

Leland Stanford Junior University and United Stanford Workers, Service Employees International Union, Local 680, AFL-CIO. Case 32-CA-11592

April 15, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On December 24, 1991, Administrative Law Judge Earledean V.S. Robbins 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 as modified below and to adopt the recommended Order as modified.

The Respondent contends in its exceptions that the judge erred by finding that it violated the Act by conduct which was not specifically alleged in the complaint to be unlawful or fully litigated at trial. We agree.

The complaint alleges at paragraph 10(b) that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with the following requested information: (1) all special requests for the last 5 years in the Department of Laboratory Animal Medicine (DLAM) which lists animals that were improperly destroyed; (2) all discipline within the last 5 years of animal health technicians (AHT) at DLAM for work-related incidents; and (3) the complete personnel file of Roger Parker while he worked in the bargaining unit as an animal health technician. The judge found, and we agree, that the Respondent unlawfully failed to comply with these three requests.

The judge additionally found that the Respondent unlawfully failed to provide the Union with three additional groups of requested information: (1) the sick leave records of all AHTs and animal caretakers who have taken disability in the past 5 years; (2) copies of all euthanasia requests and all special request forms for procedures at the DLAM in the past year in which the planned result was a death for the animals; and (3) copies of all disciplinary letters issued to Tom Boukaka. We do not agree.

A failure to satisfy the last three requests for information was not alleged in the complaint to be an unfair labor practice. Nor was the Respondent's failure to satisfy those three requests, though briefly referred to at the trial, fully litigated. Moreover, the arguments in the parties' posttrial briefs referred specifically only to

the items alleged in the complaint, and the Respondent's brief noted its understanding that the other items were "not the subject of the instant Complaint." Accordingly, we do not adopt the judge's findings as to the last three items, and shall modify the judge's Conclusions of Law and recommended Order accordingly.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusions of Law 5.

"5. The Respondent has failed and refused to bargain with the Union in good faith in violation of Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with the following requested information:

"(a) All special requests for the last 5 years in the Department of Laboratory Animal Medicine which lists animals that were improperly destroyed.

"(b) All discipline within the last 5 years at the Department of Laboratory Animal Medicine for work-related incidents.

"(c) The complete personnel file of Roger Parker of the Department of Laboratory Animal Medicine while he worked in the bargaining unit as an animal health technician."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Leland Stanford Junior University, Palo Alto, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete subparagraphs 2(a)(1), (4), and (5) and renumber the remaining subparagraphs of paragraph 2(a) accordingly.

2. 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 collectively with United Stanford Workers, Service Employees International Union, Local 680, AFL-CIO by refusing to furnish, or to timely furnish, the Union, on request, with information necessary and relevant to the performance of its functions as the exclusive collective-bargaining representative of our employees. The appropriate unit is:

All full-time and regular part-time regular staff maintenance employees, laboratory support personnel, custodians, food service employees audio-visual operators, nonexempt computer operations personnel, production control clerks and tape librarians employed by the Department of Informational Technology Services and the SLAC computing Services (ITS and SCS), book preservers and all regular staff book warehouse assistants and proofreaders of the Stanford University Press all employed by the University in Northern California; EXCLUDING: All other employees, office clerical employees; all employees of Stanford University Hospital; patient care employees; shelvers; computer production control clerks other than in ITS and SCS, computer production control coordinators and operations specialists; programmers, scientific and engineering associates; all currently represented employees; guards, professional and confidential employees, and supervisors as defined in the Act.

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 above-named Union with all special requests for the last 5 years in the Department of Laboratory Animal Medicine (DLAM) which lists animals that were improperly destroyed, all discipline within the last 5 years of animal health technicians at DLAM for work-related incidents, and the personnel file of Roger Parker while he worked in the bargaining unit as an animal health technician.

LELAND STANFORD JUNIOR UNIVERSITY

Daniel F. Altemus, Jr., for the General Counsel.
Susan K. Hoerger, of Stanford, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

EARLDEAN V.S. ROBBINS, Administrative Law Judge. This case was heard before me in Oakland, California, on July 15, 1991. The charge was filed by United Stanford Workers, Service Employees International Union, Local 680, AFL-CIO (the Union), and served on Leland Stanford Junior University (Respondent) on January 7, 1991. The complaint, which issued on March 21, 1991, alleges that Respondent violated Section 8(a)(1) and (5) of the Act by delaying or refusing to provide the Union with certain requested information necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of certain of Respondent's employees. The principal issues are (1) whether the requested information has potential relevance to the Union's processing of certain pending grievances and (2) whether the Union has waived its statutory right to certain of the requested information.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the posthearing briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Respondent has been a private, non-profit institution of higher learning at Palo Alto, California. During the 12-month period preceding the issuance of the complaint, Respondent received gross revenues, available for operating expenses, in excess of \$1 million. During that same period, Respondent, in the course and conduct of its business operations, purchased and received goods or services valued in excess of \$5000 which originated outside the State of California.

The complaint alleges, Respondent admits, and I find that Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that the Union is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. DEFERRAL

Respondent argues that this matter should be deferred to arbitration under the principles articulated in *Collyer Insulated Wire*, 192 NLRB 837 (1971). Specifically, Respondent asserts that since the basic issue here is the refusal to furnish personnel file information, the interpretation of paragraph 338 of the collective-bargaining agreement¹ is at the heart of the dispute and thus deferral is appropriate.

I find no merit in this argument. It is well established that the Board will not defer to arbitration issues that would result in a two-tiered arbitration process requiring a union to

¹ Pars. 338 and 339 provide:

ARTICLE IX: SEPARATION FROM THE JOB

A. Layoffs

. . . .

B. Discipline, Suspension and Separation

. . . .

5. Records

338 a. Each administrative unit shall maintain for each worker employed with the unit a file which shall contain copies of all written warnings, notices of suspension or demotion, written evaluations and other official records indicating changes in status or levels of pay. The worker or a Union representative, authorized by the worker in writing, shall be entitled to review said file during regular business hours in the presence of a University representative and obtain copies. In any disciplinary action the University may not rely upon any previous written warnings, notice of suspension or demotion or written evaluation not contained in said file as justification for any personnel action which adversely affects the worker in question but may rely on oral warnings not made a part of the file and issued within the preceding six (6) months.

339 b. When workers who have received written warnings or reprimand complete eighteen (18) months of work without further disciplinary action, their prior disciplinary record shall no longer be relied upon in any determination which in any manner affects their employment status.

file a grievance to obtain information potentially relevant to the pursuit of a second underlying grievance. *General Dynamics Corp.*, 268 NLRB 1432 fn. 2 (1984); *Clinchfield Coal Co.*, 275 NLRB 1384, 1385 fn. 4 (1985); *American National Can Co.*, 293 NLRB 901, 902-903 (1989). Accordingly, I find that deferral to arbitration is not appropriate.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The Union has represented certain employees in various departments of the University for more than 16 years. During this period, Respondent and the Union have been parties to several collective-bargaining agreements covering these employees. The request for information involved herein concerns material allegedly relevant to grievances filed on behalf of Deborah Britt pursuant to the grievances and arbitration provisions of the collective-bargaining agreement effective by its terms from September 1, 1988, to August 31, 1991.² Britt, an animal health technician (AHT) employed by Respondent in its Department of Laboratory Animal Medicine (DLAM), is also president of the Union.

On November 29, 1990,³ Britt was notified by memo from the AHT Supervisor John Wittry that she was being suspended for 1 day, November 30. The body of the memo, which was placed in her personnel file, reads:

On September 14, 1990 you received a disciplinary memo as a result of serious errors you made in carrying out instructions on Special Request Forms. You were warned that your repeated errors have resulted in significant expense to DLAM, delays in research projects, and jeopardized the credibility of our technical services and the working relationship between DLAM and the investigators who contract with us to provide services. Additionally, you were warned in that memo, "should you demonstrate this type of negligence again, you will be subject to further disciplinary action, up to and including termination."

On November 6, 1990 you were assigned at our morning meeting to perform special requests. One of the special request forms indicated that you were to obtain the maximum allowable amount of blood from two rabbits, but specifically stated not to exsanguinate the rabbits. You withdrew approximately 100 mls of blood via a nonsterile cardiac puncture before realizing that the request was for a survival bleed, not exsanguination. You then admitted the rabbit to ICU and contacted the investigator, but did not inform me or Dr. Blum of the error. I asked you on November 6, 1990 why the rabbit had been admitted to ICU and you stated that you had mistakenly started to exsanguinate the rabbit based on a statement I had made during the AHT morning meeting; however, you did not read the written instructions on the special request form regarding the procedure to be performed.

This error is very serious. Intensive emergency treatment was necessary to prevent the death of the rabbit,

the research protocol has been delayed to allow recovery of the animal, and the overall impact of this medical crisis on the research project is still unknown. This negligence, and specifically your failure to read the special request forms is unacceptable and cannot continue. Although I said in the morning meeting "there are two rabbit exsanguinations and rat radiographs this morning" it is nonetheless your responsibility to carefully read the special requests and follow instructions. If there is a conflict in instructions, or if you have any questions, you have been instructed to bring it to my attention, or to Dr. Blum.

Your continued errors are very serious. Except for the confusion that may have been caused by my statement in the morning meeting, this incident would have resulted in termination of your employment. As a result of this error, and after careful consideration, we have decided to suspend you for one working day, effective November 30, 1990. You are expected to return to work on December 3, 1990. Effective December 3, 1990 you will be on a probationary period until January 3, 1991. During this probationary period, I will monitor your work and meet with you regularly to review representative work assignments. Whether or not we review a particular work assignment you are expected to read all instructions carefully including special requests, medical records, treatment charts, and other written instructions used by DLAM. If during or after the probationary period, you do not follow instructions on the special requests or any other written instructions and do not report to me or Dr. Blum any conflicts in instructions or questions related to handling of an animal and/or if you do not report to me when you have performed the wrong procedure you will be terminated.

Please let me know if you have any questions.

On December 10, the Union filed a step 2 formal grievance (U-88-458) protesting this suspension. The grievance form sets forth the following description of grievance and requested action:

1. Brief description of grievance and date the action occurred (or should have occurred):

On November 29, 1990 I was issued a disciplinary letter, and a one-day suspension by supervisor John Wittry. Such discipline was without just cause and was done to cover up for the gross incompetence of the supervisor, John Wittry. I was also discriminated against because of my Union activities.

2. Action required to settle the grievance:

Remove the letter from my personnel file and never refer to it again. Pay me for the suspension and make me whole in all other ways. Cease and desist from blaming me for the incompetency of Mr. Wittry. Cease and desist from discriminating against me because of my Union activities.

On that same day, another step 2 grievance (U-88-452) was filed on Britt's behalf which describes the grievance and requested action as follows:

² Art. I, sec. C.

³ All dates herein for November and December are in 1990 and for January, February, and March are in 1991.

1. Brief description of grievance and date the action occurred (or should have occurred):

On December 3, 1990 I received unilateral notice from my supervisor that I would be placed on disability leave despite there being work that I could do under the limitations of the doctor's note and despite that such accommodations have been made for other workers. I am being discriminated against because of Union activities and so that the department can hide the incompetence [sic] of my supervisor as Stanford tries to constructively discharge me.

2. Action required to settle the grievance:

Make reasonable accommodations [sic] for me at work as have been done for other workers. Pay me for all lost pay and make me whole in all other ways. Cease and desist from discriminating against me and trying to constructively discharge me.

On December 19 Union Field Representative Mike Tatham sent a letter requesting information to Keith Smith, Respondent's acting manager of employee relations, the body of which reads:

This is a formal informational request for information that is necessary and relevant for the Union to have in order to consider whether to process through arbitration the recent grievances concerning the discrimination against USW President Debbie Britt. Please supply me with the following:

1. The sick leave records of all Animal Health Technicians and Animal Caretakers who have taken disability within the last 5 years. This is necessary and relevant because one of the grievances we cited discrimination against Ms. Britt for her disability.
2. A copy of the tape of 11/06/90 in which Ms. Britt was instructed by supervisor John Wittry to kill the animals for which she was disciplined for.
3. All special requests for the last 5 years in the Department of Laboratory Animal Medicine (DLAM) which lists animals that were improperly destroyed.
4. All discipline within the last 5 years of Animal Health Technicians at DLAM for work related incidents.
5. Complete copies of the personnel files of Wendy Baumgardner and Kathy Kane. This is necessary and relevant because the Union feels that these two have committed actions as Ms. Britt has and have not been disciplined for them like Ms. Britt has.
6. Copies of all Euthanasia requests and all special request forms for procedures for which the planned result was a death result for the animals in DLAM for the past year.
7. Copies of all disciplinary letters to Tom Boukaka. This is necessary and relevant because the Union believes that [sic] Mr. Boukaka was never disciplined for doing the same things as Ms. Britt.
8. A copy of all notes and written correspondence concerning workplace accommodations [sic] made for Beth Emert and Annette Ludtke concerning any disabilities they had concerning limited duty at work.

All correspondence in this matter should be addressed to me. Please respond within ten (10) days so we do not have to doubt your good faith in this matter.

These grievances were denied by letter, dated December 21, and signed by Douglas Dupen, the body of which reads:

This is in response to your grievances U-88-452, U-88-453, and U-88-458 filed on December 10, December 10, and December 12, 1990, respectively.

Grievance U-88-452 complains about your being "placed on disability leave despite there being work that I could do under the limitations of the doctor's note. . . ."

Late in the evening of November 29, 1990, you delivered a note from your physician announcing physical restrictions on work assignments for you. On December 3, 1990, you were informed that your department did not have a job for you which could fall within your medical restrictions. Thus you were granted disability leave.

. . . .
Grievance U-88-458 complains that a disciplinary letter and suspension were without just cause.

On November 29, 1990, you were issued a disciplinary warning letter and suspension for repeated inattention to procedures and for gross errors on the job.

There has been no violation of the Agreement. All these grievances are denied.

By letter dated December 26, Tatham notified Smith that the Union was referring these, and certain other, grievances to arbitration.

By letter dated January 17 from Tatham to Smith, the Union made an additional request for information. The body of the letter reads:

This is an addition to the formal informational request of December 19, 1990 for information that is necessary and relevant for the Union to consider processing grievances through arbitration.

Please supply us with the following:

The complete personnel file of Roger Parker of Department of Lab Animal Medicine while he worked in the bargaining unit as an Animal Health Technician. This is necessary and relevant because we feel that reasonable accommodations were made available for Mr. Parker as a male, which are being denied to Ms. Britt because of her sex.

Please respond in a reasonable period of time. However, we are not expecting that because your department's practice is to ignore all requests until you waste taxpayers' money by having the National Labor Relations Board get involved.

By letter dated February 5 addressed to Britt, as union president, Smith responded to the December 19 and January 17 request for information as follows:

This is in response to Michael Tatham's letters of December 19, 1990, and January 17, 1991, requesting information. I will respond to each request in turn.

1. I don't understand the relevance of the information requested. As you know, the grievance alleging discrimination in granting disability leave (U-88-452) was responded to in Mr. Dupen's letter of December 21, 1990. That response provided all the information we have relevant to the grievance.

2. As you may be aware, the tape recording referred to has disappeared from the custody of Mr. Wittry. If the Union has any information concerning its whereabouts, please let me know.

3. I do not understand the relevance of the information requested to the issue being raised. Perhaps you could provide clarifying information.

4. I do not understand the appropriateness of the five-year period. As you know, Paragraph 339 of the Agreement provides that written warnings or reprimands of workers who have completed eighteen (18) months of work without further disciplinary action shall no longer be relied upon in any determination which in any manner affects their employment status. As provided in Paragraph 338 of the Agreement the Union, when authorized by a worker in writing, is entitled to review that worker's file and obtain copies.

5. As provided in Paragraph 338 of the Agreement the Union, when authorized by a worker in writing, is entitled to review that worker's file and obtain copies. If you will transmit written authorizations by the named workers, I will see to it that you have the provided for access to those workers' files.

6. I do not understand the relevance of the information requested to the issues raised and responded to. Perhaps you can provide additional clarification.

7. The matter referenced here was the subject of an arbitration held in 1987. At that time, all relevant documents were made part of the record and the Union has a copy of that record. If the request is to review Mr. Boukakas' personnel file, upon receipt of his written authorization per Paragraph 338 of the Agreement, I will see that the file is made available for union review.

8. I do not understand the basis of this request. The University has no Obligation to apply light duty assignments upon request. The department has looked at the record and has found no instance of application of light duty assignments to the workers named.

With respect to the request of January 17: again, I do not understand the basis for this request. The department has found no instance of a light duty assignment to this worker. As provided by Paragraph 338, however, if you will provide us with written authorization by Roger Parker, I will see that his file is made available for union review.

By letter dated February 6 from Tatham to Smith, the Union made an additional request for information related to Respondent's response to the December 19 request. The body of the letter reads:

This is an addition to our informational request of December 19, 1990 for information that is necessary and relevant for the Union to consider whether to process grievances for Deborah Britt through arbitration.

In your February 5, 1991 response you stated that the tape we are requesting "has disappeared." Please

furnish us with the police report of such incident. If no such report was filed please furnish us with the reason why none was filed as well as all correspondence, notes, and memos [sic] concerning the "disappearance" of this tape.

Also please furnish us with what date the "disappearance" was discovered, as well as a list of any other tapes or property that was missing along with it. The former is necessary and relevant so that the Union can determine if a nother [sic] grievance needs to be filed on the matter.

Please respond within five (5) days so we don't have to doubt your good faith in this matter.

By letter dated February 8 from Tatham to Smith, the Union modified its December 19 request for information. The body of the letter reads:

This is a revision of our informational request of December 19, 1990, for information that is necessary and relevant for us to process grievances. For items 5 and 7, without waiving our position, we withdrew our requests for personnel files. We will expect you to produce any and all records or disciplinary letters in the personnel files of any bargaining unit workers in the Department Lab Animal Medicine for incidents concerning the destruction of animals. We will expect you to delete the names of any workers from the copies you will provide us.

Note that this does not exclude you from providing the personnel file of Roger Parker as we have previously demanded, since he is no longer a bargaining unit worker.

Please respond within two (2) days.

By letter dated February 12, from Smith to Britt as union president, Respondent responded to the February 6 request. The body of the letter reads:

This is in response to Michael Tatham's letter of February 6, 1991, requesting information about the tape recording that disappeared from the custody of Mr. Wittry.

The tape in question was the regular Tuesday tape. It was discovered missing on Wednesday morning, November 7, 1990. No other tapes were noticed to be missing. No police report was filed. The tapes are often borrowed by persons who were not able to attend the meeting. These tapes are generally not retained but rather are recorded over each week. No correspondence, notes, or memos were written concerning the disappearance of this tape.

By letter dated February 26 and addressed to Britt as Union president, Smith made the following response to the Union's February 8 request:

This is in response to the letter of February 8, 1991, from Michael Tatham revising his informational request of December 19, 1990.

There are no records or disciplinary letters in the personnel files of any bargaining unit workers in the

Department of Lab Animal Medicine for incidents concerning the destruction of animals.

As I stated in my letter of February 5, 1991, we have found no instance of a light duty assignment to former animal health technician Roger Parker, nor to any other animal health technician in the work group. And, again, if you will provide us with written authorization by Mr. Parker, I will see that his file is made available for union review.

By letter dated March 4 from Tatham to Smith, the Union set forth a further explanation as to the necessity for the January 17 request for the personnel file of Roger Parker. The body of the letter reads:

This is a follow up letter to my informational request of January 17, 1991. The Union feels that it is necessary and relevant to review the complete personnel file of Roger Parker because we believe that there will be various items that will indicate that he has been treated differently than Ms. Britt has.

Furthermore, we found in the past that information that you have supplied us has not been accurate. On 2/15/91 you supplied us with the payroll hours worked by seven terminated Food Service workers at Stanford. On one worker we found that you supplied us with her payroll records of hours worked until 5/13/90, having omitted [sic] all time she has worked since 9/90 until present. Your responses of 2/5/91 and 2/26/91 where you claim their [sic] is "no instance" of light duty assignments for Mr. Parker needs verification, which only a review of his personnel file can do.

It is undisputed that the only information furnished by Respondent in response to the December 19 and January 17 request, as modified and/or explained by the February 6 and 8 request, is contained in Smith's letters of February 5, 12, and 26. It is further undisputed that no clarification was furnished by the Union of its request except as set forth in the letters above. Tatham's testimony as to the relevance of the information requested is undisputed.

Conclusions

Section 8(a)(5) and (1) of the Act imposes on an employer the obligation to furnish information requested by a union which is necessary for, and relevant to, the union's performance as the exclusive bargaining representative of its employees. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979); *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 151-154 (1956); *San Diego Newspaper Guild Local 95 v. NLRB*, 548 F.2d 863, 866-867 (9th Cir. 1977). Those sections further obligate an employer to respond to the Union's request in a timely manner. Thus, an unreasonable delay in providing such information is also a violation of Section 8(a)(5) and (1) of the Act. *Valley Inventory Service*, 295 NLRB 140 (1989); *Bundy Corp.*, 292 NLRB 671 (1987); *California Nevada Golden Tours*, 283 NLRB 58 (1987).

In determining whether an employer is obligated to furnish particular requested information, the sole question is whether there is a "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 Co.*, supra at 437. The standard for assessing relevancy is a liberal discovery-type standard requiring only a probability that the requested information is relevant and will be of use to the union in carrying out its statutory duties and responsibilities as the employees' bargaining representative. Consequently, the Board and the courts have consistently held that information relating to the terms and conditions of employment of unit employees is presumptively relevant because it goes to the core of the employer-employee relationship and no specific showing of relevance is required. The burden falls upon the employer to prove a lack of relevance. However, where the information sought relates to matters outside the unit, the union has the burden of showing relevancy. *NLRB v. Acme Industrial Co.*, supra; *Graphic Communications Local 13 v. NLRB*, 598 F.2d 267, 271 (D.C. Cir. 1979); *San Diego Newspaper Guild Local 95*, supra.

Applying these principles, the Board has long held that Section 8(a)(5) of the Act obligates an employer to furnish requested information which is potentially relevant to the processing of grievances. An actual grievance need not be pending nor must the requested information clearly dispose of the grievance. It is sufficient if the requested information is potentially relevant to a determination as to the merits of a grievance or an evaluation as to whether a grievance should be pursued. *United Technologies Corp.*, 274 NLRB 504 (1985); *TRW, Inc.*, 202 NLRB 729, 731.

Here, Respondent argues that it has fully responded to the Union's information request. Specifically, Respondent contends that by such request, the Union sought to determine: (1) whether any AHT had been disciplined for the destruction of animals; and (2) whether Parker or any other AHT had been granted a light-duty assignment. In each case, Respondent argues it provided the necessary and relevant information by informing the Union that (1) there were no records or disciplinary letters in the personnel files of any bargaining unit workers in DLAM concerning the destruction of animals, and (2) there was no instance of a light-duty assignment to Parker or any other AHT. Consequently, according to Respondent, the request for Parker's personnel file was unrelated to the grievances. Respondent further argues that the requested special request forms are not relevant or necessary to the Britt grievance because they do not contain information regarding the improper destruction of animals; and that the Union's failure to respond to Respondent's request for clarification relieves Respondent of any possible obligation in this regard.

I find that this argument is supported neither by the facts nor the law. Of the nine items sought by the Union, Respondent furnished information only as to two—items 2 and perhaps item 8 of the December 19 request. By Smith's February 5 letter, Respondent notified the Union that the requested November 6, 1990 Wittry-Britt tape had disappeared. Smith's February 12 letter answered subsequent questions regarding the circumstances of the disappearance and whether the disappearance had been reported to the police. Smith's February 5 letter also states that a review of its records indicated no light-duty assignments to Beth Emert and Annette Ludtke. Although this response does not precisely state that there are no notes and written correspondence concerning limited-duty workplace accommodations for Emert and Ludtke because of their disabilities, it is arguable that the re-

sponse was intended to convey the nonexistence of such documents. Because the Union raised no further issue as to this item, I conclude that it considered the response to be sufficient.

Respondent did not furnish the requested sick leave records, euthanasia request, special request forms, disciplinary letters for Tom Boukaka, or the personnel file of Roger Parker. The request set forth a brief explanation of the relevance of each item which indicated that it related to bargaining unit work or bargaining unit employees and had potential relevance to one or both of the grievances involved herein.

As to the special request forms sought in item 3, Respondent argues that (1) these forms do not contain information regarding the destruction of animals and (2) the Union did not respond to its request for clarification as to their relevance. Thus, Respondent asserts, it was unable to give any meaningful response. Respondent's argument is not persuasive. On its face, the information request seeks special request forms which list animals that were improperly destroyed. This clearly has potential relevance to the consideration, and processing, of a grievance alleging disparate discipline for almost destroying animals contrary to instructions. Respondent's response did not assert that special requests do not list animals improperly destroyed. Nor was such evidence adduced at the trial. Contrary to Respondent's urging, I cannot conclude that affirmative answers to questions regarding whether the forms contain certain specific information is tantamount to testimony that certain other relevant information is not listed on the forms.

As to the request for disciplinary letters for Tom Boukaka, Respondent responded only that all "relevant documents" are part of an arbitration record in the Union's possession. There is no indication in the response that these "relevant documents" include all disciplinary letters for Tom Boukaka as requested by the Union. In fact, the tenor of the response to this and other items, in not addressing the specific request, seems to indicate an attitude that a determination of relevance is in the sole province of Respondent. Such is clearly not the law. As noted above, if it relates to the terms and conditions of employment of bargaining unit employees, there is a presumption of potential relevance.

As to the personnel files, Respondent refused to furnish either of the three requested files on the basis that paragraph 338 of the collective-bargaining agreement permits union access to those files only upon written authorization of the employee. However, a waiver of a statutory right will be found only when there is a clear and unmistakable manifestation of an intent to waive the right. *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983); *Timken Roller Bearing Co.*, 138 NLRB 15, 16 (1962). A clear and unmistakable waiver may be found in the express language and structure of the collective-bargaining agreement or by the course of conduct of the parties. The burden is on the party asserting waiver to establish that such a waiver was intended. *NLRB v. New York Telephone Co.*, 930 F.2d 1009 (2d Cir. 1991), *enfg.* 299 NLRB 44 (1990); *United Technologies Corp.*, *supra*.

Respondent has not met that burden. Paragraph 338 is in a section of the collective-bargaining agreement relating to discipline, suspension, and separation. On its face, the language of the paragraph appears to be concerned with requiring (1) that the employer maintain a file for each employee

to contain copies of certain specified personnel actions and (2) that disciplinary action be based only on documentation in the file. There is nothing in paragraph 338 or elsewhere in the agreement to indicate that the provision in that paragraph for employee or union review of such files has any relationship to the grievance process or the statutory rights of the union with reference thereto. To the contrary, the representation article of the collective-bargaining agreement, which contains grievance procedure provisions, also requires that Respondent provide the Union with certain enumerated data and, on request, any additional data relevant and necessary to the Union's representation responsibilities. There is no reference in this section to requiring the Union to obtain written authorization of employees to review personnel files.

Thus, it seems the intent of the agreement is to affirm, rather than waive, the Union's statutory right to information. When the agreement is viewed as a whole, it seems clear that the language of paragraph 338 is intended not to restrict the statutory right of the Union to information but rather to clearly provide that an employee or a union representative authorized by the employee has the right to review the employee's personnel file regardless of any relevance to the Union's representation responsibilities.

Respondent has offered no evidence of bargaining history practice or other course of conduct to refute this conclusion. The only basis Respondent offers for its interpretation of paragraph 338 is the Union's withdrawal of its request for the Emert and Ludtke files while reaffirming its request for the Parker file "since he is no longer in the bargaining unit." I conclude that Respondent's reliance on this modification, as supporting a waiver, is misplaced. The Union specifically stated that the withdrawal was without waiver of its position.

In these circumstances, I find that the Union did not waive its statutory right to obtain personnel files relevant and necessary to its performance as exclusive collective-bargaining representative of Respondent's employees in the appropriate unit herein. As to Parker's personnel file, the Union limited its request to that portion of his file maintained while he worked in the bargaining unit. The request also states that the file is relevant because of alleged work accommodations made for Parker which were denied to Britt. This has clear potential relevance to the grievance alleging disparate treatment of Britt as to work accommodations; and the Union is not required to accept Respondent's representation as to what the file does or does not contain.

Based on the above, I find that the information requested by the Union was relevant and necessary to its performance of its responsibilities as the collective-bargaining representative of the employees in the appropriate unit. Accordingly, I find that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union the following requested information:

1. The sick leave records of all animal health technicians and animal caretakers who have taken disability within the last 5 years.

2. All special requests for the last 5 years in the Department of Laboratory Animal Medicine (DLAM) which list animals that were improperly destroyed.

3. All discipline within the last 5 years of animal health technicians at DLAM for work-related incidents.

4. Copies of all euthanasia requests and all special request forms in DLAM for the past year for procedures for which the planned result was death of an animal.

5. Copies of all disciplinary letters for Tom Boukaka.

6. The complete personnel file of Roger Parker of Department of Laboratory Animal Medicine while he worked in the bargaining unit as an animal health technician.

Because the request for the Baumgardner and Kane personnel files was withdrawn and because the Union accepted Respondent's representation that no light-duty assignments were given to Emert and Ludtke, I find that Respondent did not violate Section 8(a)(5) and (1) of the Act by failing to comply with the Union request for the Baumgardner and Kane personnel files and for copies of any notes and written correspondence concerning workplace accommodations in the nature of limited-duty work granted Emert and Ludtke because of disabilities.

I further find that by a 48-day delay in responding to the Union's request for information relevant to a grievance pending under a grievance provision which contains various timelines, none of which exceeds 35 days, Respondent has violated Section 8(a)(5) and (1) of the Act. *Valley Inventory Service*, supra; *Bundy Corp.*, supra.

CONCLUSIONS OF LAW

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

2. The Union, United Stanford Workers, Service Employees International Union, Local 680, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following described employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time staff maintenance employees, laboratory support personnel, custodians, food service employees, audiovisual operators, non-exempt computer operations personnel, production control clerks and tape librarians employed by the Department of Informational Technology Services and the SLAC Computing Services (ITS and SCS), book preservers and all regular staff book warehouse assistants and proofreaders of the Stanford University Press all employed by the University in Northern California; EXCLUDING: All other employees, office clerical employees; all employees of Stanford University Hospital; patient care employees; shelvers; computer production control clerks other than in ITS and SCS, computer production control coordinators and operations specialists; programmers, scientific and engineering associates; all currently represented employees; guards, professional and confidential employees, and supervisors as defined in the Act.

4. At all times material, the Union has been, and is now, the exclusive collective-bargaining representative of Respondent's employees in the above-described unit.

5. Respondent has failed and refused to bargain with the Union in good faith, in violation of Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with the following requested information:

(a) The sick leave records of all animal health technicians and animal caretakers who have taken disability within the last 5 years.

(b) All special requests for the last 5 years in the Department of Laboratory Animal Medicine (DLAM) which list animals that were improperly destroyed.

(c) All discipline within the last 5 years of animal health technicians at DLAM for work-related incidents.

(d) Copies of all euthanasia requests and all special request forms in DLAM for the past year for procedures for which the planned result was death of the animal.

(e) Copies of all disciplinary letters for Tom Boukaka.

(f) The complete personnel file of Roger Parker of Department of Laboratory Animal Medicine while he worked in the bargaining unit as an animal health technician.

6. By delaying until February 5, 1991, its response to the Union's December 19, 1991 request for information, Respondent has violated Section 8(a)(5) and (1) of the Act.

7. The unfair labor practices described above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act. Having found that Respondent has violated Section 8(a)(5) and (1) of the Act by its refusal to furnish certain information requested by the Union, I shall recommend that Respondent be directed forthwith to turn over to the Union the information set forth in the Order.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, Leland Stanford Junior University, Palo Alto, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with United Stanford Workers, Service Employees International Union, Local 680, AFL-CIO by refusing to furnish, or to timely furnish, said union, on request, with information necessary and relevant to the performance of its function as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time regular staff maintenance employees, laboratory support personnel, custodians, food service employees, audiovisual operators, nonexempt computer operations personnel, production control clerks and tape librarians employed by the Department of Informational Technology Services and the SLAC Computing Services (ITS and SCS), book preservers and all regular staff book warehouse assist-

⁴If 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.

ants and proofreaders of the Stanford University Press all employed by the University in Northern California; EXCLUDING: All other employees, office clerical employees; all employees of Stanford University Hospital; patient care employees; shelvers; computer production control clerks other than in ITS and SCS, computer production control coordinators and operations specialists; programmers, scientific and engineering associates; all currently represented employees; guards, professional and confidential employees, and supervisors as defined in the Act.

(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 forthwith to the Union the following information:

(1) The sick leave records of all animal health technicians and animal caretakers who have taken disability within the last 5 years.

(2) All special requests for the last 5 years in the Department of Laboratory Animal Medicine (DLAM) which list animals that were improperly destroyed.

(3) All discipline within the last 5 years of animal health technicians at DLAM for work-related incidents.

(4) Copies of all euthanasia requests and all special request forms in DLAM for the past year for procedures for which the planned result was death of the animal.

(5) Copies of all disciplinary letters for Tom Boukaka.

(6) The complete personnel file of Roger Parker of Department of Laboratory Animal Medicine while he worked in the bargaining unit as an animal health technician.

(b) Post at its office and place of business, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 32, 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.

IT IS FURTHER RECOMMENDED that the complaint be, dismissed insofar as it alleges that Respondent violated the Act other than as found herein.

⁵ 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."