

**Jacksonville Area Association for Retarded Citizens
and General Service Employee Union, Local
73, of the Service Employees International
Union, AFL-CIO. Case 33-CA-10140-2**

DECISION AND ORDER

February 16, 1995

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND TRUESDALE

Upon a charge filed by the Union on April 8, 1993, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on June 2, 1993, alleging that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with requested information.

On December 3, 1993, the General Counsel, the Union, and the Respondent filed with the Board a stipulation of facts and motion to transfer the case to the Board. The parties stated that the original charge, complaint, stipulation of facts, and attached exhibits constitute the entire record in this case and that they waive a hearing before an administrative law judge. On July 26, 1994, the Board approved the stipulation and transferred the proceeding to itself for issuance of a Decision and Order.

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

On the entire record and briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Illinois corporation, with an office and place of business in Jacksonville, Illinois, is engaged in the business of providing services to persons with developmental disabilities. During the fiscal year ending June 30, 1992, the Respondent, in conducting its business operations derived gross revenues in excess of \$1 million, provided services valued in excess of \$50,000 for the State of Illinois, and purchased and received at its Jacksonville, Illinois facility, goods valued in excess of \$25,000 directly from points outside the State of Illinois.

The Respondent admits, and we find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and is a health care institution within the meaning of Section 2(14) of the Act. The Respondent admits, and we find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Since January 1992, the Union has been the exclusive collective-bargaining representative of the employees in an appropriate unit of approximately 150 employees. The first collective-bargaining agreement between the Respondent and the Union was effective for a 12-month period beginning November 23, 1992.

At all material times, Rebecca W. McGinnis was the Respondent's executive director. Tom Morelock was the Respondent's personal director and Pamela Chapman was a supervisor for the Respondent. All three were supervisors within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act. Also, at all material times, Lyndell Huff has served as a union steward, with authority on behalf of the Union to (a) file grievances under the article XI of the above-mentioned collective-bargaining agreement and (b) request and receive information from the Respondent which is necessary for and/or relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit and specifically with respect to its representation of employees in the processing of grievances under article XI of that same collective-bargaining agreement.

Article XVI, section 16.1 of the agreement states that "[T]he Executive Director may grant an unpaid leave of absence to non-probationary employees for the purpose of educational study or other personal reasons." About April 1, 1993, the Union, by Huff, filed a grievance on behalf of Ann Knous, an employee in the unit. The "Statement of Grievance" stated:

Ann Knous on March 26, 1993 was denied discretionary leave time. This violates Article XVI Leaves of Absence, Section 16.1 Discretionary Leave; Article IV Non-Discrimination Section 4.1 and all relevant sections of the Contract.¹

About April 1, the Union, by Huff, submitted to Morelock a written request for "a copy of each discretionary leave request that has been filed from November 22, 1992, to April 1, 1993." About April 1, the Respondent, by Chapman, orally informed the Union that it would not furnish the requested information.

About April 6, 1993, the Union, by Huff, made another written request for the information. By memorandum dated April 6, Morelock denied the request stating that the information requested is

¹ This statement was amended on April 2, 1993, to add at the end, "Article VII Discipline and Discharge, Section 7.2 Just Cause."

[P]ersonal and confidential. Even submitting you a list of individuals who have requested such leave would indicate a breach of confidentiality. The only way that you could obtain this information is to be submit a release from each individual involved.

B. *The Parties' Contentions*

The sole issue here is whether the Respondent's refusal to furnish the requested information violated Section 8(a)(5) and (1) of the Act.

The Respondent argues that the information requested is not relevant to the Union's performance of its grievance processing duties. It urges, in effect, that the Respondent's executive director has the unreviewable discretion to grant the leave requests made under the discretionary leave provision (art. XVI—sec. 16.1) of the contract based on the immediate needs of the organization at the time the request is made. Consequently, it argues, the decision of the executive director is limited to the time the request is made and, because circumstances change, decisions on discretionary leave requests made at other times are not relevant.

The Respondent also argues that because the Union is seeking a copy of the requests, not the Respondent's action on these requests, "one does not know how this relates to the decision denying Knous's request for a discretionary leave."

Finally, the Respondent argues that the request is overbroad because the discretionary leave provision, which allows for this kind of leave for "educational or other personal reasons," encompasses a wide range of possibilities. The Respondent contends that the Union's request must be more narrowly tailored to situations similar to that of Knous in order to meet the standard of relevancy.

In addition to contesting relevancy, the Respondent defends its refusal to provide the information on the grounds that the information requested is confidential. It argues that the discretionary leave provision of the contract, which "allow[s] leaves for personal reasons," involves personal and confidential matters of the employee making the request. It further contends that it has offered to provide the information if the individual employees sign releases waiving the confidentiality of their requests but that the Union has rejected this proposal. The Respondent points out that it is not making a broad claim that all personnel materials are confidential but instead its claim is narrowly limited to the requests for discretionary leave at issue.

The General Counsel asserts that the Union explained to the Respondent that the purpose of the information it requested, i.e., copies of the discretionary leave request filed over an approximately 4-month period, was to investigate and process the grievance of

Ann Knous, and that this grievance alleged the violation of multiple contract provisions. The General Counsel contends that, under the applicable precedent, the requested information is clearly relevant to the Union's performance of its statutory duties to represent the unit employees by, inter alia, investigating and processing the grievance.²

As to the Respondent's contention that there are confidentiality interests, the General Counsel counters that the Respondent has not met its burden of proving that those interests outweigh the Union's interest in obtaining the requested information. The General Counsel contends that the Respondent has not shown that the information requested concerns intimate or highly personal matters, i.e., anything more confidential than "garden variety of common ailments" which the Board has ordered employers to provide.³ He further argues that the Respondent has failed to show that in the normal course of its operations it keeps this information confidential or that the employees have requested or expected that the information be kept confidential.

C. *Discussion*

1. Relevancy

The law in this area is clear. An employer has a duty to provide upon request information relevant to the union carrying out its statutory duties and responsibilities. Where, as here, the requested information concerns information pertaining to employees within the bargaining unit it is presumptively relevant.⁴ The standard for relevancy is a liberal discovery-type standard,⁵ i.e., the information requested need not necessarily be dispositive of the issue between the parties, it must only have some bearing on it.⁶

As the Supreme Court stated in *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967), "This discovery-type standard decided nothing about the merits of the union's contractual claims." The Board has stated similarly: "An employer must furnish information that

²In the General Counsel's brief to the Board, he states, "[W]hile the request is not expressly limited to requests submitted by bargaining unit members, the General Counsel is seeking the production of the requested information only with respect to employees in the bargaining unit." Thus, there is no contention that the Respondent unlawfully refused to supply information with respect to employees outside the bargaining unit.

³The General Counsel cites, inter alia, *Remington Arms Co.*, 298 NLRB 266, 272-273 (1990); and *New Jersey Bell Telephone Co.*, 289 NLRB 318 (1988).

⁴*Pfizer, Inc.*, 268 NLRB 916, 918 (1984), enf. sub nom. *NLRB v. Electrical Workers IBEW Local 309*, 763 F.2d 887 (7th Cir. 1985), and cases cited therein.

⁵*Pfizer, Inc.*, supra at 918.

⁶*Id.*

is of even probable or potential relevance to the union's duties.⁷

More particular to the instant facts, the Board and the courts have held that information which aids in the arbitral process is relevant and should be provided regardless of whether the request for information is at the grievance stage or made after the parties have agreed to proceed to arbitration.⁸ Such an approach toward the process of exchanging information encourages the resolution of disputes short of full-fledged arbitration so that the arbitration system is not "woefully overburdened."⁹

We find no merit in the Respondent's contentions that the Union's request is overbroad. With respect to the Respondent's contention that the request is overbroad because it asks for information with respect to decisions made at a different time, we note that the Union has limited its request to slightly more than 4 months. The Respondent has presented no evidence to show that within this timeframe the circumstances are so disparate from those existing at the exact time of Ann Knous's request for discretionary leave that the other requests for discretionary leave would be irrelevant.

With respect to the Respondent's contention that the request is overbroad because it is not limited to situations similar to the request by Knous, a union has the right and the responsibility to frame the issue and advance whatever contentions it believes may advance the successful resolution of a grievance.¹⁰ Here, the Union wants to examine other requests—of whatever nature—made under the discretionary leave provision of the contract and limited to an approximately 4-month period. This information may be of use to the Union with regard to the alleged violations of the contract which it claims in the grievance, i.e., in deciding whether to proceed with Knous's grievance and in processing the grievance.

With respect to Respondent's contention that the information the Union seeks is irrelevant because the Union does not also seek the Respondent's disposition of these requests, the Union is entitled to know what types of discretionary leave have been requested. The Respondent is not entitled to refuse to supply relevant information on the basis of its belief that the Union should have asked for more. Accordingly, we find that the Respondent has not presented evidence which is sufficient to overcome the presumption that the information sought is relevant.

⁷ *Pfizer, Inc.*, 268 NLRB at 918, quoting *Conrock Co.*, 263 NLRB 1293, 1294 (1982).

⁸ *Id.*

⁹ *Acme Industrial*, supra at 438.

¹⁰ E.g., *Conrock Co.*, 263 NLRB 1293, 1294 (1982), enf'd. 742 F.2d 1371 (9th Cir. 1984).

2. Confidentiality

The Supreme Court in *NLRB v. Detroit Edison Co.*, 440 U.S. 301 (1979), found that, in certain situations, confidentiality claims may justify a refusal to provide relevant information. In making these determinations, the trier of fact must balance the union's need for the information sought against the legitimate and substantial confidentiality interests of the employer.¹¹ However, it is also well settled that as a part of this balancing process, the party making a claim of confidentiality has the burden of proving that such interests are in fact present and of such significance as to outweigh the union's need for the information.

The Respondent has not met its burden of showing that it has legitimate and substantial confidentiality interests which justify its refusal to supply the requested information. The Respondent never informed the employees that the information requested would be kept confidential, and there is no evidence that the employees requested that it keep these records confidential. The Respondent urges that leaves can be granted for "personal reasons" and asserts that by definition "personal reasons" involve personal and confidential matters of the employee who requested the leave. Under the terms of the collective-bargaining agreement employees can make requests for "educational study or other personal reasons." The Respondent has not presented any evidence as to whether employees, in fact, have requested leave for "personal reasons" other than educational study. Assuming that some of the requests were for reasons other than educational study, we disagree with Respondent that all such requests by definition must involve confidential matters. They might involve a wide range of reasons including many which do not involve significant confidentiality concerns. It is the Respondent's burden to show that the reason cited in fact involved such confidentiality interests.¹² However, even if it were able to meet that burden with respect to certain requests, the defense would only be relevant to those requests and would not constitute a defense to Respondent's blanket refusal to supply information.¹³ We conclude that there is no basis here for finding that any of the requested information involves significant confidentiality concerns. Therefore, we find that the Respondent was obligated

¹¹ See, e.g., *Remington Arms Co.*, 298 NLRB at 273.

¹² As for the Respondent's contention that the Union did not cooperate with its offer of accommodation—i.e., its offer to give the Union the requests for discretionary leave for which the employees had signed releases—we note that for an employer to have a defense of accommodation, it must first prove its claim of confidentiality. See *Resorts International Hotel*, 307 NLRB 1437, 1483 (1992), enf'd. 996 F.2d 1553 (3d Cir. 1993).

¹³ *Washington Gas Light Co.*, 273 NLRB 116 (1974).

to supply the information requested and that by refusing to do so it has violated Section 8(a)(5) and (1).¹⁴

CONCLUSIONS OF LAW

1. Jacksonville Area Association for Retarded Citizens is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and is a health care institution within the meaning of Section 2(14) of the Act.

2. General Service Employee Union, Local 73, of the Service Employees International Union, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is the exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act of certain employees in the following appropriate unit:

All full-time and regular part-time non-professional employees including assistant teachers, home managers, developmental trainers, secretaries, residential aides, assistant coordinators residential services, cooks, head cooks, drivers, head drivers, P.T. services workers, child development services workers, relief home manager, residential aides, head custodian, licensed practical nurses, client services workers, CILA assistant coordinators, respite care workers, office manager, senior accounting clerks, dental assistants, language development services worker and on-call substitutes/respite care workers employed by the Employer at its Jacksonville, Jerseyville and Whitehall, Illinois facilities; but excluding all professional employees, managerial employees, confidential employees, guards and supervisors as defined in the Act.

4. By failing and refusing to furnish to the Union copies of each discretionary leave request that has been filed by unit employees from November 22, 1992, to April 1, 1993, as requested in relation to the grievance of Ann Knous, the Respondent has violated Section 8(a)(5) and (1) of the Act.

5. The unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease

¹⁴As noted above, there is nothing before us to indicate that any of the requested information involves significant confidentiality interests. We will, however, permit the Respondent at the compliance stage to make a particularized showing that specific records sought by the Union involve legitimate significant confidentiality concerns requiring a balancing of the Union's need for the information against those confidentiality interests.

and desist and take certain affirmative action that we find necessary to effectuate the policies of the Act.

ORDER

The Respondent, Jacksonville Area Association for Retarded Citizens, Jacksonville, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing or failing to bargain in good faith with the Union by failing to furnish to the Union information relevant to the processing of grievances or the administration of the 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 the Union a copy of each discretionary leave request that by unit employees has been filed from November 22, 1992, to April 1, 1993.

(b) Post at its facility in Jacksonville, Illinois, copies of the attached notice marked "Appendix."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 33, 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.

¹⁵If 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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through any representative of their own choice
- To act together for mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain in good faith with General Service Employee Union, Local 73, of the Service Employees International Union, AFL-CIO by refusing to furnish information relevant to the processing of grievances or the administration of the collective-bargaining agreement.

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, on request, furnish the Union with a copy of each discretionary leave request that has been filed by unit employees from November 22, 1992, to April 1, 1993.

JACKSONVILLE AREA ASSOCIATION FOR
RETARDED CITIZENS