

International Brotherhood of Electrical Workers, AFL-CIO, Local Union #292 and Sound, Public Address and Communication Employers Association

International Brotherhood of Electrical Workers, AFL-CIO, Local Union #110 and Sound, Public Address and Communication Employers Association. Cases 18-CB-3461 and 18-CB-3462

April 28, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon charges filed by Sound, Public Address and Communication Employers Association (the Association), on July 15, 1994, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 18, issued an order consolidating cases, consolidated complaint, and notice of hearing on August 25, 1994, against the International Brotherhood of Electrical Workers, Local Union #292 (Local 292), and Local Union #110 (Local 110), the Respondents, alleging that they had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(3), Section 8(d), and Section 2(6) and (7) of the National Labor Relations Act. The Respondents filed an answer to the consolidated complaint admitting in part, and denying in part, the allegations in the consolidated complaint, raised affirmative defenses, and requested that the consolidated complaint be dismissed.

Thereafter, on October 12, 1994, the General Counsel filed directly with the Board a Motion for Summary Judgment and brief in support thereof, with exhibits attached.¹ On October 17, 1994, the Board issued an order transferring proceeding to the Board and Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. On October 31, 1994, the Respondents filed a memorandum in opposition to Motion for Summary Judgment.

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

On the entire record in this proceeding, the Board makes the following

Ruling on the Motion for Summary Judgment

The consolidated complaint alleges that since about October 1, 1993, the Association requested that the Respondents furnish to the Association copies of collective-bargaining agreements between the Respondents and employers engaged in the same industry but not members of the Association. The complaint alleges

¹ On October 17, 1994, the General Counsel filed a supplement to Motion for Summary Judgment, with an exhibit attached.

that the information requested is necessary for and relevant to the Association's ability to police its collective-bargaining agreements with the Respondents. Finally, the consolidated complaint alleges that since about March 31, 1994, the Respondents have failed and refused to furnish to the Association the information requested, and that by such conduct, the Respondents have failed and refused to bargain collectively and in good faith with the Association within the meaning of Section 8(d) of the Act and in violation of Section 8(b)(3) of the Act.

In its answer, the Respondents admit that the Association requested that they furnish copies of collective-bargaining agreements between the Respondents and employers engaged in the same industry but not members of the Association, but the Respondents deny that the information requested by the Association is necessary for and relevant to the Association's ability to police its collective-bargaining agreements with the Respondents and that they refused to furnish the requested information. In this regard, the Respondents state that their obligation to provide the information in question is set forth in the collective-bargaining agreements; that the Association did not request the information for the purpose of policing its collective-bargaining agreements with the Respondents, but rather, for the purpose of gaining a competitive advantage over other employers engaged in the same industry but not members of the Association; and that they offered to make the requested information available to the Association through a third party for review provided that the parties could agree on certain production safeguards to prevent abuse or misuse of the requested information. Further, as an affirmative defense, the Respondents assert that the parties had agreed to arbitrate their dispute and that they remain willing to proceed to arbitration of this dispute.

First, we find that the requested information is necessary for and relevant to the Association's ability to police its collective-bargaining agreements with the Respondents, as alleged in the complaint. The collective-bargaining agreements between the Association and the Respondents contain the following "most favored nations" provision:

SECTION 1.12. EQUAL CONDITIONS—The Union agrees that if, during the life of this Agreement, the Union grants to any employers in the sound, public address, and communications industry, any better terms or conditions than those set forth in this Agreement, such better terms or conditions shall be made available to the Employers under this Agreement and the Union shall immediately notify the S.P.A.C.E. of such concessions.

The Board has consistently held that such a "most favored nations" clause establishes both the necessity and relevancy of such information as requested by the

Association and that a union's refusal to furnish such information violates Section 8(b)(3) of the Act. See *Teamsters Local 272 (Metropolitan Garage)*, 308 NLRB 1132, 1133-1134 (1992); *Service Employees Local 144 (Jamaica Hospital)*, 297 NLRB 1001, 1002-1003 (1990); *Electrical Workers IBEW Local 1186 (Pacific Electrical)*, 264 NLRB 712, 721-722 (1982); and *Hotel & Restaurant Employees Local 355 (Doral Beach Hotel)*, 245 NLRB 774, 776-777 (1979).²

The Respondents' contention that the Association's true purpose in seeking the requested information was to gain a competitive advantage over other employers who are not members of the Association does not negate the Respondents' duty to furnish this information. It is well settled that where a party requests information that is relevant to that party's collective-bargaining needs, it is irrelevant that there may also be other reasons for the request or that the information may be put to other uses. *Associated General Contractors of California*, 242 NLRB 891, 894 (1979); *Utica Observer-Dispatch, Inc. v. NLRB*, 229 F.2d 575, 577 (2d Cir. 1956).

We also find without merit the Respondents' contention that we should defer this dispute to arbitration. It is well settled that issues raised by a party's refusal to furnish relevant and necessary information are inappropriate for deferral to the arbitration process. *Clinchfield Coal Co.*, 275 NLRB 1384 (1985); *General Dynamics Corp.*, 268 NLRB 1432 fn. 2 (1984). The Respondents' alternative contention that the requested information be submitted to a third party for independent review in lieu of its submission to the Association is equally without merit. Having established that the requested information is necessary for and relevant to its ability to police its collective-bargaining agreements with the Respondents, the Association is entitled to the information, and the Respondents are obligated to provide it directly to the Association. See *Service Employees Local 144*, supra, 297 NLRB at 1003; and *Associated General Contractors of California*, supra, 242 NLRB at 893.

Accordingly, for the above reasons, we find that the Respondents' refusal to furnish the requested information to the Association violated Section 8(b)(3) of the Act.

²Our dissenting colleague acknowledges that the Respondents have a contractual obligation to disclose any better terms and conditions that have been granted to non-Association employers. Such disclosure is relevant to ascertaining whether the Respondents must grant better terms and conditions to the Association. However, our colleague nonetheless asserts that there is no basis for the information requested here. In response, we note that the requested information is designed to shed light on the very issue of whether there has been compliance with the contractual promise to grant better terms and conditions to the Association if non-Association employers have received such terms and conditions.

On the basis of the entire record, the Board makes the following

FINDINGS OF FACT

I. THE BUSINESS OF THE ASSOCIATION

The Association, an unincorporated association with an office and place of business in St. Paul, Minnesota, is a multiemployer bargaining association whose members are contractors engaged in construction, installation, and maintenance of low-voltage electrical systems, such as alarms and closed-circuit television. During the 12 months preceding issuance of the consolidated complaint, the Association's members, in conducting their operations, derived gross revenues in excess of \$1 million and have sold and shipped from their Minnesota facilities goods and services valued in excess of \$50,000 directly to points outside the State of Minnesota. We find that the Association is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Respondents are labor organizations within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *The Collective-Bargaining Relationship*

1. The units

The following employees of the Association's members constitute appropriate units for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

(a) All technicians and installers employed by members of the Association and working within the geographical jurisdiction of Respondent Local 292; excluding office clericals, guards and supervisors as defined in the Act.

(b) All technicians and installers employed by members of the Association and working within the geographical jurisdiction of Respondent Local 110; excluding office clericals, guards and supervisors as defined in the Act.

2. The collective-bargaining agreements

Since at least March 1, 1991, Respondents Local 292 and Local 110 have been the exclusive collective-bargaining representative of their respective unit, and have been recognized as such representative by the Association. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from March 1, 1994, to February 28, 1997.

B. The Request for Information and the Respondents' Refusal

On or about October 1, 1993, the Association requested that the Respondents furnish the Association with copies of collective-bargaining agreements between the Respondents and employers engaged in the same industry but not members of the Association. Since about March 31, 1994, the Respondents, by their agents Greg Shafranski, Robert Elizondo, and others have failed and refused to furnish to the Association the information requested.

For the reason stated above, we find that the Respondents have, since March 31, 1994, and at all times thereafter, refused to furnish to the Association copies of collective-bargaining agreements between the Respondents and employers engaged in the same industry but not members of the Association. By that refusal, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(3) and Section 8(d) of the Act.

IV. THE REMEDY

Having found that the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(3) and Section 8(d) of the Act, we shall order that it cease and desist therefrom. We shall further require the Respondents, on request, to provide the Association with copies of collective-bargaining agreements they have with other employers who are not members of the Association.

CONCLUSIONS OF LAW

1. Sound, Public Address and Communications Employers Association is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Electrical Workers, AFL-CIO, Local Union #292 and International Brotherhood of Electrical Workers, AFL-CIO, Local Union #110 are labor organizations within the meaning of Section 2(5) of the Act.

3. All technicians and installers employed by members of the Association and working within the geographical jurisdiction of Respondents Local Union #292 and Local Union #110 constitute appropriate units for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material, the above-named labor organizations have been and are now the exclusive representatives of all employees in the aforementioned appropriate units for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing to bargain collectively with the Association and by refusing on or about March 31, 1994, and at all times thereafter to furnish copies of collective-bargaining agreements with other employers

who are not members of the Association, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(3) and Section 8(d) of the Act.

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

ORDER

The National Labor Relations Board orders that the Respondents, International Brotherhood of Electrical Workers, AFL-CIO, Local Union #292, Minneapolis, Minnesota, and International Brotherhood of Electrical Workers, AFL-CIO, Local Union #110, St. Paul, Minnesota, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Sound, Public Address and Communication Employers Association by refusing to furnish to the Association copies of collective-bargaining agreements with other employers who are not members of the Association.

(b) In any like or related manner acting in derogation of its statutory duty to bargain with the Association on behalf of its members.

2. Take the following affirmative action that the Board finds will effectuate the policies of the Act.

(a) On request, furnish to Sound, Public Address and Communication Employers Association copies of collective-bargaining agreements between the Respondents and other employers in the industry who are not members of the Association.

(b) Post at their facilities in Minneapolis and St. Paul, Minnesota, copies of the attached notice marked "Appendices A and B."³ Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents 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 Respondents have taken to comply.

MEMBER BROWNING, dissenting.

Contrary to my colleagues, I find that the complaint, the answer, and the parties' submissions to the Board reveal the existence of substantial and material issues requiring an evidentiary hearing before an administra-

³If 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."

tive law judge. The contractual provision that supports the Association's claim to the requested information deals, by its own terms, only with "better terms and conditions" that may be granted by the Respondents to non-Association employers. Neither the Association nor the General Counsel had identified any possible basis on which the Association would be entitled to any information about contractual terms with other employers, if such terms do not qualify as "better" than those contained in the Association's labor agreement. The Respondents, on the other hand, have identified a plausible reason why disclosure of such other contract terms would be harmful to the Union and to the other employers with which it bargains: viz, that such disclosure would permit the Association members to know the factors effecting their competitors' labor costs, the better thereby to tailor their own job bids to fall just below the competitors' bids. The Respondents have conceded the duty to disclose any "better" terms in the requested contracts and has proposed several ways of identifying such terms and redacting others. Under the circumstances, I view the Respondents' position as raising triable issues concerning, for example, the scope of the information to be disclosed, the procedure for determining that scope, and the need for conditioning disclosure on the maintenance of confidentiality. Accordingly, I would deny the General Counsel's Motion for Summary Judgment and remand the proceeding to the Regional Director for further appropriate action.

APPENDIX A

NOTICE TO MEMBERS
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 in good faith with Sound, Public Address and Communication

Employers Association by refusing to furnish copies of collective-bargaining agreements negotiated between International Brotherhood of Electrical Workers, AFL-CIO, Local Union #292 and employers who are not members of the Association.

WE WILL NOT in any like or related manner act in derogation of our statutory duty to bargain with the Association on behalf of its members.

WE WILL, on request, furnish to the Association copies of collective-bargaining agreements with other employers who are not members of the Association.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO,
LOCAL UNION #292

APPENDIX B

NOTICE TO MEMBERS
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 in good faith with Sound, Public Address and Communication Employers Association by refusing to furnish copies of collective-bargaining agreements negotiated between International Brotherhood of Electrical Workers, AFL-CIO, Local Union #110 and employers who are not members of the Association.

WE WILL NOT in any like or related manner act in derogation of our statutory duty to bargain with the Association on behalf of its members.

WE WILL, on request, furnish to the Association copies of collective-bargaining agreements with other employers who are not members of the Association.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO,
LOCAL UNION #110