

Grinnell Fire Protection Systems Company and Road Sprinkler Fitters, Local Union No. 669, U.A., United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO.
Cases 5-CA-28153 and 5-CA-28440

November 15, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On February 8, 2000, Administrative Law Judge Karl H. Buschmann issued the attached decision. The Respondent and the General Counsel each filed exceptions and a supporting brief. The Charging Party and the General Counsel each filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified and to adopt the recommended Order as modified.

As the judge found, the Respondent failed and refused to provide the Union with, *inter alia*, the names and addresses of replacement employees in the bargaining unit represented by the Union, which has been on strike against the Respondent since April 1994. We agree with the judge that the information requested was presumptively relevant, that the Respondent violated Section 8(a)(5) by failing and refusing to provide it, and that the appropriate remedy is to require the Respondent to provide that information.

Our dissenting colleague would remand the case to the judge for further findings concerning the purposes for which the Union sought the information. Noting that the Board has held that an employer has no duty to bargain over the terms and conditions of employment of strike replacements,¹ our colleague contends that the Respondent had no duty to furnish the information, with respect to the strike replacements, to the extent that the Union requested it in order to bargain for a new contract or to ensure that employees were paid according to the terms of the expired agreement. Our colleague also argues that there is evidence that the Union sought the information in order to induce the employees to quit their jobs and work elsewhere, and that the judge failed to make an explicit factual finding in this regard. To the extent that the Union sought the information for that purpose, our colleague would not require the Respondent to provide it.

¹ See, e.g., *Detroit Newspapers*, 327 NLRB 871 (1999) (Members Fox and Liebman dissenting).

We find that no remand is warranted. To begin with, our colleague is mistaken when he broadly asserts that employers have no duty to bargain over the terms and conditions of employment of strike replacements. To be sure, while a strike is in progress and individuals have been hired to replace strikers, the employer is not required to bargain with the union over the terms and conditions under which those individuals work *as strike replacements*. Once the strike has ended, however, any replacements who remain employed assume the same status as other unit employees. They are no longer strike replacements, and the terms under which they work will be governed by any newly bargained contract.² Consequently, the union is entitled to receive information regarding strike replacements, not because it can insist on bargaining over the terms under which they work as strike replacements, but because in bargaining for a new agreement, it is bargaining over terms that will be applicable to all unit employees, including those who worked as replacements during the strike.

The Board thus has repeatedly held that a union is presumptively entitled to be furnished, on request, with the names and payroll information concerning bargaining unit employees, *including strike replacements*.³ The employer can rebut the presumption by showing that divulging the information will be unduly burdensome or that harassment of employees is likely to result,⁴ but no such claim or showing has been made here. Our colleague contends that the Union had an invalid purpose behind its information request—to find out who was working for the Respondent and attempt to persuade them to quit and work for other employers—but, as the judge found, that contention is not supported by the record. Indeed, the judge explicitly found that “the Respondent has failed to demonstrate that the Union’s request for information is in any way connected with an improper or unlawful motive.” Thus, our colleague has failed to demonstrate the existence of a motive that would even arguably render the Union’s information request invalid.

Our colleague concedes that certain of the Union’s “ostensible” purposes were legitimate, but he argues that, absent a fact-finding, there is no showing that the Union had any valid purpose for requesting the information. In effect, our colleague would require the Union to demonstrate good faith by proving that it had a valid purpose

² See *Detroit Newspapers*, 327 NLRB 871, quoting *Service Electric Co.*, 281 NLRB 633, 639–640 (1986).

³ See, e.g., *Page Litho, Inc.*, 311 NLRB 881, 882 (1993), *enf. mem.* denied on other grounds 65 F.3d 169 (6th Cir. 1995); *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055, 1096 (1st Cir. 1981).

⁴ *Id.*

for requesting relevant information, even when its stated reasons were valid. That is not the Union's burden, however. A union's request for presumptively relevant information is presumed to be in good faith unless the contrary is shown.⁵ As we have already noted, the Respondent failed to show any invalid motive behind the Union's information request. Accordingly, there is no need to remand the case to the judge for additional findings.

In excepting to the judge's order that it provide the Union with the information at issue, the Respondent relies on *Metropolitan Edison Co.*, 330 NLRB 107 (1999). In that case, however, the employer refused an information request on grounds of confidentiality, claiming that the information sought would result in retaliation against, and coercion and intimidation of, persons who had informed the employer that an employee was stealing food from the plant cafeteria. For purposes of deciding the case, the Board assumed that the employer had asserted a legitimate and substantial confidentiality interest. The Board nevertheless found that the confidentiality interest was not so substantial as to justify the employer's blanket refusal to provide any information in response to the request for informants' names. The Board found that the employer had an obligation to come forward with some offer to accommodate both its concerns and the union's legitimate need for relevant information. The Board ordered the employer to bargain in good faith with the union regarding its request for the names of informants, which information (the Board found) was relevant to the union's administration of the nondiscrimination provision of the parties' contract, and thereafter to comply with any agreement reached through such bargaining.

In the instant case, by contrast, the Respondent has failed even to assert, let alone establish, a substantial confidentiality interest. The Respondent does except to the judge's finding that it refused to furnish the information despite repeated requests and without taking a formal position that the information was confidential. However, the Respondent has pointed to no evidence that it in fact took the position that the information was confidential. Nor does the Respondent specifically make such a claim to the Board, despite its citation in its exceptions brief to *Metropolitan Edison*. The Respondent has therefore shown no need for an accommodation. In these circumstances, we find that the judge correctly ordered the Respondent to provide the requested information.⁶

⁵ *O&G Industries*, 269 NLRB 986, 987 (1984).

⁶ We find it unnecessary to rely on the judge's finding that the Respondent made no effort to bargain to accommodate the Union's inter-

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Grinnell Fire Protection Systems Company, Exeter, New Hampshire, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(a) and reletter the subsequent paragraphs.

“(a) Refusing to bargain in good faith with the Union by refusing to provide the Union with the information requested by letter of October 19, 1998, i.e., a current list of all employees performing work described in Article 18 of the expired agreement, indicating the employee's name, address, dates of employment, job title or classification, rate of pay, and fringe benefits.”

2. Substitute the following for paragraph 2(a).

“(a) Furnish the Union with the information requested in its letters of October 19, 1998 and June 7, 1999.”

3. Substitute the attached notice for that of the administrative law judge.

MEMBER HURTGEN, dissenting.

I would remand the case for further consideration.

The Union sought the information ostensibly for a number of purposes. They include: (1) continued bargaining for a new contract; (2) making sure that employees are paid according to the terms of the expired contract; (3) to assure that prior unfair labor practices are remedied; (4) soliciting employees to be members of the Union.

In evaluating the Union's request, it must be borne in mind that a strike began on April 12, 1994, and Respondent hired a large number of strike replacements. Thus, the information concerned, inter alia, strike replacements. Even the judge referred to the employees as strike replacements.¹

Of course, there is no obligation to bargain with respect to the terms and conditions of employment of strike replacements.² Thus, to the extent that items (1) and (2) involve strike replacements, there is no duty to supply the information.³ In addition, there is evidence that the

est in seeking relevant information. As noted supra, the Respondent has failed to show that the “accommodation” model is applicable here.

We grant the General Counsel's limited exceptions to the judge's apparently inadvertent failure to include, in his conclusions of law, Order, and notice, provisions reflecting his findings as to the Union's October 19, 1998 information request to the Respondent. We shall modify the Order and notice accordingly.

¹ Respondent also used some nonstriking employees.

² *Detroit Newspapers*, 327 NLRB 871 (1999).

³ The evidence does not establish that the Union wanted the information to bargain on behalf of replacements who might remain after the strike is over.

Union sought the information for purposes of inducing the employees to quit their employment and work elsewhere. The judge did not make an explicit factual finding in this regard. He said that there was not an "improper or unlawful motive," and at another point, he assumed that Respondent's assertion was correct. I believe that an explicit factual finding is necessary. To the extent that information was sought for this purpose, I would not find a duty to supply it.

Concededly, the third and fourth purposes noted above are legitimate ones. Thus, to the extent that these are the Union's true purposes, the Union would be entitled to the information. However, absent a fact-finding, it cannot presently be said whether there is *any* valid purpose for the information request. Accordingly, the judge must make findings as to these matters, and must consider them in determining whether a violation exists and in fashioning a remedy for any violation that he may find.⁴

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 representatives of their own choice
- To act together for other 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 the Union by refusing to provide the Union with the information requested by letter of October 19, 1998, i.e., a current list of all employees performing work described in article 18 of the expired agreement, indicating the employee's name, address, dates of employment, job title or classification, rate of pay, and fringe benefits.

WE WILL NOT refuse to bargain in good faith with the Union by refusing to provide the Union with the information requested by letter of June 7, 1999, i.e., a list of all Grinnell employees enrolled in apprenticeship pro-

⁴ Contrary to my colleagues, I am not requiring that the Union prove its good faith. I am simply noting that there are a number of possible bases for the request for information, some of which do not provide a valid basis for the request. In these circumstances, there is a need for findings as to whether there was any valid basis for the request.

grams during the period from May 1, 1994 to the present, setting forth the employee's identity, current or last known address, and dates of employment, the program(s) in which the employee was enrolled, and the dates of such apprenticeship enrollment.

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

WE WILL furnish the Union with the information requested in its letters of October 19, 1998 and June 7, 1999.

GRINNELL FIRE PROTECTION SYSTEMS COMPANY

Cynthia Blasingame Baker, Esq., for the General Counsel.

Peter Chatilovicz and Charles F. Walters, Esqs. (Seyfarth, Shaw, Fairweather & Geraldson), of Washington, D.C., for the Respondent.

William W. Osborne, Jr., Esq., of Washington, D.C., for the Charging Party.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried in Washington, D.C. on November 18, 1999, upon a complaint in Case 5-CA-28153 issued on May 28, 1999 and a complaint in Case 5-CA-28440 issued on September 29, 1999, as consolidated by order of October 6, 1999. The charges were filed by Road Sprinkler Fitters, Local Union No. 669, U.A., United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (the Union) on January 25, 1999 and on June 30, 1999, respectively. The Respondent, Grinnell Fire Protection Systems Company, filed timely answers in which the jurisdictional allegations were admitted and the substantive allegations were denied.

The issue is whether the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by refusing to furnish the Union with information relevant and necessary to its representation of bargaining unit employees.

On the entire record in this case, including the briefs filed by the parties and on my observations of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Bermuda corporation, located in Exeter, New Hampshire, is engaged in the business of installing and supplying automatic sprinkler and fire protection systems in various states. With sales and shipments of goods in excess of \$50,000 directly across state lines, the Respondent is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS

The Union has been the collective-bargaining representative of the Respondent's employees in the following unit:

All journeymen sprinkle fitters and their apprentices employed by Grinnell Fire Protection Systems Company, but excluding all other building tradesmen, clerical, office and supervisory employees, as defined by the Act.

The last collective-bargaining agreement expired on March 30, 1994. The parties engaged in negotiations but failed to reach an agreement. Since about April 12, 1994, the Union has been on strike against the Company. Grinnell has continued its operations with nonstriking employees and by hiring a large number of replacement workers.

John Bodine, the Union's vice president, testified that he has solicited Grinnell's employees over the last few years to become union members by visiting jobsites and by contacting people over the telephone. In this connection, he has made sure that employees are receiving the proper rate of pay and has generally discussed with them the conditions of their employment with the Respondent. Bodine admitted that he has also informed those employees that job opportunities existed at other companies, and that he has encouraged employees at Grinnell to work for other, union companies.

The Union made several requests for information from the Employer. By letter of October 19, 1998, the Union requested that the Respondent provide it with a "current list of all employees performing work described in article 18 of the expired agreement, indicating the employee's name, address, dates of employment, job title or classification, rate of pay and fringe benefits" (GC Exh. 2). As stated in the Union's letter, the information was sought in preparation for future discussions, and as, testified by Bodine, the Union needed to be able to identify the employees, because it represented them. By letter of December 1, 1998, Daniel Casteel, Respondent's vice president for human resources, requested the Union to clarify the purpose of its demand because the Company questioned the stated purpose for the information (GC Exh. 3). The Union made an additional demand for information by letter of June 7, 1999 seeking *inter alia* the following (GC Exh. 4):

A complete list of all Grinnell employees enrolled in programs described in paragraphs 1 and 2, during the period from May 1, 1994 to the present, setting forth the employee's identity, current or last known address, and dates of employment by Grinnell, the program(s) in which the employee was enrolled, and the dates of such apprenticeship enrollment.

The record shows that the Respondent has failed to provide the requested information. In its answer to the complaint, the Respondent admitted that it failed to provide the information described in paragraph 10 of the complaint. Indeed, by letter, dated September 23, 1999, the Respondent advised the Union that it would not provide the apprentices' names and addresses (GC Exh. 6).

III. DISCUSSION

The parties are in agreement that under the Act an employer has an obligation to provide the Union with information relevant to the Union's statutory duties and responsibilities as the employees' collective-bargaining representative. *NLRB v. Acme Industrials Co.*, 385 U.S. 432 (1967). It is also settled that the Union has the right to know the names and addresses of all bargaining-unit employees and striker replacements without any further showing of relevance. *Page Litho, Inc.*, 311 NLRB 881 (1993), *enfd.* 65 F.3d 169 (6th Cir. 1995). As testified by the Union's vice president, Bodine, the Union represented these employees. It should accordingly know their identities. Nevertheless, the Respondent has refused to furnish the information in spite of repeated requests and without taking a formal position that the information is confidential. *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). There, the Supreme Court recognized that even though the requested information may be relevant, an employer may have a legitimate interest in preserving the confidentiality of certain information, which must be given respect.

Here, the Respondent argues that the Union's request was made in bad faith because of "the undisputed evidence that the Union seeks this information for one purpose only: to raid Grinnell's replacements by getting them to work for competitor employers" (R. Br., p. 5). The Respondent makes this observation without disputing—in effect conceding—"the presumptive relevancy of the names and addresses of its sprinkler fitters," but argues that the Union has not ceased but continues its aggressive effort to interfere with Grinnell's right to employ replacement workers.

To be sure, John Bodine, the only witness in this case, stated that he had visited the Respondent's worksites from time to time or called employees and informed the employees of job opportunities with other employers and on some occasions even encouraged them to work for union companies. However, the record does not show that the Union made the information request with the intent of raiding the Respondent's work force. Indeed, the Respondent has failed to demonstrate that the Union's request for information is in any way connected with an improper or unlawful motive. The mere fact that the Union has assisted its members in finding employment with union companies or otherwise discussed with them job opportunities with other employers does not suggest that the information request had that purpose. The Union obviously accomplished that goal without the requested information. But even if

the Union's purpose in requesting the information included its intentions to organize the striker replacements by soliciting them to join the Union or to work for union companies, the Respondent has failed to show that the request lacks a proper and legitimate purpose. The Union's letter of October 19, 1998 addressed to Daniel W. Casteel, vice president of Grinnell, clearly indicates that the Union demanded the information in "preparation for our future discussions" and to discuss restoration of the collective-bargaining relationship. It was also the Union's position that the Respondent comply with the order in the prior decision,¹ namely to remedy the prior unfair labor practices.

Here, the Respondent made no effort to bargain to accommodate the Union's interest in seeking relevant information. Instead, it flatly rejected the request for their names and addresses of the employees at Grinnell. It thereby violated Section 8(a)(5) of the Act. *Metropolitan Edison Co.*, 330 NLRB 107 (1999).

CONCLUSIONS OF LAW

1. The Respondent, Grinnell Fire Protection Systems Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Union has been the exclusive collective-bargaining representative of the following employees of Respondent, which 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 journeymen and apprentice sprinkler fitters engaged in the installation, alteration, maintenance, repair and service of automatic sprinkler and fire control systems; excluding all other employees, guards and supervisors as defined in the Act.

4. By failing and refusing to furnish the Union with a complete list of all Grinnell employees enrolled in apprenticeship programs during the period from May 1, 1994 to the present, setting forth the employee's identity, current or last known address, and dates of employment by Grinnell, the program(s) in which the employee was enrolled, and the dates of such apprenticeship enrollment, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.
5. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent engaged in unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Order will require Respondent to furnish the Union with the information, which it has unlawfully failed and refused to furnish.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, Grinnell Fire Protection Systems Company, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the Union by refusing to provide the Union with the information requested by letter of June 7, 1999, i.e., a list of all Grinnell employees enrolled in apprenticeship programs during the period from May 1, 1994 to the present, setting forth the employee's identity, current or last known address, and dates of employment, the program(s) in which the employee was enrolled, and the dates of such apprenticeship enrollment.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

¹ *Grinnell Fire Protection Systems Co.* 328 NLRB 585 (1999).

² If 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.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with the information requested in its letter of June 7, 1999.

(b) Within 14 days after service by the Region, post at all of its facilities throughout the United States copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 5, 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. 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 March 1, 1994.

(c) 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.

³ 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."