

Valley Programs, Inc. and District 65, United Auto Workers of America, AFL-CIO. Case 1-CA-26641

September 28, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

On May 30, 1990, Administrative Law Judge Stephen J. Gross issued the attached decision. The Respondent filed exceptions and a supporting 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 brief and has decided to affirm the judge's findings,¹ and conclusions² and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Valley Programs, Inc., Northampton, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² In support of its claim that it is prohibited by state statute from disclosing the requested information, the Respondent relies on a quote from an opinion by the Massachusetts Attorney General. Contrary to the assertion in the Respondent's brief, the Attorney General's opinion is not part of the record. We cannot on the basis of a single sentence taken from a document that is not in the record conclude that the statute prohibits the Respondent from disclosing the requested information.

The Respondent also relies on *Torres v. Attorney General*, 391 Mass. 1, 460 N.E.2d 1032 (1984), to support its claim that the statute is applicable here. *Torres*, however, rather than supporting the Respondent's position, supports the judge's statement that the statute may not apply to the Respondent's employees, but only to individuals who receive benefits from the Respondent. Id. at 1036-1037.

Further, we note that the statute provides for disclosure of personal data where "authorized by statute or regulations which are consistent with the purposes of this chapter." Our holding that the Union is entitled to the requested information is pursuant to our authority under the National Labor Relations Act. Thus, disclosing this information to the Union may fall within the exception the state statute provides.

In sum, we agree with the judge's statement that the Respondent made no showing that Chapter 66A of Massachusetts' General Laws applies to information it maintains about its own employees.

Benjamin Smith, Esq., for the General Counsel.
Albert R. Mason, Esq., of Springfield, Massachusetts, for the Respondent.

DECISION

STEPHEN J. GROSS, Administrative Law Judge. Respondent Valley Programs, Inc. (VPI) is a nonprofit corporation that 300 NLRB No. 39

provides mental health services and shelter for the homeless at about 14 sites in and around Northampton, Massachusetts.¹ The Commonwealth of Massachusetts funds VPI. The Charging Party, UAW District 65 (the Union),² represents VPI's bargaining unit employees.³

The General Counsel contends that VPI violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) when it refused to provide certain information requested by the Union.⁴ I heard the case on February 5, 1990, in Boston. The General Counsel and VPI have submitted briefs.

For the reasons set forth below, my conclusion is that, as alleged by the General Counsel, VPI violated the Act by failing to provide the information requested by the Union.

The Union's Information Request

In December 1988 VPI and the Union entered into a collective-bargaining contract with an expiration date of June 30, 1989. Bargaining over a new agreement began on June 9, 1989. (Hereafter all the dates I refer to will be in 1989.) A few months earlier a union representative had orally asked for the following information in respect to each of the 90 or so bargaining unit employees:

Name
Worksite Address
Home address
Home phone number
Date of hire
Hourly rate of pay
Hours worked per week
Individual work schedule
Summary of health plan

VPI provided all of the information for those bargaining unit members who were members of the Union. (Somewhat less than half the bargaining unit employees are members of the Union.) For the employees who were not members of the Union, VPI provided all of the information except home addresses and home telephone numbers.

On June 6 the Union requested, in writing, the same information. VPI and union representatives discussed the request at a June 27 bargaining session. VPI took the position that it could not lawfully release the home addresses and home telephone numbers of any employee who was not a union member unless the employee authorized VPI to do so. VPI went on to suggest alternative ways of communicating with employees (such as bulletin boards and intra-VPI mail).

VPI has maintained that position. The Union continues to insist on its right to the home addresses and home telephone numbers of all bargaining unit members.

I. THE GENERAL COUNSEL'S PRIMA FACIE CASE

Home addresses of bargaining unit members are presumptively relevant to a union's obligations as collective bargaining representative. E.g., *Tom's Ford*, 253 NLRB 888, 894-

¹ VPI admits that it is an employer engaged in commerce.

² VPI admits that the Union is a labor organization.

³ The bargaining unit: All full-time and regular part-time counselors and senior counselors including all other comparable positions employed by VPI at its Western Massachusetts locations, but excluding office clerical employees, managerial employees, guards, and all supervisors as defined in the Act.

⁴ The Union filed its unfair labor practice charge on September 5, 1989. The complaint issued on October 24, 1989.

895 (1980). So are the home telephone numbers of bargaining unit members. *Burkart Foam*, 283 NLRB 351 (1987), enfd. 848 F.2d 825 (7th Cir. 1988); *Emro Marketing Co.*, 272 NLRB 282, 283 (1985), enfd. 768 F.2d 151 (7th Cir. 1985); *Riveredge Hospital*, 266 NLRB 1198, 1200 (1983), enfd. 789 F.2d 524 (7th Cir. 1986). The Union asked VPI to provide home addresses and telephone numbers. VPI provided the information for only some of the bargaining unit members, and VPI continues to refuse to provide the information for bargaining unit members who are not union members. Thus the only question is whether VPI has carried its burden of showing that some circumstance particular to this matter justifies its action.

II. ARE THERE CIRCUMSTANCES THAT ENTITLE VPI TO WITHHOLD EMPLOYEE ADDRESSES OR TELEPHONE NUMBERS FROM THE UNION?

Did the Union Waive Its Right to the information?

Article 21 of the 1988–1989 collective-bargaining contract provides:

Personnel files shall be maintained and kept confidential by the agency. Whenever any material including evaluations are inserted or deleted into the personnel file or records of an employee, such employee should be promptly notified in writing and given a copy of such material. The employee can see his/her file and request corrections or deletions of material that is inaccurate. Employees shall reserve the right to attach memos or letters of rebuttal to any material in their personnel files.

An employee's personnel file shall be accessible to the employee, to the administration, and with the written permission of the employee to the union. [Emphasis added.]⁵

VPI appears to claim that it would have to use employee personnel files in order to provide the Union with home addresses and telephone numbers. And, as indicated, employee personnel files are "accessible" to the Union only with "the written permission of the employee." (The reason VPI gave the home addresses of the union members to the Union was because VPI concluded that the union members' dues check-off authorizations could reasonably be construed as the requisite written permission.)

I do not credit the testimony of VPI officials that the only place it keeps employee addresses and telephone numbers is in the employees' personnel files. But even were I to credit that testimony, article 21 would provide no defense to VPI in that article 21 does not constitute a waiver by the Union of its right to obtain employee addresses and telephone numbers from VPI.

Article 21 limits union access to personnel files. But the Union did not seek such access. All it asked for were employee names and telephone numbers. Of course if the Union had asked for copies of materials generally kept only in personnel files (documents relating discipline, for example, or medical matters) that would be tantamount to asking for ac-

cess to the personnel files themselves. But that is not the case here. Even under normal contract interpretation, therefore, article 21 would probably not provide VPI with a basis for withholding the information the Union seeks. Beyond that, where an employer is contending waiver on a union's part, normal contract interpretation does not apply. Rather, for contract language to be treated as a waiver by a union of a right arising from the Act, the waiver must be "clear and unmistakable," either from the language of the contract provision or from the parties' bargaining history. *Johnson-Bateman Co.*, 295 NLRB 180, 186–187 (1989). Neither is the case here.⁶

State Law Restrictions on the Release of Personal Data

VPI's principal contention is that a Massachusetts statute precludes VPI from providing employee addresses and telephone numbers to the Union absent consent by each of the employees. The statute is Chapter 66A of Massachusetts' General Laws.

Chapter 66A does appear to limit VPI's disclosure of "personal data." But as the General Counsel points out, Chapter 66A's restrictions, as applied to VPI, seem to be limited to information about the clients that VPI serves and do not extend to the information VPI maintains about its own employees. Perhaps that is not in fact so; perhaps, notwithstanding the way Chapter 66A reads, it has been interpreted in ways that limit VPI's release of information about its employees. But, if so, that was up to VPI to show. And VPI has made no such showing.

Because I conclude that VPI has failed to show that state law applies to VPI's disclosure of employee information to the Union, I do not reach Federal preemption issues.

Union "Harassment" of Employees Who are not Union Members

A VPI official testified that several employees had complained to him that they were receiving harassing telephone calls from union representatives at inappropriate times of the day (7 a.m., for example, and midnight). But VPI does not contend that that entitled VPI to withhold home address and telephone number information from the Union. In any event, for VPI to be justified in withholding address and telephone number information from the Union out of concern for the well-being of VPI employees, evidence that release of the information would cause problems for the employees would have to be considerably stronger. See *Burkart Foam*, 283 NLRB at 356, 848 F.2d at 833–834.

The recommended Order requires VPI to cease and desist from its unfair labor practices, to provide the Union with the home addresses and telephone numbers of all bargaining unit members, and to post notices to that effect. As noted earlier, VPI operates numerous facilities. Since bargaining unit members work at all of such facilities, the recommended Order requires copies of the notice to be posted at each of the facilities.

⁵ While termination date of the contract has passed, article 21 of the contract remains in force by virtue of article 47 of the contract. ("All of the terms and provisions of this agreement shall remain in effect during the negotiation of a successor agreement.")

⁶ A VPI official testifying on behalf of VPI was queried about the bargaining over article 21. But she did not contend that there was any reference to employee addresses or telephone numbers during the bargaining about the provision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁷

ORDER

The Respondent, Valley Programs, Inc., Northampton, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with District 65, United Auto Workers of America, AFL-CIO, as the exclusive bargaining representative of those employees of VPI who are members of the bargaining unit, by refusing to furnish the Union with the home addresses and telephone numbers of all members of the bargaining unit.

(b) In any like or related manner interfering with, 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 policies of the Act.

(a) Furnish the Union with the home addresses and telephone numbers of all employees in the bargaining unit.

(b) Post at each of its facilities copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by a VPI representative, shall be posted by VPI immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted.

VPI shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.

⁷If 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.

⁸If 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."

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

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 collectively with District 65, United Auto Workers of America, AFL-CIO, by refusing to furnish the Union with the home addresses and telephone numbers of all employees who are members of the bargaining unit. The following employees are in the bargaining unit:

All full-time and regular part-time counselors and senior counselors including all other comparable positions employed by Valley Programs at its Western Massachusetts locations, but excluding office clerical employees, managerial employees, guards, and all supervisors as defined in the National Labor Relations Act.

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

WE WILL provide the Union with the home addresses and telephone numbers of all employees who are members of the bargaining unit.

VALLEY PROGRAMS, INC.