

**Pfizer, Inc. and International Brotherhood of Electrical Workers, Local 309. Case 14-CA-16016**

14 February 1984

**DECISION AND ORDER**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER

Upon a charge filed by International Brotherhood of Electrical Workers, Local 309 (Local 309 or the Charging Party), on 24 June 1982, and duly served on Pfizer, Inc. (the Respondent), the General Counsel of the National Labor Relations Board, acting through the Regional Director for Region 14, issued a complaint and notice of hearing on 15 July 1982, alleging that the Respondent had violated Section 8(a)(1) and (5) of the National Labor Relations Act. The Respondent filed an answer and, on 15 September 1982, the Respondent, the Union, and the General Counsel filed with the Board a motion to transfer the proceedings to the Board and a stipulation of facts. The parties stipulated to the contents of the record, and agreed that no oral testimony was necessary or desired.

They further stipulated that they waived a hearing before an administrative law judge, the makings of findings of fact and conclusions of law by an administrative law judge, and the issuance of an administrative law judge's decision and desire to submit this case for findings of fact, conclusions of law, and an order directly to the Board. By order dated 7 December 1982, the Board granted the motion, approved the stipulation of facts, and transferred the proceedings to the Board. Thereafter, briefs were filed by the General Counsel, the Charging Party, and the Respondent.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record stipulated to by the parties and the briefs filed by the parties, and hereby makes the following findings and conclusions.

**I. THE BUSINESS OF THE RESPONDENT**

Respondent Pfizer, Inc., a corporation, with an office and a place of business at 2001 Lynch Avenue in East St. Louis, Illinois (herein called the plant), is and has been engaged in the manufacture, sale, and distribution of iron oxides and related products. During the 12-month period ending 30 June 1982, the Respondent, in the course and conduct of its operations, manufactured, sold, and distributed at its East St. Louis, Illinois plant products valued in excess of \$50,000, of which products valued in excess of \$50,000 were shipped from said

plant directly to points located outside the State of Illinois. The parties therefore stipulated, and we find, that the Respondent is and has been at all material times herein an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

The parties stipulated, and we find, that Charging Party Local 309 is, and has been at all material times herein, a labor organization within the meaning of Section 2(5) of the Act.

**III. THE ALLEGED UNFAIR LABOR PRACTICES****A. The Stipulated Facts**

As noted previously, Pfizer has a plant in East St. Louis, Illinois, where it is engaged in the manufacture and sale of iron oxide pigment, a coloring agent for paints and building supplies. All of the hourly paid production and maintenance employees at the plant are represented by labor organizations. Local 309 represents the 8 or 9 electricians employed at the plant, the Operating Engineers Union represents the employees in the boilerhouse, while Local 1850 of the International Brotherhood of Painters and Allied Trades (the Painters) represents approximately 250 of the other maintenance and production workers. Each of these three labor organizations has a collective-bargaining agreement with Pfizer. The Respondent has one set of rules for all hourly employees in the plant which is contained in its "Employee Handbook" and distributed to all employees.

William Toon, an electrician, and Calvin Kramer, a millwright, were involved in a fight at the plant on 19 February 1982.<sup>1</sup> Both were terminated on 23 February, and the Respondent relied on the same reasons for both discharges: violating rules 5 and 8 of the Respondent's "Rules of Individual Conduct." Those rules, as set forth in its employee handbook, provide:

Violations of the following Rules are considered sufficient cause for immediate discharge:

. . . .  
5. Threatening, intimidating or coercing fellow employees . . . .

. . . .  
8. Fighting or the provocation leading/-resulting in a fight or other form of disorderly conduct.

Toon, who is represented by Local 309, filed a grievance over his discharge,<sup>2</sup> alleging that the Re-

<sup>1</sup> All dates hereinafter refer to 1982 unless otherwise noted.

<sup>2</sup> Kramer, who is represented by Painters, also filed a grievance.

spondent had misapplied article I of the collective-bargaining agreement.<sup>3</sup> The Respondent denied the grievance on the grounds that Toon was discharged for violating rules 5 and 8, above. Toon's grievance went to arbitration on 7 and 8 July. Prior to arbitration, Local 309 requested the Respondent to provide it with certain kinds of information "in order to properly investigate and evaluate this grievance . . ." The parties, in an exchange of letters, arrived at a mutually acceptable exchange of information, except with respect to the following documents, which the Respondent refused to provide:

A copy of all documents in the Company's possession that reflect upon Cal Kramer's work record at the Company, including, but not limited to, documents that relate to or reflect the following:

A. All oral or written warnings or other disciplinary action taken by the Company against Mr. Kramer;

B. All evaluations of Mr. Kramer's work performance while employed at the Company;

C. Mr. Kramer's positions, dates held, and the wage rate he received in each position during the period he has worked for the Company;

D. Any promotions or commendations Mr. Kramer has received while employed at the Company.<sup>4</sup>

Copies of all documents that reflect any assaults committed by any employee or fights that have occurred between employees on the Company's premises since January 1, 1979, including, but not limited to, documents that reflect the Company's response to these incidents, disciplinary actions taken against any party to these incidents, and any grievances filed regarding such incident and the disposition thereof.

With respect to the last item—"documents that reflect any assaults"—the Respondent wrote Local 309 about two instances of discipline for fighting involving two employees represented by Painters (Kramer's representative)—one which resulted in discharge and the other one in which an employee

<sup>3</sup> This article provides in pertinent part as follows:

*ARTICLE I—RECOGNITION*

2. The Union recognizes that the operation of the plant and the direction of the work forces, including the right to hire, suspend and discharge employees is vested and shall remain vested exclusively in the employer.

<sup>4</sup> Local 309 requested and received the exact same information for Toon.

was discharged for threatening supervisors, but then reinstated as a result of a settlement between the Respondent and Painters. The Respondent failed, however, to provide any documents evidencing these incidents.

Local 309 once again wrote the Respondent requesting the information and noting that Kramer's work record was particularly relevant "to the issue of the proper application of the Company's rule in light of the fact that Mr. Kramer assaulted Mr. Toon, but both men received the same punishment." The Respondent again denied the request. As noted previously, Toon's grievance went to arbitration. At the hearing Leonard C. Stephens, director of personnel, testified about his decision to discharge both Toon and Kramer. He stated that the Respondent has a progressive discipline system, and that the rules contained in the handbook apply to all employees. According to Stephens, it was the Respondent's policy to look at an employee's work history, and, "in most cases . . . depend[ing] on the severity," an "individual's past record will play definitely an integral part in the final decision-making process." He further stated that he reviewed Toon's record before deciding to discharge him, and did likewise for Kramer. To date the arbitrator has not issued an award. He has agreed to open the record for the submission of additional relevant documents, depending on the resolution of this case.

*B. The Issues and Contentions*

The General Counsel argues that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to provide Kramer's work record and documents concerning other employees who were disciplined or discharged for violation of the same rules for which Toon was discharged. According to the General Counsel, the Respondent had a duty to furnish this information because it is relevant to Toon's grievance; that is, the information would aid Local 309 in evaluating the propriety of proceeding with a pending arbitration. The General Counsel further notes that, in assessing relevancy, the Board's standard is a broad one, like that used for discovery in the Federal courts. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Thus, the General Counsel urges that we order the Respondent to furnish the requested information. The Charging Party supports the General Counsel in these claims.

The Respondent contends that it had no duty to furnish the requested information because it is not necessary and relevant to Toon's grievance. Moreover, it claims that the documents requested from Kramer's personnel file are confidential and that under *NLRB v. Detroit Edison Co.*, 440 U.S. 301

(1979), the Respondent should not provide the information without Kramer's consent.

### C. Discussion and Conclusions

The law in this area is clear and well settled. An employer has a duty to provide upon request information relevant "to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial Co.*, 385 U.S. at 437. Where the requested information concerns wage rates, job descriptions, and other information pertaining to employees within the bargaining unit, this information is presumptively relevant. *Vertol Division*, 182 NLRB 421, 425 (1970); *Curtiss-Wright Corp.*, 145 NLRB 152 (1963), *enfd.* 347 F.2d 61, 69 (3d Cir. 1965); *Timken Roller Bearing Co.*, 138 NLRB 15 (1962), *enfd.* 325 F.2d 746, 750 (6th Cir. 1963), *cert. denied* 376 U.S. 971 (1964). Where the request is for information concerning employees outside the bargaining unit, the union must show that the information is relevant. *Brooklyn Union Gas Co.*, 220 NLRB 189 (1975); *Curtiss-Wright Corp.*, *supra*. In either situation, however, the standard for relevancy is the same: a "liberal discovery-type standard." *Loral Electronic Systems*, 253 NLRB 851, 853 (1980); *Acme Industrial*, 385 U.S. at 437. Thus, information need not necessarily be dispositive of the issue between the parties, it need only have some bearing on it. As the Court said in *Acme Industrial*, 385 U.S. at 437: "This discovery-type standard decided nothing about the merits of the union's contractual claims. [Footnote omitted.]" And see, for the same result, *Conrock Co.*, 263 NLRB 1293, 1294 (1982): "An employer must furnish information that is of even probable or potential relevance to the union's duties. [Footnote omitted.]"

As the Circuit Court for the District of Columbia has observed:

A broad disclosure rule is crucial to full development of the role of collective bargaining contemplated by the Act. Unless each side has access to information enabling it to discuss intelligently and deal meaningfully with bargainable issues, effective negotiation cannot occur. . . . Accordingly, the standard for assessing the relevancy of requested information to a bargainable issue is a liberal one, much akin to that applied in discovery proceedings. . . . Under the Federal Rules of Civil Procedure governing discovery, "relevancy is synonymous with 'germane'"; and a party must disclose information if it has any bearing on the subject matter of the case. . . . [*Local 13 Detroit Newspaper Union v. NLRB*, 598 F.2d 267, 271 (D.C. Cir. 1979). Footnote omitted.]

This standard of relevancy applies to all requests for information, although, as noted earlier, where the request applies to information outside the bargaining unit, the requesting party has the burden of showing relevance.

In general, the Board and the courts have held that information which aids the arbitral process is relevant and should be provided. *Acme Industrial*, 385 U.S. at 438; *Fawcett Printing Corp.*, 201 NLRB 964, 972 (1973); *Chesapeake & Potomac Telephone Co.*, 259 NLRB 225, 227 (1981); *Brooklyn Union Gas Co.*, 220 NLRB at 192. In this regard, relevancy and the concomitant duty to furnish information are not affected by whether the request for information is at the grievance stage or is made after the parties have agreed to proceed to arbitration. *Fawcett Printing Corp.*, 201 NLRB at 972, *Chesapeake & Potomac*, 259 NLRB at 227. For the goal of the process of exchanging information is to encourage resolution of disputes, short of an arbitration hearing, briefs, and decision so that the arbitration system is not "woefully overburdened." *Acme Industrial*, 385 U.S. at 438.

Moreover, information of "probable relevance" is not rendered irrelevant by a party's claims that it will neither raise a certain defense nor make certain factual contentions. *Conrock Co.*, 263 NLRB at 1294; *Transport of New Jersey*, 233 NLRB 694 (1977). This is so because "a union has the right and the responsibility to frame the issues and advance whatever contentions it believes may lead to the successful resolution of a grievance." *Conrock*, *supra* at 1294. And since the Board, in passing on an information request, is not concerned with the merits of the grievance, it is also not "willing to speculate regarding what defense or defenses an employer will raise in an arbitration proceeding." *Conrock*, *supra* at 1294. With these principles in mind, we turn to the request for information in the instant case.

In the instant case, the Respondent has a progressive disciplinary system, and its rules of conduct apply to all hourly employees, regardless of which Union represents them. Further, the Respondent acknowledges that its normal procedure, in determining the punishment for violations of its rules—including rules 5 and 8—is to examine the employee's overall work record before deciding the punishment. Thus, even though an employee's violation of rule 5 or 8 is grounds for immediate discharge, the Respondent has stated that it examined Toon's and Kramer's work record in deciding each employee's discipline. On these facts, the Union contends that it needs to have access to Kramer's work record as relevant to whether the Re-

spondent applied its rules evenhandedly. We find merit in this contention.

Kramer's work record and the documents relating to the other employees disciplined under rules 5 and 8 are relevant to a determination as to whether the Respondent, in taking into account past work performance, has treated like cases in a like manner, or whether there has been disparate treatment. This information may therefore be of use to the Union either in deciding whether to proceed to arbitration, or in the arbitration proceeding itself. Certainly, we find that there is a "probability that the . . . information [is] relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Acme Industrial*, 385 U.S. at 437. Indeed, this case is particularly compelling since Local 309 represents only 8 of the over 300 employees, so that most disciplinary actions taken by the Employer involve nonunit employees working side by side, under the same set of rules, with those employees represented by Local 309.

The Respondent, however, in addition to contesting relevancy, defends its refusal to provide the information on the grounds that the information requested is confidential. When the claim of confidentiality is raised, the party asserting that claim has the burden of proof. *McDonnell Douglas Corp.*, 224 NLRB 881, 890 (1976). The Respondent here, relying on *NLRB v. Detroit Edison Co.*, supra, 440 U.S. 301, has merely asserted a general claim that an employee's work record at Pfizer should be confidential. It has not shown that during the normal course of business it keeps the information requested here confidential for other purposes. Nor has it shown that employees have sought to have this information kept confidential or that they have an expectation that in the normal processing of grievances their employment history at the Company will be kept confidential.

Rather, it appears that the normal practice is to the contrary. Arbitrators routinely consider employee work records in deciding whether employers have applied their disciplinary rules in a consistent, evenhanded, and nondiscriminatory manner. See, e.g., *Grief Bros. Cooperage Corp.*, 42 BNA LA 555, 558 (1964) (Daugherty, Arb.). *Dubuque Lorenz, Inc.*, 66 BNA LA 1245, 1249 (1976) (Sinicropi, Arb.). For the evenhanded application of work rules for discipline purposes is a fundamental principle of industrial justice. In fact, the role of the arbitrator in reviewing discharge cases has been summarized as follows:

If management acts in good faith upon a fair investigation and fixes a penalty not inconsistent with that imposed in other like cases, an

arbitrator should not disturb it . . . . The only circumstances under which a penalty imposed by management can be rightfully set aside by an arbitrator are those where discrimination, unfairness or capricious and arbitrary action are proved. . . . [*Stockham Pipe Fittings Co.*, 1 BNA LA 160, 162 (1945) (McCoy, Arb.), quoted in Elkouri and Elkouri, *How Arbitration Works* 125 (3d ed.).]

In order to determine whether rules have been applied evenhandedly it is necessary to compare the employment history of employees disciplined for the same rule violations. While these comparisons normally involve employees in the same unit, we believe that the same rule should apply in the instant case because the Respondent's rules apply to all of the plant's employees, regardless of bargaining unit.

Thus this case is fundamentally different from *Detroit Edison Co.*, supra, for in *Detroit Edison*, the employer had administered the tests "with the express commitment that each applicant's test score would remain confidential." 440 U.S. at 306. Here, no such commitment has been made. Moreover, information about Kramer's history of promotions and his disciplinary record is not of the same sensitive and confidential nature as aptitude test scores. Accordingly, based on the above facts, we find that the Union's need for the information outweighs the Respondent's concerns of confidentiality. See *NLRB v. Jaggars-Chiles-Stovall, Inc.*, 639 F.2d 1344, 1346-47 (5th Cir. 1981), cert. denied 454 U.S. 826. We therefore find that the Respondent violated Section 8(a)(5) and (1) by not furnishing the information requested by Local 309.

#### THE REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, we shall order it to cease and desist therefrom and to take certain affirmative action to effectuate the policies of the Act. Specifically, we order the Respondent, on request, to furnish the Union with the information it has requested as set out in the body of this decision. To the extent that the request is unclear, we note that the Respondent is only required to furnish the kind of documentary information that it has examined in making a disciplinary or discharge decision, and any documents reflecting such a decision, or the grievance of or settlement of such a disciplinary decision.

## ORDER

The National Labor Relations Board orders that the Respondent, Pfizer, Inc., East St. Louis, Illinois, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to bargain collectively with International Brotherhood of Electrical Workers, Local 309, by refusing to furnish it with information that it requests which is relevant and reasonably necessary to the processing and evaluation of grievances and preparing them for arbitration.

(b) In any like or related manner engaging in conduct in derogation of its statutory duty to bargain in good faith with the Union, and in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Furnish the Union with (1) documents concerning Calvin Kramer's work record, including records of any disciplinary action, oral or written; work evaluations; work history, including positions held and the dates and wage rates; and records of any promotions or commendations; and (2) documents concerning any assaults or fights which have occurred in the plant since 1 January 1979, including the Respondent's response to such incidents, any disciplinary action, and any grievances and the disposition thereof.

(b) Post at its East St. Louis, Illinois facility copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 14, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places

where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with International Brotherhood of Electrical Workers, Local 309, by refusing to furnish it with information that it requests which is relevant and reasonably necessary to the processing and evaluation of grievances and preparing them for arbitration.

WE WILL NOT in any like or related manner engage in conduct in derogation of our statutory duty to bargain in good faith with the Union, and in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL furnish to Local 309 the documents it requested concerning an employee's work record, and concerning any assaults or fights by other employees since 1 January 1979.

PFIZER, INC.

<sup>6</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of The National Labor Relations Board."