

Crouse-Irving Memorial Hospital, Inc. and General Service Employees Union, Service Employees International Union, Local 200, AFL-CIO.
Case 3-CA-11748

16 August 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS

On 30 March 1984 Administrative Law Judge James F. Morton issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Crouse-Irving Memorial Hospital, Inc., Syracuse, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Refusing to bargain with General Service Employees Union, Service Employees International Union, Local 200, AFL-CIO, as the exclusive bargaining representative of all the Respondent's service and maintenance employees, excluding supervisors, foremen, office clerical employees and full-time students, by failing to provide the Union the information it requested 25 July 1983, except the pay rates and hire dates of supervisors and volunteers."

2. Substitute the following for paragraph 2(a).

"(a) Furnish the Union the information it requested 25 July 1983, including an itemization of

those individuals performing bargaining unit work from 14 through 22 July 1983, specifically indicating the individual's name, type of work performed, classification, hire date, pay rate, work hours, overtime, if any, and shift work, except for the hire dates and pay rates of supervisors and volunteers."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with General Service Employees Union, Service Employees International Union, Local 200, AFL-CIO, as the exclusive representative of all of our service and maintenance employees, excluding supervisors, foremen, office clerical employees, and full-time students, by failing to provide the Union the information it requested 25 July 1983, except for the pay rates and hire dates of supervisors and volunteers.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information it requested 25 July 1983, including an itemization of those individuals performing bargaining unit work from 14 through 22 July 1983, specifically indicating the individual's name, type of work performed, classification, hire date, pay rate, work hours, overtime, if any, and shift work, except for the hire dates and pay rates of supervisors and volunteers.

CROUSE-IRVING MEMORIAL HOSPITAL, INC.

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The complaint alleges that Crouse-Irving Memorial Hospital, Inc. (Respondent), in violation of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act), refused to furnish information sought General Service Employees' Union, Service Employees' International Union, Local 200, AFL-CIO (the Union) alleged to be needed by the Union to process a grievance filed under the provisions of the collective-bargaining agreement the Union had with Respondent. Respondent denies that the information

¹ In sec. II.D, par. 6 of his decision, the judge erroneously stated that the Respondent acknowledged that the Union's conduct during the strike was "exemplary." The record reflects that the Respondent characterized the Union's strike conduct as "peaceful." We correct this error.

² The judge's recommended Order required the Respondent to furnish the Union the name, type of work performed, classification, hire date, pay rate, work hours, overtime, if any, and shift work of all individuals who performed bargaining unit work from 14 through 22 July 1983. At the hearing, the Union acknowledged that information concerning the hire dates and pay rates of supervisors and volunteers is not relevant to the processing of the grievance. Accordingly, we shall modify pars. 1(a) and 2(a) of the recommended Order to delete the requirement that the Respondent provide the Union with the hire dates and pay rates of supervisors and volunteers who worked in the unit during the relevant period.

sought has any relevance to that grievance and asserts in the alternative that other and weightier considerations, discussed below, justify Respondent's refusal to furnish the requested data.

The hearing was held before me in Syracuse, New York, on January 5 and 6, 1984.

On the entire record, including my observation of the demeanor of the witnesses and after due consideration of the briefs filed by the General Counsel, the Respondent, and the Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

As the pleadings establish, Respondent is a nonprofit New York corporation which operates a hospital and provides related services in Syracuse, New York. Its annual operations meet the Board's applicable jurisdictional standard.

The pleadings further establish that the Union is a labor organization as defined in the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Union is the exclusive bargaining representative of all of the approximately 450 service and maintenance employees employed by Respondent.

In early 1983 (all dates hereafter are for 1983 unless noted otherwise), Respondent had laid off a number of service and maintenance employees. By July 15 about 22 of those employees were still on layoff status.

The collective-bargaining agreement between Respondent and the Union contained a wage reopener and also provided that in all other respects the contract will be in effect until 1985. The Union and Respondent negotiated to an impasse on the wage reopener matter and, after requisite notice, the Union struck on July 15. Before that date, the service and maintenance employees had voted to assess any member who crossed their picket lines "75% of all money [made] while 'scabbing' during [the] strike."

The Union put up its picket lines on July 16. An unspecified number of unit employees refused to strike and they crossed the picket lines. Respondent continued operating by using service and maintenance employees who crossed those lines, volunteers, nonunit employees, and newly hired replacements. The strike ended on July 20.

All of the striking employees, except 36 whom Respondent asserts had been permanently replaced, were reinstated at the end of the strike. Most of the 36 were later called.

Respecting the Union's resolution to assess those of its members who refused to honor their picket lines 75 percent of monies earned, the parties stipulated that the Union is presently pursuing internal union charges against members who worked during the strike.

B. The July 25 Grievance—the Union's Request and Replies thereto

On July 25, the Union filed a written grievance, Grievance No. 16081, under its contract with Respond-

ent, in which it asserted that the Respondent violated that contract by (a) not having reinstated the 36 striking employees for whom Respondent stated it had hired permanent replacements and (b) by having failed "to provide seniority, recall, and transfer and promotion rights to approximately thirty-nine (39) employees . . . on layoff . . . (who) had priority for employment in relation to the aforementioned thirty-six (36) alleged new hires."

Also on July 25, the Union wrote to Respondent asking it to provide, among other items, the following data in order to enable the Union "to properly pursue, investigate, and evaluate the above grievance":

An itemization of those individuals performing bargaining unit work from July 14 through July 22, specifically indicating the name of the individual, the type of work performed, the classification, the date of hire, the rate of pay, the hours of work, overtime if any and shift work.

On August 5, Respondent furnished certain items as requested but declined to honor those aspects of the union request set out above. Respondent based that refusal on its assertion that "during the . . . strike . . . the primary interest of (Respondent) was to cope with the situation at hand by continuing to provide optimum care to its patients. [Respondent] believes its commitment to those people who assisted in this endeavor precludes providing the information requested."

On August 18, George Kennedy, the Union's representative, met with Maureen VanDuser, assistant vice president of Respondent. They dealt with a number of matters, not involved herein and also discussed the grievance referred to above. Kennedy repeated the Union's requests for data. In doing so he noted, as an example as to why the Union asked for the information, that the Union might be able to determine whether employees on layoff were qualified to perform jobs being done during the strike. VanDuser wrote a letter to Kennedy. The part of that letter that relates to this case refers to their August 18 meeting and then states that:

With regard to your request for additional information on those individuals who may have performed bargaining unit work during the strike, [Respondent] stands by its response of August 5.

During the August 18 meeting you alluded to the possibility of bargaining unit members who may have been asked to perform out of title work during the strike. If you provide me with specifics I will review these situations and insure correct payment of wages as set forth in Article XXXIII, Section 5.

The Union thereupon elected to file the unfair labor practice charge which gave rise to the proceeding before me.

C. Contentions of the Parties

The General Counsel and the Union state that because the Union was not privy as to how Respondent conducted its operations during the strike, the Union needs the

requested data to determine the extent to which Respondent may have violated those aspects of the contract that remained in effect during the strike, and to evaluate not only the rights of strikers not reinstated when the strike ended, but also those of its members on layoff particularly in relation to the contractual rights, if any, of employees reportedly hired by Respondent as permanent replacements.

At the opening of the hearing, Respondent asserted that the Union's real purpose in asking for the data as specified above was to enable it to prosecute internal union charges against those of its members who worked during the strike. Respondent pursued that contention during its cross-examination of the Union's representative, George Kennedy. He was asked directly if that was not the Union's purpose. He responded that the Union does not seek the requested data for use in pressing its internal union charges. The General Counsel's brief notes that Respondent had not previously raised that issue and that Respondent had never indicated to the Union that it wanted assurances that the data sought would not be used in furtherance of internal union charges.

Respondent also had asserted in its opening statement that its refusal to furnish the requested data was founded in its good-faith concern for the welfare of its employees. Relevant thereto, its assistant vice president, VanDuser, testified that she had heard reports that employees who performed unit work during the strike were subject to name-calling and to anonymous warnings. She conceded however that the Union's strike was peaceful and that she had acknowledged to the Union's representative that the Union had conducted its strike in an orderly manner. Her account was not clear on one point as she related that Respondent kept a file on all strike-related activities, but then she stated that Respondent had no written record of any reports of strike violence or the like.

D. Analysis

The General Counsel's and Respondent's brief both recognize the applicability of the holding in *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967), to the issues in this case. Thus, the Court there held that the Board is empowered to order an employer to furnish requested data which is in aid of the arbitral process.

Respondent contends that the Union is entitled to no data concerning the service and maintenance work done by employees on duty during the strike as the Union is not pressing any grievance on their behalf. That argument seems to be an afterthought as Respondent's August 5 letter, as confirmed by its August 31 letter, stated that the Union's request could not be honored as Respondent has commitments to those who cross the picket line.

The General Counsel, in her brief, has set out various areas in which the data requested relates to the July 25 grievance. One point seems crystal clear to me. The data sought by the Union would tend to show whether or not the individuals whom Respondent asserts were hired as permanent replacements for 36 striking employees actually performed unit work as permanent replacements. I find no merit in Respondent's assertion that the requested data has no relationship to that aspect of the Union's

grievance which is concerned with the reinstatement rights of 36 strikers as of the end of the strike.

Respondent separately contends that the union's requests, insofar as they pertain to the union's claims on behalf of about 22 employees still on layoff when the strike began, is essentially frivolous. Respondent asserts, in its brief, that "it is conceivable that the Union is seriously suggesting that Union members on laid off status should be allowed to cross picket lines and perform bargaining unit work while their fellow Union brethren are out of work exercising their legal right to strike . . . [and that this] is especially more so in the light of the fact that the Union has threatened to fine bargaining unit members . . . 75 percent of their wages if they cross the picket lines . . ." That argument focuses deliberately on one portion of Kennedy's testimony in which he gave VanDuser an example as to how the Union might use the information it sought. The union's grievance on its face is not limited to a claim for backpay for the term of the strike for employees on layoff, as Respondent would have it. I will not, however, attempt now to anticipate that such a contention will be the only matter presented to the arbitrator or even to offer my views as to the merits of any contentions which may be raised there. It is sufficient for me to note that, in the union's grievance, the claim is made that the laid-off employees may have rights superior to any of the employees whom Respondent contends had been hired as permanent replacements. I find that the information requested by the Union is directly related to that aspect of the grievance and that there is no basis on which I could find that the grievance is so clearly lacking in merit that any related request for information would have to be summarily dismissed.

I turn now to Respondent's other contention, that its concerns for its employees outweigh the Union's need for the information. The General Counsel and the Union do not assert that, once relevance is shown, the duty to furnish requested data is absolute. There may be interests to be balanced.¹ Respondent contends that, as the Union will use the requested data in furtherance of the internal union charges filed against its members who worked during the strike, the Union has effectively forfeited any right to that data. That contention is based on pure speculation and flies in the face of the testimonial assurances Respondent sought and obtained from the Union's representative at the hearing that the data will not be so used.

Respondent has also suggested that its concern for the safety of its employees more than offsets the union's need for any of the data. The difficulty I have with that assertion is that the evidence offered by Respondent was equivocal, contradictory, and unsubstantial. Respondent cannot fairly imply that the Union would place employees in jeopardy, especially as Respondent has openly acknowledged that the Union's conduct during the strike was exemplary. Neither can Respondent be permitted to rely on rumors and reports it states it receive when Respondent's own evidence is unclear as to whether or not it has documentary material thereon in its own files. In

¹ Cf. *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979).

sum, there is little balancing of interests to be done here. The needs, as articulated in *Acme Industrial Co.*, supra, are paramount; the objections offered by Respondent are too speculative to negate them. In such circumstances, the Board has made it clear that an employer is not justified in refusing to supply relevant data as requested.²

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization as defined in Section 2(5) of the Act.

3. Respondent has committed an unfair labor practice within the meaning of Section 8(a)(1) and (5) of the Act by having failed and refused to honor the Union's request for data as made on July 25, 1983, and as related to the matters it grieved that same date.

4. The unfair labor practices set forth above affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, Crouse-Irving Memorial Hospital, Inc., Syracuse, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with General Service Employees' Union, Service Employees' International

Union, Local 200, AFL-CIO as the exclusive representative of all of Respondent's service and maintenance employees employed at its hospital in Syracuse, New York, by not honoring the Union's request of July 25, 1983, for data with respect to the grievance it filed on July 25, 1983.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes of the Act.

(a) Furnish the Union with the information it sought on July 25, 1983, i.e.,—an itemization of those individuals performing bargaining unit work from July 14, 1983, through July 22, 1983, specifically indicating the name of the individual, the type of work performed, the classification, the date of hire, the rate of pay, the hours of work, overtime, if any, and shift work.

(b) Post at its hospital in Syracuse, New York, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 3, after being 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.

² *AGC of California*, 242 NLRB 891 (1979).

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁴ 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."