

Employer need not Disclose Result of Psychological Aptitude Tests to Union

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A union requested copies of the results of a pre-hire psychological aptitude test administered by the employer as part of an investigation relating to a bargaining unit dispute. The employer refused to provide the results without the applicants' consent, arguing that disclosing the aptitude test results would violate the applicants' reasonable expectations of privacy because the employer had told applicants that the results would generally be treated as private. The union filed an unfair labor practice charge, alleging that the National Labor Relations Act (NLRA) required disclosure of the records. The U.S. Court of Appeals for the First Circuit found that the applicants retained a legitimate expectation of privacy in the test results because the written notice that results could be disclosed in certain situations "could not eliminate all expectations of confidentiality in employee test results." Employers should be aware that an exception allowing disclosure of sensitive information to a union in compliance with the NLRA does not necessarily require disclosure of such information in all circumstances once a demand is made by the union. Employers should review their policies and practices to identify records containing private or sensitive employee information and assess on a request-by-request basis whether such information should be disclosed to unions.

NLRB v. USPS, Case No. 11-1225 (1st Cir. Oct. 27, 2011)

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Topics

National Labor Relations Act (NLRA), Bargaining, Unions