr, Peter S.; Hitterman, Paul; Nelson, Daniel N.; Muth, Jessica T.; Robles, Vivian; SM-Region 13, Chicago
Cc:	Bock, Richard; Szapiro, Miriam; Dodds, Amy L.; Shorter, LaDonna
Subject:	ABM Business and Industry, 13-CA-259139 (COVID case closing email)
Date:	Thursday, July 9, 2020 11:29:18 AM

The Region submitted this case for advice as to whether the failure to provide certain information in furtherance of a pending grievance over COVID-related layoffs violated Section 8(a)(5). We conclude that dismissal, absent withdrawal, is warranted given the Union's failure to articulate the relevance of some information and to explain why it considered another response to be incomplete.

When the requested information deals with the terms and conditions of employment of bargaining unit employees, the Board will deem the information presumptively relevant and necessary to the union's performance of its statutory duties. *See Pennsylvania Power Co.,* 301 NLRB 1104, 1105 (1991). Where the information requested is not presumptively relevant, the burden is on the party requesting the information to demonstrate its relevance. *Disneyland Park*, 350 NLRB 1256, 1257 (2007). Information about employees or operations other than those represented by the union is not presumptively relevant, and therefore the burden is on the party requesting the information to demonstrate its relevance. *See Management & Training Corp.*, 366 NLRB No. 134, slip op. at 2 (July 25, 2018) ("there is no presumption of relevance for information that does not pertain to unit employees; rather the potential relevance must be shown"). To demonstrate relevance, the General Counsel must present evidence that: (1) the party requesting the information demonstrated relevance of the non-presumptively relevant information; or (2) that the relevance of the information "should have been apparent" to the respondent under the circumstances. *Disneyland Park*, 350 NLRB at 1258. However, this second prong was discussed at length in *First Transit, Inc.*, Case 09-CA-219680, Significant Advice Memorandum dated Oct. 19, 2018, where we concluded that where relevance is contested the requesting party cannot simply argue that relevance should have been "apparent" without further explanation. Rather, the parties have an obligation to engage with each other over whether and how the information is relevant, instead of simply litigating before the Board whether the relevance of the information should have been apparent. *See First Transit* at 5-7; (b) (7)(A)

With respect to item #6 (communications between the company and clients that supported the decision to lay off), we conclude that dismissal is appropriate. The information was not presumptively relevant because it related to business communications rather than unit employees. While it is true that a manager told a Union business agent that a layoff was necessary because business was decreasing and clients were forcing the layoff for want of funds to pay employees, the Employer was well within its rights when it asserted it did not understand how the information was relevant. In this case, the Union failed to respond with an explanation. Absent the interactive process which could have obviated the need for the filing of a charge in the first place, we conclude complaint is not warranted.

For similar reasons, we find that the allegation concerning item #7 (the company's document retention policy) lacks merit. Such information was not presumptively relevant because it did not relate to employees' terms and conditions. Even assuming its relevance could be established, the Union failed to articulate its relevance after the Employer objected on this basis.

With respect to item #3 (any documents or information relied upon to make the layoff decision), we conclude that the Employer's response was sufficient under the circumstances. In answering this particular request, the Employer pointed to provisions in the collective-bargaining agreement that, in its view, justified its unilateral action. Although the Union objected on the ground that the Employer had only partially responded to this item, it never explained what kind of information was missing or further specified what it was seeking, even after the Employer offered to provide clarification about its responses, upon request. *Cf. Day Automotive Group*, 348 NLRB 1257, 1262-63 (2006) (finding no violation where the employer had reason to believe it had satisfied the union's request for information and the union never said the information provided was insufficient or requested additional information). Given the lack of substantial engagement between the parties to clarify whether and how the Employer's response was incomplete, dismissal of the allegation, absent withdrawal, is warranted.

This email closes the case in Advice. Please contact us with any questions or concerns.

(b) (6), (b) (7)(C)