

Jewish Federation Council of Greater Los Angeles and Community and Social Agency Employees Union, Local 800, American Federation of State, County and Municipal Employees, AFL-CIO. Case 31-CA-18794

February 28, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On November 13, 1991, Administrative Law Judge Michael D. Stevenson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party 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,¹ findings, and conclusions 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, Jewish Federation Council of Greater Los Angeles, Los Angeles, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ In adopting the judge's finding that the Respondent was obligated to provide the information the Union requested, we note that the Respondent was obligated to provide the information for the Union to prepare for arbitration regardless of whether or not the Union had already decided to process the grievance to arbitration. See, e.g., *Chesapeake & Potomac Telephone Co.*, 259 NLRB 225, 227 (1981), *enfd.* 687 F.2d 633 (2d Cir. 1982); *Fawcett Printing Corp.*, 201 NLRB 964, 972 (1973).

Julia A. Osborn, Esq., for the General Counsel
Barton W. Robertson, Esq. (Tyre, Kamins, Katz & Granof),
of Los Angeles, California, for the Respondent.
Glenn Rothner, Esq. and *Larry Abrams, Esq. (Reich, Adell & Crost)*, of Los Angeles, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge. This case was tried before me at Los Angeles, California, on September 19, 1991,¹ pursuant to a complaint issued by the Regional Director for the National Labor Relations Board for Region 31 on June 6, and which is based on a charge filed by Community and Social Agency Employees Union, Local 800, American Federation of State, County and Municipal

Employees, AFL-CIO (the Union) on April 22. The complaint alleges that Jewish Federation Council of Greater Los Angeles (the Respondent), has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

Issue

Whether Respondent is required to provide the Union with certain requested information and documents which pertain to the facts and circumstances surrounding the termination of former unit employee Beryl Stoker, when the Union filed a grievance over the termination and is taking the matter to arbitration.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and to cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of Charging Party and Respondent.²

On the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent admits that it is a California corporation which operates a business funding and performing social services and maintains its principal place of business in Los Angeles, California. Respondent further admits that in the course and conduct of its business operations, it annually sends substantial funds to recipients located outside the State of California. Respondent further admits that in the course and conduct of its business operations, it annually derives revenues in excess of \$250,000. Accordingly, it admits, and I find, that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that Community and Social Agency Employees Union, Local 800, American Federation State, County and Municipal Employees, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

A. *The Facts*

In mid-March, Beryl Stoker, an adverse witness for Respondent, was terminated from her job. At the time of termination, Stoker had worked for Respondent for 10 to 11 years and was the president of the Union.

Respondent is party to a collective-bargaining relationship with the Union and the applicable collective-bargaining agreement contains a provision guaranteeing bargaining unit employees tenure unless "just cause" exists for separation. In addition, the bargaining agreement contains a grievance and arbitration provision, under which the Union has filed one or more grievances challenging Stoker's termination as

² In lieu of a brief, General Counsel cited authority in her opening statement.

¹ All dates refer to 1991 unless otherwise indicated.

lacking just cause. As of the date of hearing, arbitration of the termination had been scheduled for October 7. Although the Union has filed charges with the Board contending that the termination of Stoker violated the Act, a decision on whether to issue a complaint has been deferred pending arbitration. Accordingly, the merits of Stoker's discharge are not in issue in this case. What is in issue concerns the Union's request for certain information from Respondent which it contends it needs to process effectively Stoker's grievance and which it also contends it is entitled to under Board laws.

Sometime in the fall of 1990, the Union hired labor consultant Edward Purcell, General Counsel's sole witness. Shortly after beginning his employment, Purcell had a meeting with Attorney Barton Robertson, Respondent's attorney of record in this proceeding and Respondent's witness at hearing. Despite some insignificant dispute about exactly what was said at the meeting, I find that Robertson told Purcell that Stoker had serious problems with her job performance and had received a prior negative job evaluation which she did not grieve. More specifically, I find that Robertson added that Stoker was in jeopardy of losing her job. When given this information about Union President and union executive board member Stoker, newly hired labor consultant Purcell reacted as might be expected: he advised Robertson that any action to terminate Stoker would be seen by the Union as a "declaration of war" and the Union would fight the termination "all the way."

Sometime in December 1990, Purcell was given official notice that Stoker was to be terminated. Apparently formal separation did not occur until March because Stoker was not working during the period due to disability.

In February, Purcell and Robertson had a conversation in which they agreed to waive preliminary grievance steps and present the matter to the Jewish Federation Personnel Committee, the last step in the grievance procedure prior to arbitration. On February 25, Purcell sent a letter to Robertson. In pertinent part, the letter requests certain information which the Union desired to have before presenting the grievance to the Jewish Federation Personnel Committee:

Also, in preparation for the Personnel Committee meeting on the termination grievance in particular, the Union will need a complete statement of the Employer's reasons for Ms. Stoker's termination, and copies of all documents and statements in its possession which support the Employer's position in this matter. Additionally, we request copies of all disciplinary memos/letters, and all performance evaluations from her file as well as any commendatory statements which may be in the Employer's possession. Should any of the documents reference alleged work attendance deficiencies, please also provide attendance for all periods referred to in the documents.

Thank you for your timely response to this inquiry. [G.C. Exh. 2.]

The Union did not receive the requested information and on March 18, Purcell sent a copy of the February 25 letter to Robertson renewing his request for the information (G.C. Exh. 3).

No hearing was ever held before the Jewish Federation Personnel Committee because it attached a condition which

the Union found unacceptable: that each side must present its evidence outside the presence of the other side. The Union claimed the condition would violate the contract and past practice as established in the processing of prior grievances not connected to Stoker. On March 19, Purcell sent a letter to Sue Wellerstein, Respondent's personnel director, stating the Union's objection to the procedure discussed above and its refusal to participate. In addition, Purcell wrote,

Also, I want to reiterate the Union's need for information relating to the termination case as requested of your attorney on February 25, 1991 and again on March 18, 1991. This information is necessary for us to evaluate the Stoker cases for arbitration as well as to allow the Union to prepare for arbitration hearing should that be decided by us. Given Mr. Robertson's delay in providing this data, I specifically request your intervention to expedite its transmission.

Thank you for your assistance. [G.C. Exh. 4.]

Because the parties could not agree on the correct procedures for presenting Stoker's grievance to the Jewish Federation Personnel Committee, both sides subsequently agreed to proceed directly to arbitration. However, the Union still lacked the information it requested in the letter of February 25. On March 20, Robertson wrote to Purcell setting forth Respondent's reasons for not furnishing the requested information. The letter reads as follows:

I am responding to your "second notice" in this matter. As we previously discussed, there is no provision in the collective bargaining agreement for pre-arbitration discovery and this response should not be construed as implying any such provision.

Beryl was orally advised of the basic reasons for her termination by Mark Friedman when he, I, you and Beryl first met to discuss the possibility of an amicable resolution of this matter.

To summarize them briefly, during the latter part of 1989 and during 1990 Beryl's performance was discussed with her on a regular basis by the Foundation's Director of Finance and Administration and the Foundation's Accounting Manager. These discussions outlined what was required of her, reviewed the adequacy of her performance, and pointed out the problem areas, principally the errors in her accounting work and her failure to follow normal, accepted accounting procedures.

Her performance did not improve. A timely evaluation was done at her anniversary date in July, 1990 and a work plan was written and was discussed with her, with John Garfield being present.

Subsequent to the presentation of the work plan, Beryl's immediate supervisor conducted regular bi-weekly meetings with her to assist her in achieving the goals of the work plan. However, her performance did not improve.

The Foundation's Audit and Fiscal Committee reviewed the situation and concurred with management that she should be terminated. I immediately thereafter notified you and we commenced our ultimately unsuccessful attempts at an amicable resolution.

I trust this satisfies your request for the reasons for the termination. As for any requested documents, it is apparent since you have already advised Federation of your desire to arbitrate this matter that you are seeking pre-hearing discovery to which you are not entitled.

However, as I previously told you, we will cooperate in providing material at the arbitration hearing, which you request in advance of the hearing, without the need for you to have subpoenas issued. [G.C. Exh. 5.]

B. Analysis and Conclusions

I begin with a brief general statement of the applicable law as stated by the Board in *American National Can Co.*, 293 NLRB 901, 904 (1989), affd. 924 F.2d 518 (4th Cir. 1991):

It is well settled that an employer has a duty to supply requested information to a union that is the collective-bargaining representative of the employer's employees if the requested information is relevant and reasonably necessary to the union's performance of its responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956); see also *Central Soya Co.*, 288 NLRB 1402 (1988). Disclosure by an employer of requested information "necessary . . . to enable [a union] to evaluate intelligently grievances filed" or contemplated, allows a union to "sift out meritorious claims" and facilitates the arbitral process. *NLRB v. Acme Industrial Co.*, supra at 435, 437-438. The standard for determining the relevancy of requested information is a liberal one and it is necessary only to establish "the probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial*, supra at 437. See also *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), and cases cited there.

The duty to supply the requested information does not terminate when the grievance is taken to arbitration. *O & G Industries*, 269 NLRB 986, 987 (1984). Without the requested information, the Union is hampered in effectively and intelligently performing its duty of ensuring that its constituents are treated fairly by the Employer and that their contractual rights are respected and vindicated. *Trustees of Boston University*, 210 NLRB 330, 334 (1974). The Union is also hampered in making an informal judgment of the merits of the grievance, whether to pursue it further or drop it. The law no longer requires the bargaining representative to play a game of blind man's bluff in its efforts to protect the employees' interests. *Id.*, p. 334.

Respondent contends that the Union's request for the information in question was not made in good faith. More specifically, Respondent states that the Union always intended to take the Stoker termination to arbitration and was therefore seeking prehearing discovery (Br. p. 7).

Respondent has the burden of proof to show union bad faith. *West Point Pepperell*, 290 NLRB 1242, 1244 (1988). In proving its case, Respondent must produce evidence to overcome a presumption that the Union is acting in good faith. *O & G Industries*, supra at 987. If Respondent can show bad faith in requesting the information in question, the

duty to provide same can be avoided. *J. J. Case Co. v. NLRB*, 253 F.2d 149, 153 (7th Cir. 1958).

In this case, I find that Respondent has failed to show Union bad faith. The Board will find the party requesting information is in good faith if at least one reason for the demand can be justified. *Island Creek Coal Co.*, 292 NLRB 480, 489 (1989). In applying the law cited above to the facts of this case, I fail to find any evidence showing the Union always intended to take the Stoker case to arbitration. Even if Purcell's "declaration of war" and fighting the termination "all the way" statements to Robertson could be so interpreted, the fact remains that the Union had every right under the "just cause" provision of the contract to evaluate the evidence and ensure that Stoker's rights were protected. Had the information been furnished to the Union when requested, the Union would have evaluated it and, I must assume, have acted accordingly. There is no reason shown in this case to believe that the Union would have squandered its limited resources to fight a hopeless case. What would that have accomplished.

In its brief at page 7, the Union appears to suggest that on October 7, the first day of the arbitration, Respondent may have produced some or all of the information in issue. If this is so, I do not see this case as moot, because belated compliance does not exonerate. *Fairmont Hotel*, 304 NLRB 746, 748 fn. 11 (1991); *D. J. Electrical Contracting*, 303 NLRB 820 fn. 1 (1991); *Tubari Ltd.*, 299 NLRB 1223, 1228 (1990).

CONCLUSION OF LAW

By failing and refusing to furnish to the Union promptly upon its request, a complete statement of the Employer's reasons for Stoker's termination, copies of all documents and statements in its possession which support the Employer's position in this matter, copies of all disciplinary memos/letters, and performance evaluations from her file and work attendance data, if relevant to the termination, Respondent engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

THE REMEDY

Having found that the Respondent engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist and that it take certain affirmative action necessary to effectuate the policies of the Act.

On the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I issue the following recommended³

ORDER

The Respondent, Jewish Federation Council of Greater Los Angeles, Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

³If 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.

(a) Refusing or failing to bargain in good faith with the Union by withholding from it requested information relevant to the processing of grievances or the administration of their collective-bargaining agreement.

(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) On request, furnish to the Union promptly a complete statement of the Employer's reasons for Beryl Stoker's termination, copies of all documents and statements in its possession which support the Employer's position in this matter, copies of all disciplinary memos/letters, and performance evaluations from her file and work attendance data, if relevant to the termination.

(b) Post at its place of business in Los Angeles, California, copies of the attached notice, which is marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and shall be maintained for 60 consecutive days in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

⁴If 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 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

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 or fail to bargain in good faith with the Community and Social Agency Employees Union, Local 800, American Federation of State, County and Municipal Employees, AFL-CIO, by withholding from it requested information relevant to the processing of grievances or the administration of our collective-bargaining agreement.

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

WE WILL, on request, furnish to the Union a complete statement of our reason for Beryl Stoker's termination, copies of all documents and statements in our possession which support our position, in connection with the March 1991 termination of a bargaining unit employee, copies of all disciplinary memos/letters, and performance evaluations from her file and work attendance data, if relevant to the termination, which information is needed to enable the Union to process a grievance on that employee's behalf.

JEWISH FEDERATION COUNCIL OF GREATER
LOS ANGELES