

**H. J. Scheirich Company and United Brotherhood
of Carpenters and Joiners of America, Local
No. 2294, AFL-CIO. Case 9-CA-26688-2**

October 31, 1990

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On April 17, 1990, Administrative Law Judge Arline Pacht 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 rulings, findings, and conclusions and to adopt the recommended Order.¹

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, H. J. Scheirich Company, Louisville, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ Member Oviatt notes that, although there may be some question whether the Union is entitled to receive the requested elemental times included in the standards which are not yet in effect for 2 years pursuant to sec. 5 of art. XIX of the labor agreement, because the Respondent did not raise that issue it has not been considered.

David L. Ness, Esq., for the General Counsel.
Walter L. Sales, Esq. (Ogden, Sturgill & Welch), of Louisville, Kentucky, for the Respondent.

DECISION

STATEMENT OF THE CASE

ARLINE PACHT, Administrative Law Judge. Pursuant to a charge filed on July 31, 1989,¹ by the United Brotherhood of Carpenters and Joiners of America, Local No. 2294, AFL-CIO (the Union or Local 2294), a complaint issued on September 14 alleging that the Respondent, H. J. Scheirich Company, violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondent filed a timely answer denying that it committed any unfair labor practices.

This matter was tried before me in Louisville, Kentucky, on December 5. Thereafter, the parties filed briefs which have been duly considered. Upon the entire record, including the demeanor of the witnesses, I make the following findings of fact, conclusions of law, and recommendations.²

¹ Unless otherwise noted, all dates occurred in 1989.

² The complaint alleges, the Respondent admits, and I find that H. J. Scheirich Company is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The complaint alleges, the Respondent admits, and I also find that the Carpenters Union, Local 2294, is a labor organization within the meaning of Sec. 2(5) of the Act.

FINDINGS OF FACT

I. ALLEGED VIOLATION OF SECTION 8(A)(5)

A. The Terms of the Collective-Bargaining Agreement

The facts in this case can be briefly stated and are, for the most part, uncontested. The Respondent, a manufacturer of kitchen cabinets, employs approximately 235 employees at its two Louisville plants. The Union, which represented these employees since at least the mid-1960s, has entered into successive collective-bargaining agreements with the Respondent, with the most current one effective from September 15, 1987, to September 14, 1990.

For at least several decades, the parties' labor agreements have provided for an incentive system of wages which permits workers to earn wages above their base rates by exceeding production quotas set for "standard hours." (G.C. Exh. 2 at 31)³

Article XIX of the current contract sets forth in 10 sections the parties' agreement concerning the incentive system. The first few sections make clear that the Company shall be responsible for setting work standards using professional job evaluation techniques such as methods-time-measurement studies, so that each operation or function involved in manufacturing Respondent's products is measured accurately.

Sections 5 and 6 of article XIX address the duration of the standards and the circumstances under which their restudy may occur. Specifically, a permanent standard remains in effect for 2 years unless certain changes in production conditions make a restudy of the particular operation appropriate.

Sections 6 and 7 set forth the circumstances under which an employee may challenge a standard. Verbatim, they state:

When an employee considers a new or changed permanent standard to be too low or too high, he shall report it within seven (7) days to his supervisor in writing, who will ask for a review of the standard by the standards department. If the trouble is not found after the employee has sincerely tried for two (2) weeks to earn with the standards the job will then be re-studied

If after the job is re-studied and the employee considers the permanent standard too low or too high he will then resort to the grievance procedure.

Article XIX concludes with the provision that permanent standards will be reviewed under two circumstances only: changed working conditions, or an employee complaint that a new or changed standard is inappropriate.

B. The Information Request Is Denied

By letter dated February 3, Union President William Hampton requested Respondent's chief operating officer, Raymond Heitz, supply the following information related to the incentive standards:

The time study data elements and complete methods description of the operations with the appropriate elemental times from the tables of standard data that the company implemented for the C.P.S., also the . . . as

³ The General Counsel's exhibits admitted into evidence will be referred to as G.C. Exh., followed by the exhibit number; Respondent's exhibits will be referred to as R. Exh., followed by the exhibit number.

sembly coating systems [and] shipping [departments]. [G.C. Exh. 3.]

Hampton explained in the letter that the Union needed the information so that it could “review the standards to make sure that there are no overlapping elements and that all portions of the work have been included in the standard.” (G.C. Exh. 3.) In an effort to make the request less burdensome, Hampton proposed that the material could be furnished by “copies or examination.” (G.C. Exh. 3.)

In a reply letter of February 6, Heitz refused to comply with the request, offering the following three reasons:

(1) [S]uch a request is contrary to contract specifications regarding standards, (2) that information is not essential to the fulfillment of your duty to represent the employees, and (3) the information requested is so extensive that production would be too burdensome and oppressive. [G.C. Exh. 4.]

In a second letter dated March 20, Hampton asked the Respondent to supply the same material identified in the previous request. On this occasion, Hampton wrote that the time study data was needed to enable the Union “to intelligently evaluate standard data rates fixed by [Respondent] and to properly administer the contract during the whole period of its term.” (G.C. Exh. 5.)

Heitz again responded by letter dated March 23, denying the request for the same reasons given in his previous answer. Amplifying on these reasons, Heitz testified that article XIX was negotiated in the mid-1960’s to provide an exclusive method by which employees could obtain a review of an objectionable standard without first resorting to the grievance system. Heitz further stressed that under article XIX, only the employee is given the right to question the standards; nothing in the collective-bargaining agreement gives the Union this right or entitles the Union to such a massive amount of data.

In addition, Heitz pointed out that voluminous data would have to be provided for each of the many tasks involved in performing the numerous jobs for which information was requested. He maintained, that complying with the Union’s request would be extremely burdensome particularly since within the past few months, a severe personnel reduction had greatly depleted Respondent’s clerical staff.

Hampton acknowledged that the Union was not requesting the data because of a pending grievance challenging particular standards. Rather, based upon complaints from employees in each of the departments mentioned in the letters of February 3 and March 6, the Union was seeking the information to determine whether there were problems which would warrant filing grievances.

II. DISCUSSION AND CONCLUDING FINDINGS

A. General Principles

Under well-settled principles, an employer is required to supply its employees’ exclusive bargaining agent with requested relevant information which is reasonably necessary to the union’s performance of its duties, including its obligation to administer the collective-bargaining agreement. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt*

Mfg. Co., 351 U.S. 149 (1956). The Board and the courts take a broad view of relevance, likening it to discovery rather than trial standards. Accordingly, the information must be disclosed unless it plainly appears irrelevant. *Acme Industrial Corp.*, supra at 437; *NLRB v. Item Co.*, 220 F.2d 956 (5th Cir. 1955).

Neither the Board nor the courts insist that the information sought must be tied to current collective-bargaining negotiations or an existing controversy in order to be relevant. Thus, in *Whitin Machine Works*, 108 NLRB 1537 (1954), affd. 217 F.2d 593 (4th Cir. 1954), the Board held the proper rule “to be that wage and related information pertaining to employees in the bargaining unit, should, upon request, be made available to the bargaining agent without regard to its immediate relationship to the negotiation or administration of the collective-bargaining agreement.” Moreover, because the grievance procedure is a part of the continuous collective-bargaining process, a union is entitled to information so that it may intelligently process employee complaints. *General Motors Corp., v. NLRB*, 700 F.2d 1083, 1088 (6th Cir. 1983). However, a grievance need not necessarily be pending, for the potentially relevant information may help the union evaluate claims and sort out those which have merit from those which do not. *Safeway Stores*, 236 NLRB 1126 fn. 1 (1978); *T.R.W., Inc.*, 202 NLRB 729 (1973).

Further, the cases uniformly hold that information concerning wages, including incentive earnings, is presumptively relevant. *West Point Pepperell*, 290 NLRB 1242, 1244 (1988). *General Motors Corp.*, supra at 1089.

B. The Union Requested Relevant Information

Under the above-cited cases, it is evident that the Union’s request for data underlying the formation of standards used to calculate incentive pay was presumptively relevant, even though no grievance was pending and negotiations for a new agreement were not imminent. Given such a presumption, it could be argued that the Union has no obligation to prove the relevance of its request. Yet, here, the Union did present its reasons, stating in its first letter of February 3, that it was seeking the information so that it could “review the standards to make sure that there were no overlapping elements and that all aspects of a job were taken into account in developing a standard.” Later, on March 20, the Union added that it sought the time study data “to enable [it] to intelligently evaluate standard data rates fixed by the . . . Company. . . .” In addition, the union president supported the Union’s request by maintaining that employee complaints had been forwarded to him regarding the standards. Hampton’s inability to recall more than one name of a complaining employee hardly proves that he did not receive such complaints either directly or through the shop stewards, just as he alleged. After reviewing the requested information, the Union might decide that the employee complaints were invalid, but what better way for the Union to determine how best to proceed, or whether to proceed at all, than by reviewing the underlying data. Accordingly, I find that the information sought was potentially relevant to the Union’s performance of its duty to administer and police the collective-bargaining agreement.

C. The Respondent's Defenses

The Employer does not seriously contend that the requested information was not presumptively relevant. Instead, it defends its refusal to disclose for the three reasons offered in its responses to the Union: (1) the information was not pertinent to a pending grievance or to contract negotiations; (2) the Union effectively waived any right to request the data and, (3) the request was oppressive and burdensome. As discussed further below, I conclude that the Respondent's defenses are unpersuasive.

(1) The Respondent apparently assumed that unless a grievance was pending or that contract negotiations were imminent, the Union had no purpose or right to obtain data. Thus, it wrote that the "information is not essential to the fulfillment of your duty to represent the employees." Well-settled case law cited above makes it unnecessary to belabor the point that no controversy need exist nor must bargaining be underway to justify the Union's entitlement to the requested material.

The Respondent argues in its brief, that even if the Union obtained the material and found the standards inappropriate, the collective-bargaining agreement would preclude the filing of a grievance until a restudy was conducted. The Respondent reasons that since a restudy would produce new time study elements, the information provided to the Union would become worthless.

The Respondent misses the point by failing to understand the possible purposes to which the requested information could be put. After reviewing the data, the Union could choose to file a grievance, or decide to take no action at all. In either case, the information could play a useful role either by preventing the filing of a nonmeritorious grievance or by supporting a well-grounded request for a restudy.⁴ The fact that new data would be generated by a restudy would not obviate the initial utility to the Union of the original data.

(2) The Respondent further contended that the Union's request was "contrary to contract specifications regarding standards." Respondent's contention is premised on the theory that the Union waived its right to question any matter related to the wage incentive standards by agreeing to article XIX of the collective-bargaining agreement.

In order to find that a union has waived a statutorily guaranteed right, "clear and unmistakable proof is required that the union consciously yielded that right. See *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). Neither the Board nor the courts accept contractual silence as proof of clear and unmistakable waiver. See *General Motors Corp. v. NLRB*, supra at 1091; *Ciba-Geigy Pharmaceuticals Division*, 264 NLRB 1013, 1017 (1982).

Here, the Respondent maintains that in order to reduce the number of grievances filed, the parties negotiated a detailed article in their collective-bargaining agreement, which was intended to be the exclusive method by which any aspect of the wage incentive system could be challenged. Respondent's argument rests on the notion that by consenting to one method allowing individual employees to seek review of the incentive wage system, the Union impliedly relinquished its

⁴The Respondent apparently assumes that under art. XIX, a restudy must take place before the grievance procedure is invoked. However, an argument could be made that art. XIX applies only when an employee contests a new or changed permanent standard but has no applicability when the Union chooses to dispute a standard.

collective right to question those matters or to request information about that system.

Plainly, article XIX, section 6, speaks solely of the employee's right to challenge a standard, and only when that standard is new or changed. Section 10 further provides that standards shall be subject to review only for the reasons set forth in sections 5 and 6. Although this final section may limit the procedures available to the Union should it decide to challenge the standards, nothing in the article expressly proscribes the Union's right to request data which will help it to intelligently evaluate the standards that have been set.⁵ To find proof of waiver from this contractual silence would run counter to all precedent requiring that relinquishment be expressed in clear and unmistakable language. Stated in somewhat different terms, the Union did not waive its statutory right to the requested information by executing a contract providing that the Respondent would furnish something less. *West Point Pepperell*, supra at 1224. In sum, I conclude that the Union has not clearly and unmistakably waived its right of access to the requested documents related to the wage incentive standards.

(3) Lastly, the Respondent urges that producing the requested information would be "too burdensome and oppressive." It is undisputed that the Union's request calls for production of massive amounts of material. To make matters worse, due to reductions in the number of administrative and clerical employees, Respondent submits that it has few employees available to gather the data for the Union.

The practical disadvantages of responding to the Union's request cannot be discounted. However, it is important to bear in mind that in both letters to the Respondent, the Union expressed its willingness to review the information by examination or by copying. I take the Union's offer to mean that it would be willing to prepare its own copies or simply inspect the material at the site. In either case, the role of Respondent's personnel could be limited to helping the Union locate or retrieve the appropriate information. This should not be a herculean effort since Industrial Engineering Manager Devore testified that all the time study data was stored in separate files in one office with the data categorized according to individual operations by department. In the final analysis, although disclosure may impose strains on some personnel, such considerations do not outweigh the Union's right to inspect the information requested.

Based on the foregoing, I conclude that Respondent has failed to justify its refusal to supply the data requested by the Union which is relevant to its obligation to police the collective-bargaining agreement. It follows that Respondent's refusal violates Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. The 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 within the meaning of Section 2(5) of the Act.

⁵Respondent claims in its brief that in accordance with past practice, employees could informally request a restudy without necessarily complying with art. XIX, sec. 6. However, although the record is somewhat ambiguous on this point, I understand Chief Operating Officer Heitz' testimony to mean that art. XIX supplanted past practice, so that any requests for restudy were governed by its provisions. (See transcript at pp. 112-113.)

3. At all times material, the Union has been the exclusive bargaining representative of employees in a unit described below, which is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production, maintenance, truck drivers, watchmen-firemen employees at the [Respondent's] Plant 1 . . . and Plant 2. . . .

4. By failing and refusing to provide the Union with the information requested in its letters of February 3 and March 20, 1989, which are relevant and appropriate to its performance as the employees' bargaining representative, Respondent has violated Section 8(a)(1) and (5) of the Act.

5. The unfair labor practice set forth in paragraph 4 above, affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent violated Section 8(a)(1) and (5) as set forth above, I recommend that it be required to cease and desist from such conduct or related conduct. Affirmatively, to effectuate the purposes of the Act, I recommend that Respondent be required to allow the Union to copy or examine the information requested in its letters of February 3 and March 20, 1989.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

The Respondent, H. J. Scheirich Company, Louisville, Kentucky, its officers, agents, successors, and assigns, shall 1. Cease and desist from

(a) Failing and refusing to timely furnish the United Brotherhood of Carpenters and Joiners of America, Local No. 2294, AFL-CIO, with requested information which is relevant and necessary to the performance of the Union's obligations as exclusive bargaining representative of Respondent's employees.

(b) In any like or related manner interfering with the Union's efforts to bargain collectively with it on behalf of the employees in the appropriate unit.

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

(a) Furnish Carpenters Local No. 2294 for copying or examination, the following information which it previously re-

⁶If 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.

quested: the time study data elements and complete methods description of the operations with the appropriate elemental times from the tables of standard data implemented for the C.P.S. and for the assembly coatings system and shipping departments.

(b) Post at its plants in Louisville, Kentucky, copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 9, 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 customarily are 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.

⁷If 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."

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 United Brotherhood of Carpenters and Joiners of America, Local No. 2294, as the exclusive representative of our employees in an appropriate unit by failing and refusing to timely provide requested information for examination and copying which is relevant to administering its collective-bargaining agreement with us.

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

WE WILL furnish to the Union for inspection or copying, in a timely manner, the information requested in its letters of February 3 and March 20, 1989, so that it may properly administer its collective-bargaining agreement with us.

H. J. SCHEIRICH COMPANY