

Obama Board Expands Information Request Morass

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By another 2-1 decision, the Democratic majority NLRB ruled on Jan. 3, 2012 that a union is entitled to information that is not presumptively relevant without the need to explain its "reasonable belief" that the information sought is necessary for, and relevant to, the performance of its statutory duties.

Board law has long held that presumptively relevant information must be provided to a union upon its request. With respect to information that is not presumptively relevant, the Board has held that the union is only entitled the information if it has a "reasonable belief" that the information is necessary for bargaining or grievance handling. In such cases, it was common for an employer to request that the union explain its reasons so as to assure itself of the bona fides of the union's reasonable belief. The Board's new decision in [Piggly Wiggly Midwest LLC](#) held that the union need not disclose its reasons to the employer upon request. Instead, the reasonableness of the union's views could be established by the NLRB's General Counsel during a trial of unfair labor practice charges filed against the employer for failing to provide the information that was not presumptively relevant to bargaining.

Unions have increasingly used information requests to obtain leverage or forestall concessionary bargaining. The new decision gives unions another tool if they wish to avoid bargaining in good faith or attempting to harass employers into submission. From a practical standpoint, the new decision seemingly necessitates the involvement of the NLRB in every request for information that is not presumptively relevant. Employers faced with information requests that seem outside the norm are cautioned to consult with counsel before refusing to provide such information.

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