LABOR NOTES WEBINAR

UNION INFORMATION RIGHTS
GENERAL RULE: A UNION IS ENTITLED TO INFORMATION NEEDED TO:

• Police the workplace in the interests of employees
• Investigate and present grievances
• Intelligently bargain over mid-term changes not covered by management rights clauses or other language permitting unilateral action
• Bargain a collective bargaining agreement
ENFORCEMENT AGENCIES

• National Labor Relations Board

• State labor relations boards
BENEFITS OF INFORMATION REQUESTS

• To obtain information needed for grievances and bargaining
• To impose a burden on management for violating the contract
• In bargaining, to prevent the employer from being able to declare impasse
• To lay the basis for an unfair labor practice strike
• To prevent employer from declaring a lawful lockout

NATIONAL LABOR RELATIONS BOARD
UNION’S REQUEST MAY BE ORAL OR IN WRITING

• Best practice – put request in writing
• Request (or “demand”) can be incorporated in or attached to grievance
WHEN CAN GRIEVANCE INFO BE REQUESTED?

• To monitor the workplace or the contract
• To investigate whether to file a grievance
• To prepare for a grievance meeting
• To prepare for arbitration
WHAT CAN BE REQUESTED?

• Documents
• Data
• Facts
DOCUMENTS

• Attendance reports
• Contracts with subcontractors (sometimes)
• Customer complaints
• Employee evaluations
• Insurance policies
• Interview notes
• Investigative files
• Personnel files
• Studies
• Videotapes (to examine, not to take)
DATA

• Employees disciplined for same offense
• Incidents in which past practice not observed
• Number of accidents in past year
• Names of subcontractors and work being performed
FACTS

• Names of complainants
• Names of witnesses
• Dates
• “In the second step grievance meeting, you said the grievant had done the same thing several times before. Please describe the date and nature of each incident.”
GENERAL REQUESTS

• All documents relied on in making the decision to impose discipline
• All reasons for making the decision to adopt a new attendance policy
WITNESS STATEMENTS
EMPLOYER DEFENSES THAT MAY HAVE MERIT

• Union is seeking information in bad faith (to harass employer, to prevent impasse)
• Union is seeking information to support an unfair labor practice charge
• Requested information is confidential
CONFIDENTIALITY

• INFORMATION HIGHLY SENSITIVE TO EMPLOYER
  * Trade secrets
  * Profit levels
  * Ongoing investigation
  * Documents prepared by employer’s attorney

• INFORMATION HIGHLY PERSONAL TO EMPLOYEES
  * Medical records
  * Aptitude scores
UNION RESPONSE TO CONFIDENTIALITY CLAIM

• Argue that information is not confidential
• Argue that union need for the information outweighs employer need for confidentiality
• Agree that confidential information can be removed or redacted
• Offer to sign a confidentiality agreement
HIPAA

• Health Insurance Portability and Accountability Act
• Forbids health care providers from disclosing protected health information without patient authorization.
• Exception: “Disclosures required by law” or for the purpose of resolving “internal grievances.”
IF EMPLOYER DEMANDS PAYMENT

• Demand information that supports employer claim that production of data will be “unduly burdensome.”
• Offer to share the costs
• Reduce size of request
• Tell employer to send info electronically
• Offer to use union copier
• Offer to have union members do research in company records
INFORMATION ABOUT SUPERVISORS OR OTHER PERSONS OUTSIDE BARGAINING UNIT
SAMPLE REQUEST: EMPLOYEE DISCHARGED FOR FIGHTING
EMPLOYER SUBMITS INFO REQUEST