

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Estrella Communications, Inc. d/b/a KVEA, Channel 52 and National Association of Broadcast Employees and Technicians, Communications Workers of America (CWA). Case 31-CA-22525

June 26, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on February 21, 1997, the General Counsel of the National Labor Relations Board issued a complaint on March 31, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 31-RC-7368. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On May 20, 1997, the General Counsel filed a Motion for Summary Judgment. On May 21, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On June 13, 1997, the Respondent filed a response and a brief in opposition to the General Counsel's Motion for Summary Judgment.

Ruling on Motion for Summary Judgment

In its answer, the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding. In addition, the Respondent asserts that, even if the Union were properly certified, it is not required to furnish certain of the information requested by the Union, which are subject to a right of privacy, specifically the phone and social security numbers of the employees, and unredacted disciplinary notices or warnings of such records, unless the employee consents to the release of such information.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any

special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues warranting a hearing with respect to the Union's request for information. The complaint alleges, and the Respondent's answer admits, that the Union requested the following information on January 31, 1997:

1. A list of current employees, including their names, dates of hire, rates of pay, job classification, last known address, phone number and social security number.
2. A copy of all current Company personnel policies or procedures.
3. A copy of all Company fringe benefit plans, including pension, profit sharing, severance, stock incentive, health and welfare, apprenticeship, training, legal services, child care, or any other plans which relate to the employees.
4. Copies of all current job descriptions.
5. Copies of any Company wage or salary plans.
6. Copies of all disciplinary notices, warnings, or records of disciplinary personnel actions for the last year.

Although the Respondent's answer denies that the request for phone and social security numbers of the employees and the unredacted disciplinary notices, warnings or related records is proper, by reason of the right of privacy, it is well established that, with the exception of the employees' social security numbers,¹ the information is presumptively relevant and must be furnished on request. See, e.g., *Maple View Manor*, 320 NLRB 1149 (1996); *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain and to furnish the requested information with the exception of employee social security numbers.²

On the entire record, the Board makes the following

¹ See, e.g., *Dexter Fastener Technologies*, 321 NLRB 612 (1996). In his Motion for Summary Judgment, the General Counsel states that he will not seek to require that the Respondent furnish the social security numbers of employees.

² Member Higgins did not participate in the underlying representation proceeding. However, he agrees with his colleagues that the Respondent has raised no new issues in this "technical" 8(a)(5) proceeding and that summary judgment is therefore appropriate.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with an office and place of business in Glendale, California, has been engaged in the operation of a television broadcasting station. The Respondent in conducting its business operations described above, annually supplies services valued in excess of \$100,000 and supplies services valued in excess of \$5000 directly to customers located outside the State of California. Furthermore, in the conduct of its business, the Respondent subscribes to national wire services and advertises national brand products. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held April 4, 1996, the Union was certified on December 16, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:³

All technical and production employees employed by the Employer at its facility located at 1139 Grand Central Avenue, Glendale, California, excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since January 31, 1997, the Union has requested the Respondent to bargain and to furnish information, and, since March 3, 1997, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after March 3, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

³The unit description is accurately set forth in par. 3 of the complaint. It differs slightly and insignificantly from the unit described in the Board's Decision and Certification of Representative.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested with the exception of the social security numbers of employees.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Estrella Communications, Inc. d/b/a KVEA, Channel 52, Glendale, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with National Association of Broadcast Employees and Technicians, Communications Workers of America (CWA) as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(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, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All technical and production employees employed by the Employer at its facility located at 1139 Grand Central Avenue, Glendale, California, excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information it requested on January 31, 1997, with the exception of the social security numbers of employees.

(c) Within 14 days after service by the Region, post at its facility in Glendale, California, copies of the at-

tached notice 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 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 21, 1997.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 26, 1997

| | |
|-----------------------|----------|
| _____ | |
| William B. Gould IV, | Chairman |
| _____ | |
| Sarah M. Fox, | Member |
| _____ | |
| John E. Higgins, Jr., | Member |

(SEAL) NATIONAL LABOR RELATIONS BOARD

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."

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 with National Association of Broadcast Employees and Technicians, Communications Workers of America (CWA) as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

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, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All technical and production employees employed by us at our facility located at 1139 Grand Central Avenue, Glendale, California, excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on January 31, 1997, with the exception of the social security numbers of employees.

ESTRELLA COMMUNICATIONS, INC.
D/B/A KVEA, CHANNEL 52