

Union Right to Information

One of the most useful tools in the [NLRA](#) is the right to obtain information from employers. Although this right is not explicit in the text of the NLRA, the Supreme Court has construed it from the requirement in Section 8(d) that employers and unions bargain collectively. Without access to information, unions cannot fulfill their responsibilities to negotiate, monitor, and enforce contracts. Refusals to provide information, or unreasonable delays, violate Section 8(a)(5) of the NLRA.

WHEN TO REQUEST INFORMATION

Employers sometimes assert that union rights are restricted to information needed for contract negotiations. This is not true. In [NLRB v. Acme Industrial Co. \(1967\)](#), the Supreme Court ruled that employers must furnish unions with information relevant to grievances.

As a steward, you may request information to:

- monitor compliance with the contract,
- investigate whether a grievance exists,
- prepare for a grievance meeting,
- decide whether to drop a grievance or move it up the ladder, or
- prepare for an arbitration hearing.

WHAT CAN YOU REQUEST?

The obligation of an employer to provide information is extremely broad. It includes relevant documents, data, and facts. Information is considered relevant if it might be useful to the union or could lead to the identification of useful information.

If management does not have the information in its possession, it must conduct a diligent effort to obtain it, including making requests of third parties with whom it has a relationship, such as contractors, customers, and parent corporations.

Preconditions, such as an insistence that the union not disclose information to outsiders, may not be imposed unless the information meets a strict test of confidentiality.

Information requests must be made in good faith. The request must relate to contract administration or bargaining, and the union must explain its reasons if asked by the employer. The union cannot use an information request for harassment purposes or to conduct a fishing expedition into the employer's records.

Documents. You are entitled to examine a wide variety of records to investigate a grievance or to prepare for bargaining. Here are some of the documents you can request:

- accident reports
- bargaining agreements for
- air quality studies other units or facilities
- attendance records
- bargaining notes
- bid applications
- bonus records
- contracts with customers, suppliers, and contractors
- correspondence
- customer complaints
- customer lists
- disciplinary records
- EEO-1 reports
- employer manuals, guidelines, and policies (including internal policies)
- environmental audits
- equipment specifications
- evaluations
- first report of injury forms
- health and safety audits
- inspection records
- insurance policies
- interview notes

- investigative reports
- investigatory files

- job assignment records
- job descriptions
- laboratory reports
- leave requests
- material safety data sheets
- memos
- merger agreements
- minutes of employer meetings
- [OSHA](#) logs
- payroll records
- pension contribution records
- personnel files
- photographs
- piece-rate records
- promotion tests
- reports and studies
- schedules
- security guard reports
- seniority lists
- supervisor notes
- time cards
- time study records
- training manuals
- videotapes
- wage and salary records
- work rules

Data. Employers must provide the union with lists, statistics, and other relevant data - even if management must spend hours or longer putting it together. You can request data on prior disciplinary actions, promotional patterns, and overtime assignments. Employers are not excused from producing relevant data because of the size of the union's request, although the employer can bargain on reimbursement for its costs. Requests for data going back five years have been enforced by the NLRB.

Facts. Employers must answer pertinent factual inquiries. For a misconduct case, ask for the names and addresses of witnesses and descriptions of their testimony. For a subcontracting grievance, ask for a description of the work, the amount of the contract, and the reasons for the contract. For an arbitration hearing, ask for the names of persons that the employer intends to call to the stand.

General inquiries. Employers must respond to general inquiries such as:

- Please supply all documents or records which refer to or reflect the factors causing you to reject this grievance.
- Please supply all factual bases for the company's decision.
- Please provide all documents, reports, and other evidence utilized in making the decision to discipline the employee.

Disciplinary grievance. When grieving disciplinary action, always request a copy of the grievant's personnel file. If unequal punishment is an argument in the case, ask for the names of other employees who have committed the same offense and the penalties imposed. In some circumstances, you can request information about [supervisors and other non-unit employees](#).

Contract interpretation grievance. When a grievance concerns disputed contract language, request the employer's bargaining notes from the sessions during which the clause was negotiated, the dates and contents of any union statements upon which the employer is relying, and descriptions of any incident which the employer contends support its position.

Promotion grievance. Request the personnel file of the successful bidder, the file of the grievant, and copies of interview notes evaluating the applicants.

Past practice grievance. If you are trying to enforce a past practice, and management denies that the practice has been consistent, ask for the dates and circumstances of all occasions on which management claims a departure from the practice.

Health and safety grievance. If you are grieving an unsafe substance, request the material safety data sheet (MSDS) supplied by the maker of the substance, copies of any OSHA citations, studies by the employer concerning the substance, and statistical or aggregate medical data concerning employee illnesses or laboratory findings. If necessary, arrange for an outside specialist, such as an industrial hygienist, to conduct an inspection of the workplace.

Discretionary leave grievance. If you are grieving the denial of a leave request, ask for records of requests by other employees over the past several years and the employer's reasons for granting or not granting each request.

Information about non-unit employees. You may request information about employees outside of the bargaining unit, including supervisors, when that information is relevant to a grievance. For example, if a unit employee is accused of violating a rule which equally applies to non-unit employees, you can request the names of non-unit employees, including supervisors, who have violated the rule, a description of each infraction, and a description of any discipline imposed. If you know of a particular non-unit employee or supervisor who has violated a rule that applies to unit and non-unit employees, you are entitled to information from the non-unit employee's personnel file as well as any other records relevant to proving unequal discipline. Employer defenses based on the privacy of supervisors' records have been rejected by the Board in these circumstances.

EMPLOYER RESPONSES

Employers often make excuses to avoid supplying relevant information. Here are some that the NLRB has rejected:

- You can get the information from your members.
- The request is too large.
- The grievance has no merit.
- The information has been posted.
- The grievance is not arbitrable.
- You can subpoena the information to the arbitration.
- Past grievances were resolved without this information.
- The materials are privileged.
- We will only give the information if you agree to give us similar information from union records.
- No documents exist under that titleholder.
- We will provide the information to the union if the grievance goes to a higher step.
- The grievance is time-barred.

Confidentiality. The major exception to the duty to provide information is confidentiality. Confidentiality refers to information which is either highly personal or highly sensitive. Individually identified medical records, psychological data, and aptitude test scores usually meet the highly personal standard. Records revealing the employer's trade secrets, profits and losses, and product research often meet the highly sensitive standard. Employee addresses, telephone numbers, wage data, personnel files, and disciplinary records are not confidential. Nor are internal reports or studies, even if self-critical of the employer.

To invoke the confidentiality defense, an employer must have a publicized and consistently enforced policy barring disclosure of the information in question. Moreover, the interests of the employer in preventing disclosure must outweigh the union's need to obtain the requested information.

An employer that asserts confidentiality must do so at the time it initially refuses to supply the information. The employer must also offer to make an arrangement with the union that accommodates both the employer's confidentiality concerns and the union's need for the requested information.

Measures can usually be found to protect both sides. For example, if medical confidentiality is asserted, the employer can delete or black out the medical references. If trade secrecy is raised, the parties can sign a confidentiality agreement in which the union promises that only one or two union officials will view the records and that the records will not be disclosed except to the union lawyer or to an arbitrator.

DEADLINES

Under NLRB rules, an employer must respond promptly to a union information request. The acceptable time period, however, depends on the information requested. Simple items such as personnel files and attendance records should be produced in no more than one or two weeks. Unreasonable delay is just as serious an NLRA violation as outright refusal.

NLRB CHARGES

When an employer denies or ignores a union information request, a ULP charge should be filed at the NLRB. A local union can file a charge even if the signatory on the contract is a parent union. A steward should obtain authorization from a union leader before filing a labor board charge.

As a rule, the NLRB does not defer information-request charges. An exception arises, however, if the union has filed a grievance protesting the employer's refusal. For this reason, the union should usually refrain from filing a contract grievance on an information violation.

The usual remedy for an information violation is an order that the information be supplied and a posting. The NLRB cannot order that a grievance be accepted.

From: "The Legal Rights of Union Stewards" by Robert M. Schwartz