

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: April 8, 2015

TO: Marlin O. Osthus, Regional Director
Region 18

Ronald K. Hooks, Regional Director
Region 19

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

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| SUBJECT: ABM Industries, Inc. d/b/a ABM Janitorial | 530-6067-6001-3750 |
| Services – North Central Region | 530-6067-6001-3785 |
| Case 18-CA-136876 | 530-6067-6001-3790 |

ABM Janitorial Services, Inc., a wholly owned
subsidiary of ABM Industries, Inc.
Case 19-CA-124390

The Region submitted these cases for advice as to whether the Employer and its subsidiaries violated Section 8(a)(5) of the Act by refusing to provide two local unions with certain information regarding the Employer's relationship with another company it recently had purchased and information about that company's employees.¹ We conclude that because each local union failed to demonstrate the relevance of the requested information, the outstanding Section 8(a)(5) complaint should be withdrawn in Case 19-CA-124390 and the charges should be dismissed in both cases, absent withdrawal.

FACTS

A. General Background.

ABM Industries, Inc., ("ABM" or "the Employer") is a nationwide corporation that provides property maintenance services, including energy, janitorial, electrical and lighting, facilities engineering, landscaping, parking and transportation, HVAC and

¹ Region 18 is coordinating the processing of all unfair labor practice charges filed against ABM Industries, Inc., and its subsidiaries.

mechanical, security personnel, and consulting services. It employs over 100,000 employees.

In October 2012, ABM purchased Air Serv Corporation (“Air Serv”). Air Serv provides commercial aviation companies with cargo, cleaning, ground transportation, passenger, and security services. It employs about 8,000 employees throughout the United States and the United Kingdom. At that time, ABM’s CEO sent a letter to all former Air Serv employees announcing the purchase and welcoming them to the ABM family. On Air Serv’s website, it announced that, “[i]n late 2012, ABM, a leading provider of integrated facility solutions, acquired Air Serv. When combined with ABM’s Janitorial, Facility Solutions, Security, and Parking airport business, Air Serv will significantly expand ABM’s capabilities in serving the end-to-end needs of the airlines and airport authorities.” ABM announced that Air Serv would be its own “vertical” and that Air Serv’s CEO would report directly to ABM’s CEO.

In addition to ABM’s public statements announcing the purchase of Air Serv and its integration into ABM, Air Serv employees began to receive paychecks and use personnel forms containing the ABM logo. Additionally, at one location in Seattle, Washington, ABM and Air Serv employees clock in together and the ABM logo is present on the office wall.

B. ABM and Air Serv Operations in Seattle, Washington, and SEIU Local 6’s Request for Information Regarding Air Serv’s Employees.

ABM Onsite Services-West Inc. (“ABM Onsite”), using the name ABM Janitorial Services, Inc., is a wholly-owned subsidiary of ABM. ABM Onsite is a signatory to the King County Master Agreement between SEIU Local 6 and various janitorial companies in the Seattle, Washington area. The current master agreement is effective from July 1, 2013 through June 30, 2016. The recognition clause states that SEIU Local 6 is the exclusive bargaining representative for all non-supervisory employees covered by the wage classifications in the agreement. The wage classifications include janitor, waxer/shampooer, and foreperson.

ABM Onsite employs about 400 janitors in King County, with about 160 employees working at the Seattle-Tacoma Airport (“SeaTac”) in Seattle who clean the airport terminal and physical spaces occupied by the concessionaires. ABM Onsite contracted with the Port of Seattle to provide these janitorial services at SeaTac. Additionally, ABM Onsite employs about nine employees who perform cabin cleaning services at SeaTac for Southwest Airlines. ABM Onsite has recognized SEIU Local 6 and applied the terms of the master agreement to all of its airport employees, including the nine aircraft cabin cleaners.

Air Serv, most likely through contracts with airlines,² has about 90 employees at SeaTac, including 60 aircraft cabin cleaners, 16 janitors, and several baggage handlers, checkers, and skycaps that provide wheelchair services. There is no evidence regarding what type of work the 16 Air Serv janitors perform. Air Serv has not recognized SEIU Local 6, and its employees are not covered by the King County Master Agreement. There is no evidence that ABM Onsite began supervising Air Serv employees after ABM purchased Air Serv, or that that Air Serv's supervisors and managers otherwise changed.

On June 20, 2013, SEIU Local 6 filed a grievance against ABM Onsite for violating the recognition clause of the master agreement. It filed the grievance on behalf of Air Serv's janitors and cabin cleaners and asserted that they should be covered by the master agreement now that ABM had purchased Air Serv. As part of the grievance, SEIU Local 6 requested information from ABM Onsite regarding the names, addresses, phone numbers, hire dates, work locations, hourly wage rates, and benefits of all janitors and cabin cleaners currently working for ABM and Air Serv at SeaTac or elsewhere in King County. ABM Onsite denied the grievance and informed SEIU Local 6 that it was unable to provide any information about Air Serv's employees because they were employed by a separate branch of ABM. ABM Onsite eventually provided the requested information regarding its own employees in the relevant area.

In February, March, and April 2014, SEIU Local 6 renewed its requests for the names, work locations, and pay rates of Air Serv's employees at SeaTac or in King County. In doing so, SEIU Local 6 stated that it believed ABM and Air Serv constituted a single employer and that Air Serv's employees were performing bargaining unit work, including janitorial and cabin cleaning services. In subsequent letters, ABM Onsite maintained that Air Serv's employees were not performing unit work and were employed by a separate, wholly-owned subsidiary of ABM with separate supervision and management. A representative of SEIU Local 6 stated in an email to the Region that when ABM acquired Air Serv, "AirServ created 'Janitors' and began also cleaning parts of the airport but not under our contract."³ It is unknown whether these janitors performed bargaining unit work or operated in a completely separate section of the airport.

² There is no evidence that Air Serv has a contract to provide services at SeaTac with the Port of Seattle similar to ABM Onsite's contract.

³ When asked to provide affidavits to support this claim, SEIU Local 6 was unable to do so.

In March 2014, SEIU Local 6 filed a charge against ABM Onsite in Case 19-CA-124390 alleging that it had violated Section 8(a)(5) by failing to provide all of the requested information. In late August 2014, Region 19 found merit to that charge and issued complaint. In January 2015, Region 19 issued an order indefinitely postponing the administrative hearing.

C. ABM and Air Serv Operations in Minneapolis, Minnesota, and SEIU Local 26's Request for Information Regarding Air Serv's Employees.⁴

ABM Janitorial Services, North Central Region ("ABM Janitorial"), is a wholly-owned subsidiary of ABM that performs janitorial work at the Minneapolis/St. Paul International Airport ("MSP") pursuant to contracts it has with the Metropolitan Airports Commission and Southwest Airlines. SEIU Local 26 has represented ABM Janitorial's employees at MSP for more than 25 years. ABM Janitorial is a signatory to the Master Agreement between SEIU Local 26 and the Minneapolis-St. Paul Contract Cleaners Association. The current master agreement is effective from March 3, 2013 through December 31, 2015. Article 1 states that the territorial jurisdiction covered by the agreement is the seven-county metropolitan area. The unit employees are classified under the agreement either as repair persons/specialty workers or general cleaners. ABM Janitorial employs about 230 unit employees at MSP, the majority of which clean the terminals. About 10 of the employees perform cabin cleaning work for Southwest Airlines. ABM Janitorial's employees do not push wheelchairs, drive carts, or provide other passenger-related services at the airport.

Since October 2013, Air Serv has provided passenger services at MSP pursuant to a contract with Delta Airlines. In April 2014,⁵ Air Serv also began providing Delta with cabin services, including cleaning aircraft interiors, conducting security searches, trash removal services, potable water services, and emptying aircraft toilets. As a result of this new cabin services contract with Delta, Air Serv hired an additional 400 employees at MSP.⁶

⁴ There are additional unrelated charges pending against Air Serv's Minneapolis operation, including alleged violations of Section 8(a)(1) based on overbroad work rules, threats, interrogation, and illegally filed lawsuits. Region 18 has issued complaint against Air Serv based on some of those charges, and it is actively investigating others.

⁵ All dates hereafter are in 2014.

⁶ Prior to the Air Serv contract, Delta cabin cleaning had been performed by a Delta subsidiary.

Air Serv now employs approximately 715 employees at MSP in the following classifications: 400 cabin service workers; 122 wheelchair agents; 63 electric cart drivers; 45 bag runners; 38 unaccompanied minor employees; and 17 skycaps. There is no evidence that any Air Serv employee performs janitorial work at MSP terminals or cleans aircraft cabins for Southwest. Additionally, there is no evidence that Air Serv officials supervise ABM Janitorial unit employees, or that ABM Janitorial officials supervise Air Serv employees.

On April 14, shortly after Air Serv was awarded the Delta cabin services contract, SEIU Local 26 filed a grievance against ABM Janitorial on behalf of all Air Serv employees doing bargaining unit work, including but not limited to cabin cleaning work.⁷ It asserted that ABM Janitorial had breached the contract's recognition clause, Section 2.1, by not abiding by the master agreement's terms for Air Serv's employees. The purpose of the grievance essentially is to preserve cabin cleaning work for the SEIU-represented bargaining unit by having Air Serv employees included in the unit. The requested remedy is "for all Air Serv workers doing janitorial or day porter work (in this case including wheelchair and car drivers) to immediately come up to the contract standards of the CBA." Along with the grievance, SEIU Local 26 requested 22 items of information from both ABM Janitorial and Air Serv, including corporate documents, employee information,⁸ contracts, a list of shared equipment, and evidence of employee interchange and common supervision. SEIU Local 26 also made clear that it suspected ABM Janitorial and Air Serv constituted a single employer.

On June 17, ABM Janitorial responded to SEIU Local 26's information request by stating that ABM Janitorial and Air Serv are separate companies and, due to a lack of access to Air Serv's records, it could not provide any Air Serv documents. ABM Janitorial did provide, however, some of its own documents in response to the request. In addition to providing information about its organizational structure, handbooks, memoranda, and policies, ABM Janitorial responded to all of the questions that requested documents about whether the activities of ABM Janitorial and Air Serv were interrelated. For example, ABM Janitorial stated that no service contracts existed between it and Air Serv; no current Air Serv employees performed work for it, and vice versa; its officials had never supervised Air Serv employees, and vice versa;

⁷ SEIU Local 26 asserts that ABM Janitorial, and the bargaining unit employees who work for it, should have been awarded the Delta cabin cleaning contract because unit employees already performed cabin cleaning work for Southwest Airlines.

⁸ SEIU Local 26 requested the names, dates of hire, wage rates, benefits, and work area/assignments of non-supervisory employees working for Air Serv at MSP.

and there was no interchange of any equipment, tools, vehicles, or supplies between the two entities.

ACTION

We conclude that the local union at each location has failed to demonstrate the relevance of the requested information concerning Air Serv and its employees because neither union has presented objective facts to support their belief that ABM, or its subsidiaries, and Air Serv constitute a single employer.⁹ Because ABM and its subsidiaries are not obligated to provide the requested information, the outstanding Section 8(a)(5) complaint should be withdrawn in Case 19-CA-124390 and the charges in both cases should be dismissed, absent withdrawal.

It is well established that, as part of its duty to bargain in good faith, an employer must comply with a union's request for information that will assist the union in fulfilling its responsibilities as the unit employees' statutory bargaining representative.¹⁰ This includes any information relevant and reasonably necessary for negotiating, administering, or policing a collective-bargaining agreement.¹¹ Information regarding the terms and conditions of employment of employees represented by a union is presumptively relevant and must be produced.¹²

However, where a union requests information about employees other than those it represents, or about an entity that does not employ unit employees, there is no presumption that the requested information is necessary and relevant to the union's representational role.¹³ Under those circumstances, a union bears the initial burden of showing the relevance of the requested information before an employer is under a

⁹ The unions allege only that ABM and Air Serv constitute a single employer, not alter egos, but we note that they also have failed to present objective facts to support a reasonable belief that the entities were alter egos designed to evade ABM's responsibilities under the collective-bargaining agreements.

¹⁰ *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 436 (1967); *Detroit Edison Co.*, 440 U.S. 301, 303 (1979).

¹¹ *See, e.g., Leland Stanford Junior University*, 262 NLRB 136, 138-39 (1982), *enforced* 715 F.2d 473 (9th Cir. 1983).

¹² *See, e.g., Proctor Mechanical Corp.*, 279 NLRB 201, 204 (1986), *quoting Bohemia, Inc.*, 272 NLRB 1128, 1129 (1984).

¹³ *Id.*, 279 NLRB at 204.

statutory obligation to provide it.¹⁴ The Board applies a “liberal, discovery-type” standard to determine whether requested information is probably or potentially relevant to the execution of the union’s statutory duties.¹⁵

The Board has held that information regarding an employer’s potential single employer, alter ego, or double-breasted relationship with another entity is not presumptively relevant because it does not directly concern unit terms and conditions of employment.¹⁶ Nonetheless, the Board may find such information is relevant where a union is seeking to determine whether the employer has diverted work away from the bargaining unit,¹⁷ breached a contractual provision,¹⁸ or unlawfully avoided its obligation to bargain or apply contractual terms.¹⁹

In order for an information request pertaining to an employer’s alleged single employer or alter ego relationship to be relevant to a union’s representational role, that union must establish a reasonable belief supported by objective evidence that one of those relationships exists.²⁰ A mere suspicion that such a relationship exists will

¹⁴ *NLRB v. Associated General Contractors*, 633 F.2d 766, 770-71 (9th Cir. 1980), *cert. denied* 452 U.S. 915 (1981).

¹⁵ *NLRB v. Acme Industrial Co.*, 385 U.S. at 437. *See also, e.g., A-1 Door & Building Solutions*, 356 NLRB No. 76, slip op. at 2 (2011), *citing Shoppers Food Warehouse Corp.*, 315 NLRB 258, 359 (1994).

¹⁶ *See Shoppers Food Warehouse Corp.*, 315 NLRB at 259; *Pence Construction Corp.*, 281 NLRB 322, 324 (1986); *Bohemia, Inc.*, 272 NLRB at 1129; *Walter N. Yoder & Sons*, 270 NLRB 652, 652 n.5 (1984), *enforced* 754 F.2d 531 (4th Cir. 1985).

¹⁷ *See, e.g., Shoppers Food Warehouse Corp.*, 315 NLRB at 259-60; *Pence Construction Corp.*, 281 NLRB at 324.

¹⁸ *See, e.g., Bentley-Jost Electrical Corp.*, 283 NLRB 564, 568 (1983).

¹⁹ *See, e.g., Associated General Contractors of California*, 242 NLRB 891, 893 (1979), *enforced in relevant part* 633 F.2d 766 (9th Cir. 1980), *cert. denied* 452 U.S. 915 (1981).

²⁰ *Bohemia, Inc.*, 272 NLRB at 1129. *See also Brisco Sheet Metal, Inc.*, 307 NLRB 361, 366 (1992), *citing NLRB v. Leonard B. Herbert, Jr. & Co.*, 696 F.2d 1120, 1124-25 (5th Cir. 1983), and *Blue Diamond Co.*, 295 NLRB 1007, 1007 (1989).

not justify a request.²¹ A union is not required to show that the requested information, if supplied, would in fact establish a single employer relationship, but a union does need to demonstrate that objective facts existed that would allow a reasonable belief that the two entities are a single employer.²²

Applying these principles, we conclude that the two local unions here have failed to demonstrate the relevance of the requested information at Seattle and Minneapolis. The information request at each location will be analyzed separately below.

A. SEIU Local 6's Request for Information Regarding Single Employer Status in Seattle Was Not Supported by Objective Evidence.

SEIU Local 6 contends that the information it sought from ABM Onsite, including the names, addresses, job classifications, wage rates, and work locations of Air Serv employees at SeaTac or in King County, is necessary to determine whether ABM Onsite is violating the master agreement by having non-unit employees perform contractual unit work. Its June 2013 grievance basically asserts that if ABM Onsite and Air Serv constitute a single employer, then ABM Onsite is required to apply the master agreement to Air Serv's janitors and cabin cleaners in the territorial jurisdiction.

We conclude that SEIU Local 6 has failed to establish the relevance of the requested information because it did not have an objective factual basis for its belief either that ABM Onsite and Air Serv constitute a single employer or that there has been any diversion of unit work. Initially, we note that the type of information that SEIU Local 6 requested would not help it determine whether ABM Onsite and Air Serv constitute a single employer. The factors considered in making a single employer determination are interrelation of operations, common management,

²¹ *Bohemia, Inc.*, 272 NLRB at 1129 (finding union did not have an objective basis upon which to request single employer information when union agent had conceded that information request was based solely on the unit employees' "suspicion" that bargaining unit work had been transferred to another employer facility because of the lower wages being paid there). Compare *M. Scher & Son*, 286 NLRB 688, 691 (1987) (union had objective factual basis for believing second employer was alter ego or single employer of the main employer where, inter alia, the second employer was employing the main employer's employees, trucks, equipment, and traffic cones on its jobs and both employers were often on the same jobs and maintained the same office address).

²² *Pence Construction Corp.*, 281 NLRB at 324 (internal citations omitted).

centralized control of labor relations, and common ownership or financial control.²³ The names, addresses, job classifications, wage rates, and work locations of Air Serv's employees working at SeaTac or elsewhere in King County would not assist SEIU Local 6 in determining whether ABM Onsite and Air Serv had interrelated operations, common management or supervision, centralized control of labor relations, or common ownership and financial control.

Further, there is no evidence in the current record that would support a reasonable belief that bargaining unit work was performed by Air Serv employees or that ABM Onsite had a plan to transfer unit work to Air Serv. While a representative for SEIU Local 6 stated that Air Serv created "Janitors" who clean parts of the airport, there is no evidence that those janitors took over work that was previously performed by ABM Onsite unit employees or that they work in similar locations in the airport. Without an objective factual basis for believing that non-unit employees are performing existing unit work, SEIU Local 6 has not met its burden of establishing the relevancy of the requested information.²⁴

In support of its assertion of relevance, SEIU Local 6 relies on ABM and Air Serv's public statements from October 2012 that the two entities would provide end-to-end services for the air travel industry and that Air Serv's CEO would report to ABM's CEO. SEIU Local 6 also relies on the fact that Air Serv employees use ABM personnel forms, receive paychecks containing the ABM logo, and both ABM and Air Serv employees clock in together at one location where an ABM logo is present on the

²³ See, e.g., *Hydrolines, Inc.*, 305 NLRB 416, 417 (1991).

²⁴ See *Tri-State Generation & Transmission Assn.*, 332 NLRB 910, 911 (2000) (in finding that the union did not meet its burden to show relevance in a work preservation claim, the Board stated "nor was there any indication that *existing* bargaining unit work would be transferred to [the other employer], or that plans for such transfer were in development") (emphasis added); *Bohemia Inc.*, 272 NLRB at 1129 (union only had "suspicion" and did not have any objective factual basis for believing unit work was transferred out of the unit). See also *Sunbelt Rentals, Inc.*, Case 25-CA-29798, Advice Memorandum dated April 28, 2006, at 7 (union did not establish relevancy of requested information where there was no evidence that bargaining unit work was to be transferred to another facility). Compare *Reiss Viking*, 312 NLRB 622, 626 (1993) (reasonable objective factual basis that the employer was contracting out unit work where unit employees saw subcontractors performing unit work and unit employees were laid off); *Blue Diamond Co.*, 295 NLRB at 1007 (1989) (union's information request was not a "fishing expedition" because unit employee observed non-unit employees performing bargaining unit work).

office wall. That evidence does not support a reasonable belief that ABM Onsite officials supervise Air Serv employees, that ABM Onsite controls Air Serv's labor relations, or that the two companies' operations are interrelated in any way.²⁵

B. SEIU Local 26's Request for Information Regarding Single Employer Status in Minneapolis Was Not Supported by Objective Evidence.

In Minneapolis, SEIU Local 26 requested information from ABM Janitorial and Air Serv that included their corporate documents, employee information, contracts, a list of shared equipment, and evidence of employee interchange and common supervision. It asserts that the requested information is necessary for it to effectively process the work preservation grievance it filed against ABM Janitorial in April 2014.

We conclude that SEIU Local 26 has failed to establish the relevance of the requested information because it did not have an objective factual basis for its belief that ABM Janitorial and Air Serv are a single employer or that there has been any diversion of unit work. There is no evidence that Air Serv has been performing any bargaining unit work. While Air Serv obtained a new services contract in April 2014 and began to perform cabin cleaning services for Delta, that work had not been performed previously by the bargaining unit employees who work for ABM Janitorial. Without an objective factual basis to support a reasonable belief that non-unit employees are performing existing unit work, SEIU Local 26 has not met its burden of proving the relevance of the requested information for its work preservation grievance.²⁶

²⁵ Compare *Bentley-Jost Electric Corp.*, 283 NLRB at 565-68 ("enough facts existed to give rise to a reasonable belief" that the two companies were acting as a single employer or alter egos where evidence demonstrated that the two employers shared an office and phone number, used the other's production materials, and had overlapping corporate officials); *McCormick Dray Lines, Inc.*, 317 NLRB 155, 160-61 (1995) (union had objective factual basis for believing that the employer was operating a double-breasted operation where, inter alia, nonunion company began performing previously union jobs, job applicants for both companies were interviewed and offered employment by same person, job advertisements for both companies were used interchangeably, and companies shared the same receptionist and facility); *Conditioned Air Systems, Inc.*, 360 NLRB No. 97, slip op. at 5 (2014) (union had reasonable objective basis for believing alter ego relationship existed where employer told union it was using nonunion labor at a jobsite, unit employees saw suspected alter ego employees using the employer's trucks, and unit employees had documents indicating that general contractor shifted work from the employer to its suspected alter ego).

²⁶ See footnote 24, above.

As discussed above, the evidence that SEIU Local 26 relies on, such as Air Serv employees receiving paychecks containing ABM's logo and using ABM personnel forms, does not constitute sufficient objective facts to support a reasonable belief that ABM Janitorial and Air Serv are a single employer. There is no evidence that ABM Janitorial maintains any control over Air Serv, that ABM Janitorial controls Air Serv's labor relations, or that the two companies' operations are interrelated in any way. Indeed, ABM Janitorial specifically denied any operational relationship, and confirmed that there was no employee, supervisor, or equipment interchange between the two entities.

Accordingly, because the local union at each location failed to present objective evidence to support a reasonable belief that ABM and Air Serv constitute a single employer, ABM Onsite and ABM Janitorial were not obligated to provide the requested information concerning Air Serv and its employees. Thus, the outstanding Section 8(a)(5) complaint should be withdrawn in Case 19-CA-124390 and the charges in both cases should be dismissed, absent withdrawal.

/s/
B.J.K