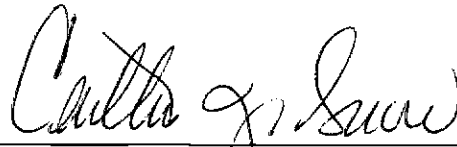




AWARD:

Having carefully considered all evidence submitted by the parties in this matter, the arbitrator concludes that the parties are free, if it is the desire of either, to seek an evidentiary hearing before an arbitrator at the local level in order to explain the nature of the supervisory files at issue. If such a hearing is held, the arbitrator in the matter shall mandate a process by which the particular required information is to be divulged, consistent with the analysis of the original report in the matter. It is so ordered and awarded.

DATE: March 9, 1992

  
\_\_\_\_\_  
Carlton J. Snow  
Professor of Law

IN THE MATTER OF ARBITRATION )	)
BETWEEN )	)
UNITED STATES POSTAL SERVICE )	)
AND )	)
NATIONAL ASSOCIATION OF )	)
LETTER CARRIERS )	)
AND )	)
AMERICAN POSTAL WORKERS UNION )	)
(Case No. H7N-5C-C 12397) )	)
(Remedy Award)	)

ANALYSIS AND AWARD

Carlton J. Snow  
Arbitrator

I. INTRODUCTION

This matter came for a decision pursuant to the arbitrator's retained jurisdiction granted in this case. The arbitrator issued an initial award on July 29, 1991. At that time, the arbitrator had retained jurisdiction in the matter to resolve problems resulting from the remedy in the award.

Pursuant to the arbitrator's retained jurisdiction, a hearing with regard to remedy took place on December 19, 1991 in a conference room of the U.S. Postal Service headquarters located at 475 L'Enfant Plaza S.W. in Washington, D.C. Mr. John C. Oldenburg, Senior Attorney in the Office of Field Legal Services, represented the United States Postal Service. Mr. Keith E. Secular of the Cohen, Weiss and Simon law firm in New York City represented the National Association of Letter Carriers. Although the American Postal Workers Union was a party to the original arbitration proceeding, no one

represented the APWU at this hearing.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. Ms. Kim Petrarca of Diversified Reporting Services, Inc. recorded the matter for the parties and submitted a transcript of 60 pages. The arbitrator also retained extensive personal notes during the hearing. The parties fully and fairly represented their respective parties.

Those present at the hearing agreed the matter had properly been submitted to arbitration and offered no challenges to the substantive or procedural arbitrability of the Dispute. They authorized the arbitrator to resolve all questions raised with regard to implementing the award in Case No. 87N-5C-C 12397. The two participating parties submitted the matter to the arbitrator on the basis of post-hearing briefs, and the arbitrator officially closed the hearing on January 27, 1992 after receipt of the final brief in the matter.

## II. STATEMENT OF THE ISSUES

The issues before the arbitrator are as follows:

- (1) What is scope of the arbitrator's retained jurisdiction?
- (2) What steps must the parties take to implement the award in Case No. H7N-5C-C 12397?

## III. STATEMENT OF FACTS

In this case, one of the parties to a national level arbitration conducted pursuant to Article 15.3(D) of the parties' National Agreement has invoked the arbitrator's retained jurisdiction in order to resolve questions regarding the remedy set forth in the original award. In the initial grievance in the matter, the National Association of Letter Carriers challenged the Employer's refusal to make available to the Union personnel files of two supervisory employes. The Union sought the files because they were believed to be relevant to the Union's preparation for a pending discharge grievance filed in behalf of a local union member. The American Postal Workers Union intervened at the national level in the dispute and participated in the initial hearing. Following a hearing in the matter, the arbitrator found that the Employer had violated the parties' collective bargaining agreement by refusing disclosure of the requested information. To remedy the violation, the arbitrator issued an award

requiring the Employer to disclose the requested information and setting forth a process by which the disclosure was to be arranged.

The original decision stated:

Although the disclosure of the requested information is required, the parties shall have ninety days from the date of this report to meet and negotiate a methodology by which the information is to be divulged, consistent with the analysis set forth in this report. If the parties fail to agree, either may seek an evidentiary hearing before an arbitrator in order to explain the true nature of a supervisory employe file; and the arbitrator will render an award mandating the process by which the requested information will be disclosed. The arbitrator shall retain jurisdiction in this matter to resolve any problems resulting from the remedy in the award.

Unable to reach agreement during the 90 day period set forth in the award and being in disagreement with regard to how to proceed in the matter, the National Association of Letter Carriers invoked the arbitrator's jurisdiction; and a remedy hearing in the matter took place. The American Postal Workers Union did not join the other parties in the remedy negotiations and did not appear at the remedy hearing.

V. POSITION OF THE PARTIES

A. The Union

The National Association of Letter Carriers argues that the parties have, for the most part, resolved the question of methodology with regard to disclosing the requested information and disagree primarily with regard to the scope of the arbitrator's retained jurisdiction. According to the Union, the present issues are limited to questions with regard to two documents originally requested by the Union in the local discharge grievance. Those questions, according to the Union, are specific to the local grievance and are not relevant to future cases involving union requests for information from supervisory personnel discipline records.

The National Association of Letter Carriers contends that the arbitrator must resolve the questions of fact with regard to the nature of the particular supervisory files at issue in the local matter. The NALC argues that the arbitrator has no authority beyond the specific request for information which was the subject matter of the original grievance. It is the belief of the Union that it would exceed the arbitrator's authority to grant the remedy sought by the Employer.

B. The Employer

The Employer, as a threshold matter, argues that the American Postal Workers Union must be bound by any decision in this matter, notwithstanding the failure of the APWU to appear at the remedy hearing. According to the Employer, the intervention of the American Postal Workers Union in the dispute between the National Association of Letter Carriers and the Employer cannot be limited at this late date by a unilateral withdrawal after the award or by merely choosing not to participate. It is the position of the Employer that, pursuant to Article 15.4.A.6 of the National Agreement, all decisions by an arbitrator are final and binding. This contractual obligation, argues the Employer, cannot be avoided once intervention has been permitted and the issue in dispute has been resolved.

On the merits of the dispute, the Employer maintains that the award in dispute requires the arbitrator to conduct an evidentiary hearing on the true nature of supervisory discipline files in order to construct the methodology for the disclosure of information in supervisory personnel files consistent with the original award. The Employer maintains that its proposed methodology should be adopted by the arbitrator as a fair method of balancing the conflicting interests of unions, management, and affected employees. According to the Employer, the arbitrator must construct a methodology for disclosure as a remedy in this case, whether or not he accepts the Employer's proposed methodology.

It is the belief of the Employer that the methodology selected by the arbitrator must resolve all anticipated issues of access to supervisory files. According to the Employer, the remedy in issue requires, either by negotiation or by ruling of an arbitrator, that a methodology which is binding on the APWU, the NALC, and the Employer, be developed with reasonable dispatch.

V. ANALYSIS

A. Background

There is no disagreement between the parties with regard to the posture of the matter before the arbitrator. Both the Employer and the National Association of Letter Carriers agree that the arbitrator's retained jurisdiction in Case No. H7N-5C-C 12397 supplies the basis for resolving this matter. The original complaint in this case involved a claim by the National Association of Letter Carriers that the refusal of local postal management to provide information requested in a separate pending discipline grievance violated the parties' collective bargaining agreement. The arbitrator sustained this grievance on July 29, 1991.

The portion of the original award now in dispute states:

Although the disclosure of the requested information is required, the parties shall have ninety days from the date of this report to meet and negotiate a methodology by which the information is to be divulged, consistent with the analysis set forth in this report. If the parties fail to agree, either may seek an evidentiary hearing before an arbitrator in order to explain the true nature of a supervisory employe file; and the arbitrator will render an award mandating the process by which the requested information will be disclosed. The arbitrator shall retain jurisdiction in the matter to resolve any problems resulting from the remedy in the award.

The parties present at the remedy hearing stipulated that meetings took place but that they failed to reach agreement. Moreover, the parties disagreed with respect to how to proceed. Accordingly, the National Association of Letter Carriers properly has invoked the arbitrator's retained jurisdiction.

B. Scope of the Arbitrator's Retained Jurisdiction

The issue decided in Case No. H7N-5C-C 12397 involved a matter of contractual interpretation. The arbitrator concluded that the refusal of local postal officials to divulge specific requested information violated the parties' National Agreement. While that conclusion at the national level is of precedential value with regard to the Union's request for similar information, the award itself addressed only the specific informational issue which formed the subject matter of the grievance.

It is the remedy for the particular violation of the parties' collective bargaining agreement which now is at issue. That remedy required the parties to meet and negotiate a "methodology by which the information is to be divulged, consistent with the analysis set forth in this report." The analysis set forth in the original report detailed the Unions' right to information under terms of the parties' collective bargaining agreement. It, therefore, established boundaries with respect to what types of information could be obtained.

The remedy in the original award provided the parties with an opportunity to develop their own particular procedures for divulging the required information. The remedy, however, addressed only the specific violation complained of by the NALC in the grievance at issue, that is, the failure of particular local managers to divulge particular requested information. The scope of the remedy, therefore, was established by the first sentence of the cited portion of the

original award.

The second sentence of the award in the original report established a mechanism which either party to the contemplated remedy negotiation had a right to invoke once the mandated 90 day period of negotiation had been completed. That mechanism is "an evidentiary hearing before an arbitrator in order to explain the true nature of a supervisory employee file." The remedy required an arbitrator, after the evidentiary hearing, to "render an award mandating the process by which the requested information will be disclosed." The "requested information" is the information sought by the National Association of Letter Carriers which became the grievance sustained in the award at issue.

The third sentence of the cited portion of the award retained jurisdiction "in this matter to resolve any problems resulting from the remedy in the award." Jurisdiction retained in the third sentence of the award is not the same as jurisdiction anticipated by the second sentence. The evidentiary hearing anticipated in the second sentence of the award merely provided a mechanism to backstop the negotiations mandated in the first sentence of the award.

It was the parties who were to carry out the burden of finding a procedure for the disclosure of the particular information requested by the National Association of Letter Carriers in the local discharge grievance. The information to be divulged was that information "consistent with the analysis set forth in [the original] report." Only if the

parties failed in their negotiation could either seek an evidentiary hearing to resolve factual issues with regard to the nature of the requested file.

The scope of such an evidentiary hearing cannot exceed the scope of the parties' task. The contemplated arbitration was to provide a mechanism for the resolution of issues it was hoped would be settled by good faith negotiation. The scope of the negotiations, therefore, established the scope of the jurisdiction of the arbitrator should the evidentiary hearing provision of the award be invoked.

Once negotiation between the parties failed and a party sought an evidentiary hearing, the arbitrator chosen by the parties should assume responsibility for resolving issues left unresolved by the parties. Like the parties themselves, the arbitrator must look to the analysis of the original report and determine from facts presented what information is to be revealed. It was anticipated that the arbitrator would render a decision, considering the analysis in the original report, and direct the Employer with respect to the most effective means of divulging the requested information.

The arbitration mechanism set forth in the second sentence of the cited portion of the award, like the negotiation itself, is strictly a local matter. Facts relevant to a particular request for information in a particular grievance are simply beyond the scope of this arbitrator's retained jurisdiction in this matter. The arbitrator retained jurisdiction to "resolve any problems resulting from the remedy in the award."

Problems resulting from the remedy in the original award are not the "particulars" of the information request at issue in the grievance. They, rather, are problems with the mechanism mandated to resolve the "particulars."

Both parties have styled the award as a "remand." That representation is misleading. The issue of disclosure, that is, the issue in the grievance sustained by the arbitrator, was not remanded to the parties. Nor was the nature of the information to be disclosed remanded. Those issues were resolved in the Union's favor. The remedy was remanded to correct damage done by the particular violation of the parties' National Agreement.

The mandated remedy is not a "remand." It is a prescription to implement the award. The parties were offered 90 days to agree to a disclosure procedure. At the end of that time, either party could seek an evidentiary hearing with a ruling by an arbitrator. That arbitrator would then rule, based on an evidentiary hearing and consistent with the analysis in the national level award, on what information must be disclosed in the local discharge grievance.

The prescription for implementation is a complete remedy. Jurisdiction by this arbitrator was retained in the last sentence of the cited portion of the award only to resolve any problem between the parties with regard to what was required by the remedy. Such problems are limited by the structure of the remedy, and they do not include factual issues regarding the particular information requested by the National

Association of Letter Carriers.

In the present matter, the arbitrator's retained jurisdiction properly has been invoked to correct a misunderstanding between the parties with regard to the requirements of the award. From evidence presented in the matter, it is clear that the parties have exhausted the 90 day period of negotiation without developing a mutually agreeable methodology by which the information the NALC requested in the local discharge grievance is to be divulged. Either party, therefore, is free to seek local arbitration where, after an evidentiary hearing on the nature of the supervisory employe files, the arbitrator shall establish, consistent with the original analysis in this case, a process by which the requested information will be disclosed.

C. Absence of the American Postal Workers Union

The Employer interpreted the arbitrator's award and retained jurisdiction as extending to the development by the parties of a national methodology for handling future claims that sought information contained in supervisory employee files. Because of that misapprehension, the Employer was greatly concerned that all parties to the original award be bound by the decision rendered under this arbitrator's retained jurisdiction. As it is now clear that this arbitrator's retained jurisdiction did not extend nearly so far,

much of the Employer's concern is dissipated.

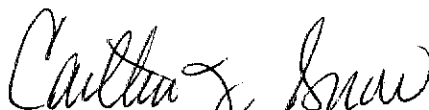
The Employer is correct in its claim that intervention in a dispute and participation in the proceeding makes a subsequent award in the case "final and binding" on the intervenor. This arbitrator's ruling that the Employer violated the parties' collective bargaining agreement when it refused the information request of the NALC is binding on the APWU, notwithstanding the election of the APWU not to participate in the present dispute between the NALC and the Employer regarding the implementation of the award.

As a practical matter, the present decision does not have an impact on the APWU. The APWU concluded that its interests were adequately protected by the NALC's participation in negotiations over the disclosure of the particular information at issue. It is reasonable to conclude that the APWU also decided its interests in regard to the invocation of this arbitrator's retained jurisdiction were adequately protected without its participation. That was a reasonable decision for the APWU to make, and it is not appropriate for an arbitrator to examine such an internal business decision further.

AWARD

Having carefully considered all evidence submitted by the parties in this matter, the arbitrator concludes that the parties are free, if it is the desire of either, to seek an evidentiary hearing before an arbitrator at the local level in order to explain the nature of the supervisory files at issue. If such a hearing is held, the arbitrator in the matter shall mandate a process by which the particular required information is to be divulged, consistent with the analysis of the original report in the matter. It is so ordered and awarded.

Respectfully submitted,



Carlton J. Snow  
Professor of Law

Date: March 9, 1992

C #10363

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

-and-

AMERICAN POSTAL WORKERS UNION

-and-

NATIONAL ASSOCIATION OF LETTER  
CARRIERS

Intervenor

-and-

MAIL HANDLERS DIVISION, LABORERS  
INTERNATIONAL UNION OF NORTH  
AMERICA

Intervenor

GRIEVANT:  
Class Action  
Philadelphia, Penn.

CASE NO.  
H4T-2A-C 36687

BEFORE: Richard Mittenthal, Arbitrator

APPEARANCES:

For the Postal Service:

Mary Anne Gibbons  
Attorney  
Office of Labor Law

For the APWU:

Anton G. Hajjar  
Attorney (O'Donnell  
Schwartz & Anderson)

For the NALC:

Keith E. Secular  
Attorney (Cohen Weiss  
& Simon)

For the Mail Handlers:

Laurence E. Gold  
Attorney (Connerton  
Ray & Simon)

Place of Hearing: Washington, D.C.  
Date of Hearing: May 23, 1990  
Date of Post-Hearing Briefs: October 25 and  
November 6, 1990

AWARD: The Postal Service violated APWU's rights under Article 17, Section 3 and Article 31, Section 2. The remedy for this violation is provided in the foregoing opinion.

Date of Award: November 16, 1990.

  
Richard Mittenthal  
Arbitrator

## BACKGROUND

This grievance protests the Postal Service's refusal to provide APWU with the minutes of certain Employee Involvement/Quality of Work Life (EI/QWL) meetings held jointly by the Postal Service and the Mail Handlers. APWU insists that this denial of information was a violation of Article 17, Section 3 and Article 31, Section 2 of the National Agreement. The Postal Service disagrees. NALC has intervened in support of one phase of APWU's position. The Mail Handlers have intervened in support of the Postal Service's position.

The EI/QWL concept was introduced in postal facilities in September-October 1982. Three of the four major unions - NALC, Mail Handlers, and Rural Letter Carriers - agreed to participate in the process. APWU is not a participant. The purpose of the program, broadly stated, is to "improve...the working life..." of employees and "enhance the effectiveness of the Postal Service." Management and each of the three unions above have established joint committees at local, regional and national levels to implement the EI/QWL concept. The committees attempt to identify and solve problems which affect the employees' work and the quality of their work life with the object of achieving greater job satisfaction and smoother operations. The committees, however, are "not intended to be a substitute for collective bargaining or the grievance procedure." And "no agreement or understanding reached as a result of the QWL process may negate or interfere with the National Agreement..."<sup>1</sup>

The Philadelphia Bulk Mail Center (BMC), Business Annex, has a 045 operation (non-preference letter distribution) and a 075 operation (non-preference flat secondary distribution). APWU clerks had been responsible for sorting this mail into cases by zip code and scheme knowledge, removing the sorted mail, bundling or banding it, and placing it in the appropriate receptacle, either a sack or an all-purpose container (APC). The latter task was part of the so-called dispatch function. These arrangements had evidently been in effect for some years.

M. Gallagher, the then President of APWU Local 7048, was told by a Mail Handler in September 1986 that this particular dispatch function had been discussed in EI/QWL meetings

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<sup>1</sup> The quotations in this paragraph are taken from the October 15, 1982 Understanding (Statement of Principles & Committee Responsibilities) signed by the Postal Service and the Mail Handlers.

involving Management and the Mail Handlers and changes in this function were being considered by Management. Gallagher heard that the dispatch area was to be redesigned and that this would likely mean a "change in jurisdiction", namely, a re-assignment of dispatch work from APWU employees to Mail Handler employees. He therefore submitted the following request to Management on September 18:

...We request that the following documents...be made available to us in order to properly identify whether or not a grievance does exist and, if so, their relevancy to the grievance:

1. Request copies of all the minutes of all Employee Involvement/Quality of Work Life meetings

...

He apparently made clear that he was referring to Management-Mail Handler minutes.

Gallagher's request was passed along to the appropriate department. He spoke with W. Traugott, the then Acting Employee & Labor Relations officer in the BMC. He claims that Traugott advised him "he would provide that information as soon as he could get it" and that Traugott expressed no reservations about satisfying APWU's request. However, he was later informed that Traugott was having difficulty getting the minutes because P. Brown, the Coordinator for the local EI/QWL group, was not sure these minutes could be given to APWU. And he was still later informed that his request had to be referred to the national EI/QWL group for an answer. APWU became impatient with the delay and filed a grievance (CG-426) on November 1. It cited Articles 17 and 31 and complained of Management's failure to "provide the Union an opportunity to review the minutes of all...[EI/QWL] meetings."

In the meantime, evidently in late October, Management redesigned this dispatch function. APWU employees continued to distribute the mail, casing and bundling, at the 045 and 075 operations. But they now put the bundles in a utility cart. The cart was moved to a dispatch area by Mail Handler employees who then placed the bundles in APCs. These employees matched the "labels", perhaps this refers to zip codes, on the bundles with the "labels" on the APCs. They did not require scheme knowledge for this task. APWU believed that dispatch work had been improperly transferred from APWU jurisdiction to Mail Handler jurisdiction. It filed a grievance (CG-424) on October 24 and complained that the duties in question were "clearly clerical distribution activities" which were part of APWU's jurisdiction.

As for the grievance now before the arbitrator, the grievance protesting the failure to provide the EI-QWL minutes, Management's Step 1 representative was a Supervisor of Mails. She referred the grievance to Step 2 because "information is not available to me on QWL meetings." At Step 2, only Gallagher and Traugott were present. There is a difference of opinion as to what was said. Gallagher alleges he told Traugott that the dispatch change had an impact upon the APWU bargaining unit and was a by-product of EI/QWL discussions and that the minutes of those discussions were hence "relevant." He insists that Traugott did not raise the question of "relevancy" and that Traugott simply said he would give the minutes to the APWU if he had them but he had been unable to obtain them. Traugott, however, alleges that Gallagher offered no explanation as to why he wanted the minutes. Nor, according to Traugott, did he ask Gallagher for an explanation.

The Step 2 answer, prepared on November 20 by someone on Traugott's staff, read in part:

A review of the facts indicates that the APWU Local 7048 has no contractual right to access to the minutes of the quality of work life meeting. The record indicates that the APWU declined during contract negotiations to participate in the QWL process. Therefore, their elimination from the program was by choice. Management has no obligation (and since another craft union is a primary participant), and no right to make this information available to the APWU.

Gallagher sought to correct Management's Step 2 answer on November 29. He advised Traugott in writing that he had "clearly indicated" at the Step 2 hearing that APWU had "sufficient reason to question discussions...in QWL meetings as we...suspect that on occasion our bargaining unit positions are the topic."

Traugott formally replied on December 2, 1986, to Gallagher's September request for information. He noted on the request form that the request was "denied" because he had been "unable to secure copies of minutes from QWL Committee." The Postal Service-Mail Handlers committee decided at the national level on February 3, 1987, that the minutes of any committee meeting could not be released without the consent of both such parties.

The grievance was heard in Step 3 on March 2, 1987. Management denied the grievance on the ground that APWU "has

not established the relevancy of their request to review the records in question." An appeal to regional arbitration followed but the Postal Service took the position that a "national interpretive issue" was involved. Hence, a Step 4 meeting was held on March 22, 1988. Management again denied the grievance, emphasizing the following points:

Whether an APWU bargaining-unit position is discussed during an EI-QWL meeting is immaterial. No action has been taken as a result of such meetings which would affect any positions within the APWU crafts. The APWU has chosen not to participate in the EI/QWL process, therefore, the information from EI/QWL meetings would not be necessary for the enforcement, administration, or interpretation of the National Agreement.

In addition, because the Union has not claimed that any action has been taken which affected an APWU craft position, the minutes would not even be necessary to determine whether a grievance exists.

APWU found this answer unsatisfactory and appealed the case to national level arbitration on May 12, 1988.

Meanwhile, the other grievance (CG-424) concerning the merits of the work jurisdiction issue was moving through the grievance procedure. It reached regional arbitration in April 1989. Arbitrator Condon held that the Postal Service did not violate Regional Instruction 399 "when it assigned Mail Handlers to perform functions in the PA 045 & 075 areas." His ruling, in short, was that the dispatch function once performed by APWU employees could properly be reassigned to Mail Handler employees under the peculiar circumstances of that case.

The relevant provisions of the 1984 National Agreement read in part:

Article 17, Section 3

The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses

during working hours. Such requests shall not be unreasonably denied. (Emphasis added)

#### Article 31, Section 2

The Employer will make available for inspection by the Unions all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information. (Emphasis added)

#### DISCUSSION AND FINDINGS

The APWU contends it had a right to the minutes of EI/QWL meetings held jointly by Management and the Mail Handlers at the Philadelphia BMC. It asserts that its representatives are responsible for filing and processing grievances, that they meet this responsibility in part by obtaining from Management "relevant information..." and "necessary" records or other documents, and that the minutes in question contained such "relevant" and "necessary" materials. It urges, accordingly, that Management's refusal to provide such minutes was a violation of Article 17, Section 3 and Article 31, Section 2. It alleges that it had reason to believe the minutes referred to a possible rearrangement of certain dispatch work, a rearrangement which could and later did result in the reassignment of work from APWU employees to Mail Handler employees. It claims that the minutes promised to reveal what was, from its standpoint, an improper intrusion on APWU's work jurisdiction. NALC supports one phase of APWU's position.

The Postal Service completely disagrees with APWU's analysis of the case. It argues, for the following reasons, that Management committed no violation of the National Agreement. First, it says APWU has failed to show that the requested minutes were "necessary" records or contained "relevant information." It stresses that EI/QWL committees do not engage in collective bargaining and cannot "negate or interfere" with the terms of the National Agreement. It maintains that because these committees therefore cannot discuss any subject which could impact APWU contract rights, the minutes could not possibly be "relevant."

Second, the Postal Service urges that only Management actions, not Management thoughts or discussions, can produce a legitimate grievance. It emphasizes that EI/QWL committees can merely recommend, that the APWU could have no grievance until Management acted on such recommendation, that APWU's request for information in September 1986 occurred before any rearrangement of the dispatch function (i.e., before any alleged intrusion on APWU's work jurisdiction), and that the request was hence inappropriate. Third, it maintains that the minutes in question were the joint property of Management and the Mail Handlers, that such minutes could be turned over to APWU only with the consent of both parties on the committee, and that no such joint consent was given. The Mail Handlers support the Postal Service position.

#### I - The Right to Information

The National Agreement plainly provides APWU with a means of acquiring from Management information it may need in filing or processing grievances. Article 17, Section 3 gives Union representatives the right to "obtain access...to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists..." The Union representative must first "request" such information. Not all "requests" need be granted but Section 3 states that a request "shall not be unreasonably denied." Thus, when a request is made and denied and a grievance is filed protesting the denial, the issue is whether the denial was "unreasonable." The answer to that question is likely to turn on whether the information sought was "necessary..."

Similarly, Article 31, Section 2 gives Union representatives the right to "inspect...all relevant information necessary for...enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance..." The Union representative must first "request" such information and Management then "will furnish" it. Management may of course refuse to furnish information if it is not "relevant" or if it has nothing to do with "enforcement, administration or interpretation" of the Agreement. These latter words relate in large part to the Union's responsibility with respect to the filing and processing of grievances.

Article 31, Section 2 has been the subject of two national level arbitration awards. The first, Case No. H4N-NA-C 17, by Arbitrator Bernstein is dated August 1988. There, NALC had requested individual employee data which it alleged was "necessary for both collective bargaining and contract

administration." Its request sought a list of city carriers by name and by sex, date of birth (i.e., age), minority code, handicap code, and veteran's preference code. It insisted that this information was needed on an "ongoing" basis and asked that it be furnished "quarterly." The Postal Service rejected the request and NALC grieved.

The arbitrator denied the grievance. He explained that Article 31, Section 2 of the 1981 National Agreement required Management to furnish "on a regular, ongoing basis" nothing more than the following employee information: "name, full address, and social security number; craft designation; health benefits enrollment code number; post office name, finance number and class." He held that NALC was asking for further data "on a regular ongoing basis" and was therefore improperly "attempt[ing] to expand the scope of..." Article 31, Section 2 through arbitration. His ruling stressed that NALC had couched its request in an inappropriate manner, that it had sought information it could not have "on a regular, ongoing basis." But the arbitrator went on to say, by way of dicta, that if NALC requested this same information "on an infrequent basis", its request would have been justified and Management would have had to provide such information.

The second award, Case No. H7N-NA-C 34, by Arbitrator Mittenthal is dated November 1989. There, several months after the Bernstein award, NALC had requested the same data Bernstein had said it was entitled to on an "infrequent" or "occasional" basis. It sought certain additional information as well. I held, following the principles expressed in the Bernstein award, that NALC was entitled to all such information other than the individual minority code.

What is significant in this case was the Postal Service argument that NALC failed to show that the information requested was "relevant or necessary for collective bargaining and/or contract administration" My decision noted that NALC had explained in Step 4 that this information was to be used for "telephone surveys" of its members. Those surveys, according to the Bernstein award, were to be conducted among "specific subgroups of the bargaining unit - women, blacks, veterans, etc. - to ascertain their particularized needs and desires so that they can properly be represented in the Union's bargaining proposals." On the basis of NALC's claim that such information was "necessary" for collective bargaining, Bernstein had held and I expressly agreed:

...This is a sufficient showing to comply with the [Article 31, Section 2] mandate that the data sought must be "relevant information necessary for

collective bargaining."

...[T]he arbitrator [cannot be made] the judge of the Union's bargaining needs. The decision as to what data is needed to prepare the Union's bargaining proposals is one that only the Union can make. If it asserts that it needs this data for that purpose, and there is no reason to conclude that the assertion is not truthful, that is enough to satisfy the mandate of [Article 31, Section 2]...

These findings should be kept in mind in evaluating the "relevancy" arguments made in the instant case.

## II - Relevancy of Requested Information

The parties disagree as to whether the minutes APWU requested were "relevant" or "necessary" within the meaning of Articles 17 and 31. APWU says these minutes were "relevant" and "necessary." The Postal Service says they were not.

To place this disagreement in sharper focus, certain facts bear repeating. An APWU representative was informally advised that Management and the Mail Handlers, at their EI/QWL meetings, had discussed the rearrangement of a dispatch function in the BMC and perhaps a reassignment of work which might result from such a rearrangement. APWU believed that such discussions may have impinged on its work jurisdiction in violation of the National Agreement. It hence asked for the minutes of these meetings. Management refused to provide this information. APWU grieved. The Postal Service does not deny that such discussions took place at EI/QWL meetings. It claims, however, that the minutes of these meetings would not be "relevant" or "necessary." Neither APWU nor the arbitrator has seen the minutes in question.

Perhaps the minutes contained nothing which could arguably be the basis for the filing of a grievance. In that event, APWU's request would not be "relevant." But perhaps the minutes did contain material which could arguably support the filing of a grievance. Suppose, for instance, that EI/QWL discussions went beyond their permissible limits and suggested some kind of bargain over work jurisdiction.<sup>2</sup> APWU could then understandably believe that a violation of Article 1 or some other provision of the National Agreement may have occurred. In that event, its request would be "relevant."

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<sup>2</sup> This is pure supposition and should not be read to suggest what actually happened at any EI/QWL meeting.

APWU was plainly at a disadvantage in this situation. Because it had not seen the minutes, because it had not been informed as to precisely what the minutes said, APWU was confronted by special difficulties in establishing the "relevancy" of its request. However, APWU had good reason to believe that EI/QWL discussions between Management and the Mail Handlers involved a possible new work flow through the BMC. It knew that such a change might well have an adverse impact on APWU's work jurisdiction. It knew too that work jurisdiction issues are grievable under the National Agreement. Given these circumstances, where APWU asserts it needs EI/QWL minutes for purposes of contract administration and there is no reason to conclude this assertion is not truthful, that is enough to demonstrate "relevancy." APWU has a right under Article 17 to "review...records necessary for ...determining if a grievance exists..."; APWU has a right under Article 31 to "relevant information...necessary to determine whether to file a grievance..."

No doubt some type of investigation precedes the submission of a grievance. Information is developed and a decision is made by APWU as to whether or not a grievance is warranted. If there seems to be no merit in a particular complaint, presumably no grievance would be filed. It is for the APWU alone to "determin[e]...if a grievance exists...", to "determine whether to file...a grievance..." If the information it seeks has any "relevancy" to that determination, however slight, its request for this information should be granted. Assume for the moment that the EI/QWL minutes were not "relevant" to the work jurisdiction grievance filed five weeks after APWU initially requested these minutes. That assumption cannot control the disposition of the present case. Whether a piece of information is "relevant" to the merits of a given claim is one thing; whether such information is "relevant" to APWU's determination to pursue (or not pursue) that claim through the filing of a grievance is quite another. The latter question allows "relevancy" a far broader reach and should have permitted the APWU, for the reasons already expressed, to receive the appropriate EI/QWL minutes. The Postal Service view that APWU's request for these minutes was a mere "fishing expedition" is not persuasive.

### III - Other Postal Service Defenses

The Postal Service emphasizes that APWU requested the minutes in September 1986 and that any EI/QWL meetings preceding this request would have involved mere discussions, maybe recommendations, but certainly no Management action. It

contends that there could be no legitimate grievance until Management acted, until Management actually rearranged the dispatch function and perhaps reassigned work. It believes that APWU's request for the minutes therefore could not have been "relevant" and was properly denied.

This argument has in part already been answered. Surely, the restrictions on permissible subject matter for EI/QWL groups could be ignored in a given meeting and work jurisdiction could become a matter of group discussion and perhaps even tacit agreement. That may not be what happened. But the only way APWU could discover what was actually said in these meetings was to examine the minutes. Management refused to allow APWU to do so. It thus prevented APWU from making an informed and measured "determin[ation]" as to whether "a grievance exists" or whether "to file...a grievance." That was improper under Articles 17 and 31.

Even if Management was correct in rejecting APWU's request in September 1986, the fact is that a grievance was filed on October 24, 1986, protesting an alleged incursion on APWU's work jurisdiction. The APWU<sup>3</sup> request for the minutes was still pending as of October 24. By then, however, Management had rearranged the dispatch function and perhaps reassigned work. Management had acted but nevertheless continued to refuse APWU's request for the minutes. What the minutes contained I do not know. They could possibly have revealed the kind of considerations which prompted the reassignment of the dispatch function; they could possibly have revealed some conflict between what Management told the Mail Handlers and what Management later told APWU in processing the work jurisdiction grievance; and so on. They could very well have proven "relevant" to APWU's case on the merits. APWU had a right under Article 17 to "review... records necessary for processing a grievance..."; APWU had a right under Article 31 to "relevant information...necessary to determine whether...to continue the processing of a grievance ...". These rights were simply not honored.

The Postal Service alleges further that APWU's request was for "all" the minutes of "all" EI/QWL meetings of Management and the Mail Handlers at the BMC. It maintains that this request was too broad, too unfocused, and that hence its denial was not unreasonable.

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<sup>3</sup> Management did not formally reject APWU's request until it issued its Step 2 answer to the present grievance on November 20, 1986.

The difficulty with this argument is that it would have been a simple matter for Management to insist that APWU make its request more specific. Management's representative in Step 2, for example, admitted he did not ask why APWU wanted the minutes. The APWU representative, I believe, would have provided the specifics if asked. Indeed, he claims he told Management in Step 2 what APWU's concerns were. He submitted a written correction to Management's Step 2 answer in which he stated that "we clearly indicated in our Step 2 hearing..." that APWU has reason to believe that "our bargaining unit positions are the topic..." of EI/QWL meetings. Surely, the Management and APWU representatives should have known by Step 2 - and most likely did - that APWU's request concerned information relating to the work jurisdiction grievance which had been filed in late October 1986, several weeks earlier.

The Postal Service asserts finally that the minutes were the joint property of Management and the Mail Handlers. It says these minutes cannot be released to APWU, or anyone else, without the consent of the parties to this particular EI/QWL arrangement. It stresses that such mutual consent had not been given.

This argument is not convincing. APWU has a right to obtain from Management information which satisfies the "relevancy" or "necessary" test in Articles 17 and 31. As explained in Part II, its request for the minutes in this case did satisfy these tests. Nothing in either article suggests that the parties meant to exclude EI/QWL minutes from the "documents, files and other records" which are subject to the discovery procedure. True, Article 17, Section 3 states that "requests shall not be unreasonably denied" and thus infers that a request can properly be denied for good reason. It may be that some matters discussed at EI/QWL meetings are so confidential or personal that Management would have good reason to deny disclosure. But I am not convinced, on the evidence before me, that an administrative decision not to release any minutes without the joint consent of Management and the Mail Handlers constituted good reason for refusing APWU's request. The minutes sought by APWU were potentially "relevant" and "necessary" to the work jurisdiction issue raised by APWU and should therefore have been provided.

#### IV - Summary

My ruling must be that the Postal Service violated Articles 17 and 31 by refusing to grant APWU's request for EI/QWL minutes, specifically, those portions of the minutes which related in any way to the rearrangement of the dispatch function and the possible reassignment of work due to such

rearrangement. The denial of this request was not reasonable.

As for the remedy, Management must now provide APWU with the information it sought. Of course this disclosure will occur far too late. Arbitrator Condon has already decided the merits of the work jurisdiction grievance in favor of the Postal Service. Should the information revealed in the minutes suggest that the Condon award was in error, should such information suggest that Condon may have ruled differently had he been privy to these minutes, APWU should be free to bring the grievance back to regional arbitration. Condon could then reconsider the matter and determine whether he would have decided the merits of the dispute differently had he possessed this additional piece of information.

#### AWARD

The Postal Service violated APWU's rights under Article 17, Section 3 and Article 31, Section 2. The remedy for this violation is provided in the foregoing opinion.



Richard Mittenthal, Arbitrator

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**UNITED STATES POSTAL SERVICE**

**and**

**Cases 10-CA-134589  
10-CA-134594**

**AMERICAN POSTAL WORKERS UNION,  
GADSDEN AREA LOCAL 537**

**and**

**Cases 10-CA-136149  
10-CA-136159  
10-CA-136172  
10-CA-136176**

**NATIONAL ASSOCIATION OF LETTER  
CARRIERS, BRANCH 1047**

**and**

**Cases 10-CA-138445  
10-CA-138478  
10-CA-138503  
10-CA-138521**

**NATIONAL POSTAL MAIL HANDLERS  
UNION, LOCAL 317**

**DECISION AND ORDER**

**Statement of the Cases**

On February 9, 2015, the United States Postal Service (the Respondent); the American Postal Workers Union, Gadsden Area Local 537 (APWU), National Postal Mail Handlers Union, Local 317 (NPMHU), and National Association of Letter Carriers, Branch 1047 (NALC) (collectively, the Unions); and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

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

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington,

D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.<sup>1</sup>

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

### **Findings of Fact**

#### 1. The Respondent's business

The Respondent is and has been, at all times material herein, an independent establishment of the Executive Branch of the Government of the United States and operates various facilities throughout the United States and the State of Alabama in the performance of its basic function to provide postal services to the Nation, including its facilities in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama (the Respondent's facilities), the facilities involved in this settlement and the underlying proceedings.

The Respondent is now and has been at all material times and entity subject to the Board's jurisdiction by virtue of the Postal Reorganization Act (the PRA), 39 U.S.C. Section 1209.

#### 2. The labor organizations involved

At all material times, the Unions have been labor organizations within the meaning of Section 2(5) of the Act.

#### 3. The appropriate units

(a) The following employees of the Respondent, herein called the APWU Unit, constitute a nationwide unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All maintenance employees, motor vehicle employees, postal clerks, mail equipment shops employees, material distribution centers employees, operating

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<sup>1</sup> Chairman Pearce and Member McFerran note that the remedy to which the parties have agreed differs in some respects from previous broad orders that the Board has issued against the Respondent in cases alleging that the Respondent has violated Sec. 8(a)(5) of the Act by failing and refusing to provide relevant information. See, e.g., *United States Postal Service*, 345 NLRB 426 (2005), *enfd.* 486 F.3d 683 (10th Cir. 2007); *United States Postal Service*, 28-CA-017383 et al., unpublished order issued November 4, 2002, *enfd.* Case 02-9587 (10th Cir. 2003). These broad orders, as enforced by the United States Courts of Appeals, remain in effect, and the Board's approval of this stipulation does not modify these orders in any respect.

services and facilities services employees, excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined by Public Law 91-375, 1201(2), all postal inspection service employees, employees in the supplemental work force as defined in Article 7, rural letter carriers, mail handlers or letter carriers.

Since on or before November 21, 2010, and at all material times, the American Postal Workers Union, AFL-CIO (the APWU National Union),<sup>2</sup> has been the designated exclusive collective-bargaining representative of the APWU Unit employed by the Respondent and during that time the APWU National Union, and its affiliated Locals on behalf of the APWU National Union, have been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 21, 2010, through May 20, 2015.

At all times since on or before November 21, 2010, by virtue of Section 9(a) of the Act, the APWU National Union has been and is the exclusive representative of the employees in the APWU Unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(b) The following employees of the Respondent, herein called the NPMHU Unit, constitute a nationwide unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

The employees of the USPS described in Article 1 (Union Recognition) of the collective-bargaining agreement between the USPS and the National Union with a term of November 21, 2011 - May 20, 2016 (the unit) constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since on or before November 21, 2011, and at all material times, the National Postal Mail Handlers Union (the National NPMHU) has been the designated exclusive collective-bargaining representative of the NPMHU Unit employed by the Respondent and during that time the National NPMHU, and its affiliated Locals on behalf of the National NPMHU, have been recognized as such representative by the Respondent.

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<sup>2</sup> Although the complaint alleges that the APWU International Union, the NPMHU International Union, and the NALC International Union are the exclusive collective-bargaining representatives of the employees in the APWU, NPMHU, and APWU units, respectively, the parties have stipulated that the [APWU] National Union, the National NPMHU, and the NALC National Union are the exclusive representatives of those employees.

This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 21, 2011, through May 20, 2016.

At all times since on or before November 21, 2011, by virtue of Section 9(a) of the Act, the National NPMHU has been and is the exclusive representative of the employees in the NPMHU Unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(c) The following employees of the Respondent, herein called the NALC Unit, constitute a nationwide unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All city letter carriers, excluding managerial and supervisory personnel; professional employees; employees engaged in personnel work in other than a purely non-confidential clerical capacity; security guards as defined in Public Law 91-375, 1201(2); all postal inspection service employees; employees in the supplemental work force as defined in Article 7; rural letter carriers; mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks.

Since on or before 1962, and at all material times, the National Association of Letter Carriers (the National NALC) has been the designated exclusive collective-bargaining representative of the NALC Unit employed by Respondent and during that time the National NALC, and its affiliated Branches on behalf of the National NALC, have been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from January 10, 2013 through May 20, 2016.

At all times since on or before 1962, by virtue of Section 9(a) of the Act, the National NALC has been and is the exclusive representative of the employees in the NALC Unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

## **ORDER**

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that:

The Respondent United States Postal Service, Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with the American Postal Workers Union, Gadsden Area Local 537, by failing, refusing, and unduly delaying in furnishing information that is relevant and necessary to the performance of their duties as agents of the American Postal Workers Union (APWU National Union), the exclusive bargaining representative of the bargaining unit employees in the following nationwide unit at its Gadsden, Alabama facilities:

All maintenance employees, motor vehicle employees, postal clerks, mail equipment shops employees, material distribution centers employees, operating services and facilities services employees, excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined by Public Law 91-375, 1201(2), all postal inspection service employees, employees in the supplemental work force as defined in Article 7, rural letter carriers, mail handlers or letter carriers.

(b) Refusing to bargain collectively and in good faith with the National Postal Mail Handlers Union, Local 317, by failing, refusing, and unduly delaying in furnishing information that is relevant and necessary to the performance of their duties as agents of the National Postal Mail Handlers Union (National NPMHU), the exclusive bargaining representative of the bargaining unit employees in the following nationwide unit at its Birmingham, Alabama facilities:

The employees of the USPS described in Article 1 (Union Recognition) of the collective-bargaining agreement between the USPS and the National NPMHU with a term of November 21, 2011 - May 20, 2016 (the unit) constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

(c) Refusing to bargain collectively and in good faith with the National Association of Letter Carriers, Branch 1047, by failing, refusing, and unduly delaying in furnishing information that is relevant and necessary to the performance of their duties as agents of the National Association of Letter Carriers (National NALC), the exclusive bargaining representative of the bargaining unit employees in the following nationwide unit at its Gadsden, Alabama facilities:

All city letter carriers, excluding managerial and supervisory personnel; professional employees; employees engaged in personnel work in other than a purely non-confidential clerical capacity; security guards as defined in Public Law 91-375, 1201(2); all postal inspection service employees; employees in the supplemental work force as defined in Article 7; rural letter carriers; mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks.

(d) In any other 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) Upon request, provide the Unions with necessary and relevant information in a timely and appropriate manner.

(b) Each information request tendered by the Unions, orally or in writing, shall be recorded at each of the Respondent's facilities located in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama. These logs shall include the following information: a brief description of the information requested; the name of the individual who is making the request; the name of the supervisor who received the request; the date the request was made; and the date that the Respondent's manager or supervisor provided the Local Union with the requested information. If the manager or supervisor, having reviewed the documents requested, believes that the Respondent will need additional time, the manager or supervisor will inform the Union in writing, requesting additional time and explaining the need for the additional time.

(c) Each manager and supervisor who is designated to receive union requests for information at the Respondent's facilities located in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama, will receive annual training which encompasses how to maintain the log, and how to tender the relevant information requested by the Union; each such supervisor and manager will sign an acknowledgment form attesting to the fact that he or she has completed said training. A copy of this acknowledgement form shall be maintained in the supervisor's or manager's training and history files. Union stewards will be granted access to the logs, upon request. Supervisors or managers who fail to reasonably supply relevant information to the Union will have this fact mentioned in the "corrective action" column of the semi-annual audit report provided to the district manager and district manager of human resources. A repeated violation could lead to discipline of said supervisor or manager.

(d) Union stewards at the Respondent's facilities located in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama must be notified when the manager or supervisor who is designated to receive union requests for information at their particular facility has changed.

(e) The Respondent's legal department or its labor relations department shall conduct semi-annual audits of the logs at each of the Respondent's facilities located in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama to ensure that the information requested by the Unions is being

handled in a timely and appropriate manner, and to ensure the logs are being properly maintained. Following the audit, the legal department or labor relations department shall tender, in writing, a written report that will be forwarded to the district manager and district manager of human resources.

(f) Within 14 days of service by the Region, post at all of its facilities located in the State of Alabama, copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by the Regional Director for Region 10, 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. The manager of each facility will be electronically mailed the Board's official notice by the Respondent. Upon receipt of such notice, each manager will record the date said notice was received and the date on which the notices were posted at the facility. The Respondent will take reasonable steps 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 facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at the closed facility at any time since April 28, 2014.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 10 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply. The Regional Director shall be supplied a copy of the documents signed by the district manager of labor relations, attesting to the dates that the notices were received at each facility, and the dates that the notices were posted.

Dated, Washington, D.C., April 16, 2015.

\_\_\_\_\_  
Mark Gaston Pearce, Chairman

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Harry I. Johnson, III, Member

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Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

## APPENDIX A

### NOTICE TO EMPLOYEES

**POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER  
AND A CONSENT JUDGMENT OF ANY APPROPRIATE  
UNITED STATES COURT OF APPEALS

#### **FEDERAL LAW GIVES YOU THE RIGHT TO:**

Form, join, or assist a union;  
Choose a representative to bargain with us on your behalf;  
Act together with other employees for your benefit and protection;  
Choose not to engage in any of these protected activities.

**WE WILL NOT** fail, refuse, or unduly delay furnishing information requested by the American Postal Workers Union that is necessary for and relevant to the performance of their duties as the exclusive collective-bargaining representative of the following appropriate bargaining unit at our facilities in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama:

All maintenance employees, motor vehicle employees, postal clerks, mail equipment shops employees, material distribution centers employees, operating services and facilities services employees, excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined by Public Law 91-375, 1201(2), all postal inspection service employees, employees in the supplemental work force as defined in Article 7, rural letter carriers, mail handlers or letter carriers.

**WE WILL NOT** fail, refuse, or unduly delay furnishing information requested by the National Postal Mail Handlers Union that is necessary for and relevant to the performance of their duties as the exclusive collective bargaining representative of the following appropriate bargaining unit at our facilities in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama:

The employees of the USPS described in Article 1 (Union Recognition) of the collective-bargaining agreement between the USPS and the National NPMHU with a term of November 21, 2011- May 20, 2016 (the unit) constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

**WE WILL NOT** fail, refuse, or unduly delay furnishing information requested by the National Association of Letter Carriers that is necessary for and relevant to the performance of their duties as the exclusive collective-bargaining representative of the following appropriate bargaining unit at our facilities in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama:

All city letter carriers, excluding managerial and supervisory personnel; professional employees; employees engaged in personnel work in other than a purely non-confidential clerical capacity; security guards as defined in Public Law 91-375, 1201(2); all postal inspection service employees; employees in the supplemental work force as defined in Article 7; rural letter carriers; mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks.

**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**, upon request, provide the Unions with necessary and relevant information in a timely and appropriate manner.

**WE WILL** record each information request tendered by the Unions in a log at our facilities located in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama. If our manager or supervisor, having reviewed the documents requested, believes that we will need additional time, the manager or supervisor will inform the requesting Local in writing, requesting additional time and explaining the need for the additional time.

**WE WILL** conduct annual training with each manager or supervisor designated to receive union requests for information at our facilities located in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama, on how to maintain the logs and how to tender the relevant requested information.

**WE WILL** notify union stewards when the manager or supervisor who is designated to receive union requests for information at their facility has changed.

**WE WILL** conduct, through our legal department or labor relations department, semi-annual audits of the logs at our facilities located in Auburn, Birmingham, Decatur, Gadsden, Huntsville, Jacksonville, Leeds, and Tuscaloosa, Alabama, to ensure that the information requested by the Unions is being handled in a timely and appropriate manner, and to ensure that the logs are being properly maintained. Following the

audit, our legal department or labor relations department shall tender, in writing, a written report that will be forwarded to the district manager and district manager of human resources.

### **UNITED STATES POSTAL SERVICE**

The Board's decision can be found at [www.nlr.gov/case/10-CA-134589](http://www.nlr.gov/case/10-CA-134589) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



**King Soopers, Inc. and Jenny Tilton and Lucinda Casados and United Food and Commercial Workers, Local No. 7 and Bakery, Confectionery, Tobacco Workers and Grain Millers International Union Local #26, AFL-CIO.** Cases 27-CA-14882, 27-CA-14883, 27-CA-15420, 27-CA-15444, 27-CA-15474, 27-CA-15610, 27-CA-15641, 27-CA-16023, and 27-CA-16177-1

September 13, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

On January 14, 2000, Administrative Law Judge Jay R. Pollack issued the attached decision. The Respondent filed exceptions<sup>1</sup> and a supporting brief, and the General Counsel 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,<sup>2</sup> and conclusions and to adopt the recommended Order as modified.<sup>3</sup>

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, King

<sup>1</sup> The Respondent has requested oral argument. The request is denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

<sup>2</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent has excepted to the judge's finding that Bakery Workers Local 26 is a labor organization. No merit has been found in the Respondent's exception to the same finding in *King Soopers, Inc.*, 332 NLRB 29 (2000). In that proceeding, we adopted the judge's finding that the affiliation of each of the locals of the Bakery Workers International Union, including Bakery Workers Local 26, with the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union did not raise a question concerning representation of employees represented by Local 26. Accordingly, we find no merit in the Respondent's parallel exception in this proceeding.

Member Hurtgen finds it unnecessary to pass on whether store 4 Manager Linda Pickett's directive to employee Pam Peek to clear materials with the store manager or human relations department before posting them on the union bulletin board independently violated Sec. 8(a)(1). Member Hurtgen notes that this incident is not separately alleged to be a violation, and, in any event, would be cumulative and would not affect the Order or notice.

<sup>3</sup> We have modified the recommended Order to comport with the requirements of *Excel Container, Inc.*, 325 NLRB 17 (1997)

Soopers, Inc., Lakewood, Greeley, and Bellevue, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(b).

"(b) Within 14 days of service by the Region, post at its Colorado facilities where violations have been found, copies of the attached notice marked 'Appendix.' Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted 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 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 facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the attached notice to all current and former employees employed by the Respondent at any time since June 23, 1997."

*Barbara E. Greene and Angie Harmeyer, Esqs.*, for the General Counsel.

*Raymond M. Deeny, Emily F. Keimig, and Ted C. Tow III (Sherman & Howard)*, of Colorado Springs and Denver, Colorado, for the Respondent.

*Michael J. Belo*, of Wheat Ridge, Colorado, for United Food and Commercial Workers Union, Local 7.

*Walter C. Brauer III (Brauer, Buescher, Valentine, Goldhammer, Kelmer & Eckert)*, of Denver, Colorado, for Bakery Workers Local 26.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Denver, Colorado, on various dates beginning on April 8, 1999, and ending on August 3, 1999. On September 27, 1996, Jenny Tilton (Tilton) filed the charge in Case 27-CA-14882 alleging that King Soopers, Inc. (Respondent or the Employer) committed certain violations of Section 8(a) (1) and (3) of the National Labor Relations Act (the Act). Tilton filed the first amended charge on January 28, 1999. On September 29, 1996, Lucinda Casados (Casados) filed the charge in Case 27-CA-14883 against Respondent. Casados filed the first amended charge on January 22, 1999. On August 8, 1996, United Food and Commercial Workers Union, Local No. 7 (UFCW Local 7) filed the charge in Case 27-CA-14763 against Respondent. An amended charge was filed in that case on January 20, 1999. UFCW filed the charge in Case 27-CA-15420 on July 28, 1997. UFCW filed the charge in Case 27-CA-15420 on July 28, 1997. The charge in Case 27-CA-15474 was filed by UFCW Local 7 on August 29, 1997. On March 24, 1998, UFCW Local 7 filed the charge in Case 27-CA-15610. The charge in Case 27-CA-15641 was filed by UFCW Local 7 on December 29, 1997. On December 16,

1998, UFCW Local 7 filed the charge in Case 27-CA-16177-1. On August 27, 1998, Case 27-CA-16023 was filed by Bakery, Confectionery, Tobacco Workers and Grain Millers International Union Local #26 (Bakery Workers Local 26). The Regional Director for Region 27 of the National Labor Relations Board issued six consolidated complaints and notices of hearing against Respondent alleging that Respondent violated Section 8(a)(1), (3), and (5) of the Act. Respondent filed timely answers to the complaints, denying all wrongdoing.

All parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, from my observation of the demeanor of the witnesses,<sup>1</sup> and having considered the posthearing briefs of the parties, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

Respondent is a corporation with various offices and facilities, in the State of Colorado, where it has been engaged in the retail sale of groceries and related items. Respondent annually derives gross revenues in excess of \$500,000 and purchases and receives goods and materials valued in excess of \$5000 from outside the State of Colorado. Accordingly, Respondent admits and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent admits and I find that the UFCW Local 7 is a labor organization within the meaning of Section 2(5) of the Act.

Based on a merger of the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union with the Grain Millers International Union, Respondent denied the labor organization status of the Bakery Workers Local # 26. In *King Soopers, Inc.*, 332 NLRB No. 5 (2000), I found that the merger of the two International Unions did not raise a question concerning representation. I again find that Bakery Workers Local # 26 is a labor organization within the meaning of Section 2(5) of the Act.

### II. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. Background and Issues

Respondent operates over 80 retail grocery stores in the State of Colorado. In many of these facilities, the grocery clerks are represented by UFCW Local 7 and the bakery department employees are represented by Bakery Workers Local # 26. In addition to representing store clerks, UFCW Local 7 represents meat department employees in bargaining units separate and apart from the grocery clerks units. Respondent operates a meat plant at which the employees are represented by UFCW, Local 7. The Bakery Workers Local 26 represents employees of the bakery department at stores in the Denver metropolitan

<sup>1</sup> The credibility resolutions here have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence or because it was in and of itself incredible and unworthy of belief.

area and at other stores in Colorado. In addition Bakery Workers Local # 26 represents bakery employees at Respondent's bakery plant.

1. From May 13, to June 24, 1996, employees represented by UFCW Local 7 engaged in a strike against Respondent. Casados and Tilton, both employed at Respondent's meat plant, participated in the strike. They both picketed at the meat plant and at a grocery store. In this case, the General Counsel alleges that Respondent threatened and disciplined Tilton and Casados because they engaged in the strike and/or other protected concerted activities.

2. Willard Foster is an all-purpose clerk at Respondent's store 60 in Lakewood, Colorado. In this case, the General Counsel alleges that Respondent through Donna Riggin, Foster's store manager, intimidated, coerced, and threatened Foster because he performed duties as a shop steward.

3. Employee Pam Peek worked as a service desk clerk at store 22. Peek sent a letter to Respondent's president in 1996 concerning a work-related problem. The General Counsel contends that Store Manager Donna Riggin unlawfully interrogated Peek about this letter.

4. UFCW Local 7 represents only the meat department employees at Respondent's store 32 in Greeley, Colorado. In March 1997, in connection with the grievance of a meat department employee, Union Representative Kevin Schneider requested attendance records for employees employed at that store. Respondent permitted Schneider access to the records for union-represented employees but denied him the information for employees outside the bargaining unit. The General Counsel argues that since June 1998, Respondent has unlawfully failed and refused to provide relevant information to UFCW Local 7 in violation of Section 8(a)(5).

5. The General Counsel alleges that Respondent maintained an overly broad solicitation rule and restriction on posting information on the union bulletin board. Respondent argues that its rule was consistent with its collective-bargaining agreement with UFCW Local 7.

6. The General Counsel alleges that Respondent unlawfully promulgated and maintained a rule restricting internal union campaigning at its grocery stores. Respondent contends that its rule was consistent with past practice and agreed to by the president of UFCW Local 7.

7. The General Counsel alleges that Respondent unlawfully caused a citation to be issued to Union Representative James Hobson for engaging in union activities at store 35.

8. Bakery Workers Local 26 represents Respondent's workers at the Employer's bakery plant and at various bakery departments in Respondent's retail grocery stores. In June 1998, Bakery Workers sought information concerning a grievance over the backpay due certain employees. In this grievance, Bakery Workers sought backpay for bargaining unit employees who allegedly lost wages because supervisors had performed bargaining unit work. Respondent agreed to permit the employees to work the extra hours. The Union on the other hand, sought backpay for the employees without the hours having to be worked. In support of its position the Bakery Workers sought Respondent's bargaining notes regarding the "remedies for errors" provision of the collective-bargaining agreement.

Respondent refused to furnish the notes. The General Counsel alleges that Respondent violated Section 8(a)(5) of the Act by failing and refusing to furnish copies of the Employer's bargaining notes.

The allegations concerning Lucinda Casados and Jenny Tilton

#### The Facts

As stated earlier, Casados and Tilton engaged in UFCW Local 7's strike against Respondent from May 13 to June 24, 1996. These two employees picketed at the meat plant where they work and also at one of Respondent's supermarkets. The strike ended on the signing of a strike settlement agreement.

The strike settlement agreement provided for the reinstatement of employees who had been terminated during the strike for misconduct. In exchange, Respondent received provisions that would secure an orderly return to work. The purpose was to prevent harassment of employees and to avoid work disruptions that had occurred after previous strikes. The strike settlement agreement established a special grievance and arbitration procedure, separate and apart from the procedures under the collective-bargaining agreement, for the resolution of disputes under the settlement agreement.

Following the execution of the settlement agreement, Respondent issued a work rule setting forth the antiharassment restrictions that been agreed by the parties. Upon their return to work, employees were asked to sign and date a copy of these rules. Those employees who refused to sign, including Casados and Tilton, were advised that they were nevertheless obligated to follow the rules.

Over the following weeks, over a half dozen employees were disciplined for violating the strike agreement, including making inappropriate comments between employees. At one store, 16 employees were discharged for violating the agreement. UFCW Local 7 challenged these terminations and the dispute was submitted to arbitration under the special procedure set forth in the strike settlement agreement. The arbitrator reduced the terminations to 2-week suspensions.

On September 5, 1996, Supervisor Larry McGinty escorted Casados and Tilton to the office of Jerry Martinez, production supervisor. Martinez directed Casados and Tilton to reread the rules regarding the orderly return to work. Martinez then told Casados and Tilton that they were accused of calling another employee a scab. He told the employees that under the rules they could not harass employees or call them scabs. Martinez informed the two employees that if they again used the word scab, they would be disciplined. While Martinez did not formally issue a warning to the employees, copies of his notes of this conversation were ultimately placed in the files of the two employees.

The evidence establishes that this was not a disciplinary interview. The employees were informed that this was not a disciplinary meeting. Rather, Martinez reminded the employees of the rule against harassment because he had been told that they had harassed a fellow employee.

On September 21, Casados and Tilton were each summoned to Martinez' office. First, Casados went to Martinez' office. In the presence of Union Steward Dave Thompson, Martinez told Casados that she was accused of calling employee Joan Joiner a

scab and that Joiner had quit her job because of the incident. Casados denied calling anyone a scab. Martinez said he had two witnesses. Martinez gave Casados a written warning stating, "Cindy has been warned that this type of behavior would not be tolerated and that if the issue came up again that disciplinary action would be taken." After, Casados left the office, Tilton was brought in to speak with Martinez. With the union steward present, Martinez told Tilton that she and Casados had been accused of causing Joiner to quit her job by calling Joiner a scab. Tilton denied even knowing Joiner. Martinez then informed Tilton that he was giving her a written warning because she had previously been warned about using the word scab.

The September 21 meetings were disciplinary interviews and Martinez secured the presence of a union steward to assist the two employees. Martinez had two witnesses, one of which was a leadman, tell him that Joiner had quit because of statements by Tilton and Casados. Martinez did not believe stronger discipline was necessary.

There were no further incidents involving Casados or Tilton until July 1997. On July 8, 1997, Martinez issued Casados a 5-day final warning suspension. The written notice states that Casados had mistreated and cursed a fellow employee. The notice made reference to the fact that Casados had received prior warnings concerning misconduct in the workplace. The July 8 warning was based on an incident in which Casados had told another employee, "to get her own fucking trays." Casados testified that the other employee had been hollering for trays and had grabbed Casados' leg.

Martinez received this information from the employee whom Casados had cursed. Casados admitted to Martinez that she had cursed the employee. Casados had been disciplined twice before for harassing fellow employees and for using profane language toward a fellow employee. Based on these prior warnings, Martinez issued Casados a warning and suspension.

#### Preliminary Conclusions

The General Counsel contends that the use of the word scab is protected under Section 7 of the Act. That argument is fundamentally incorrect. It is well established that in the context of a labor dispute, the use of the word scab is not so egregious as to forfeit the protections of Section 7 of the Act. *Teledyne Still-Man*, 295 NLRB 161, 171 (1989), *enfd.* 911 F.2d 1214 (6th Cir. 1990). However, the word scab does not enjoy any special privilege under the Act. Further, there is nothing in the Act which bars a union and an employer from bargaining collectively a strike settlement agreement which prohibits employees from insults and epithets, including the word scab.

The General Counsel contends that the use of the term "scab" is protected by Section 7 of the Act. In support of this argument the General Counsel cites the following excerpt from *Linn v. Plant Guard Workers Local 114*, 383 U.S. 53, 58 (1966):

Labor disputes are ordinarily heated affairs: the language that is commonplace there might well be deemed actionable *per se* in some state jurisdictions. Indeed, representation elections are frequently characterized by bitter and extreme charges, counter-charges, unfounded rumors,

vituperations, personal accusations, misrepresentations and distortions. Both labor and management often speak bluntly and recklessly, embellishing their respective positions with imprecatory language.

The Supreme Court went on to state at 383 U.S. at 60-61:

We note that the Board has given frequent consideration to the type of statements circulated during labor controversies, and that it has allowed wide latitude to the competing parties . . . Likewise, in a number of cases, the Board has concluded that such epithets such as "scab," "unfair," and "liar" are commonplace in these struggles and are not so indefensible as to remove them from the protection of Section 7, even though the statements are erroneous and defame one of the parties to the dispute.

The cases cited by the General Counsel do not establish that an employee calling another employee a scab is engaged in activity protected by the Act. Rather, these cases hold that an employee engaged in Section 7 activity, such as organizing or striking, does not lose the protection of the Act by using the word "scab" or other language which might be offensive in another context. The cases protecting the wearing of union insignia do not establish a right of an employee to call another employee a "scab" or any other name. Rather, these cases establish the right of employees to wear union insignia at work absent special circumstances that outweigh the employees Section 7 rights. See, e.g., *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945). They do not establish the right of employees to confront fellow employees at work.

In *Canandaigua Plastics*, 285 NLRB 278 (1987), the Board held that the employer who had discharged a union adherent for harassing a fellow employee did not violate the Act. In *Canandaigua Plastics*, the alleged discriminatee had called a fellow employee names. The employee had been warned that if she did not stop the harassment, she would be disciplined. The Board held that the discharge for such harassment was lawful.

The issue remains whether Respondent disciplined Casados and Tilton because those employees engaged in the strike. In *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. Upon such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983). In *Manno Electric*, 321 NLRB 278, 280 fn. 12 (1996), the Board restated the test as follows: The General Counsel has the burden to persuade that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employees had not engaged in protected activity.

In the instant case, Tilton and Casados engaged in union and protected activity during the strike. Numerous other employees engaged in these same activities. The September 5 incident alleged to be violative was not a warning. Rather, the credible evidence shows that upon hearing that the employees had harassed another employee, Martinez reminded Casados and Tilton about the rules against such harassment. Union activities were not a factor in his conduct.

On September 21, Casados and Tilton were issued written warnings by Martinez. Martinez based the discipline on evidence provided by two witnesses, one of which was a leadman. Based on this information and the previous conversation with Casados and Tilton on September 5, Martinez warned both employees. I cannot find that union activity or protected conduct was a motivating factor in Martinez' decision.

In July 1997, a year after the strike ended, Martinez issued Casados a warning and suspension. Casados admitted to cursing the fellow employee. She had three warnings in her file for harassing or cursing fellow employees. Again, I find that Martinez' discipline of Casados was not based on union activity.

#### B. The Alleged Coercion of Willard Foster

##### The Facts

Willard Foster is an all-purpose clerk and a shop steward at Respondent's store 60 in Lakewood. Foster testified that on November 11, 1997, Foster, while on an assigned 10-minute break, approached Donna Riggin, store manager, to request an appointment to discuss union business. Riggin said she was too busy to talk to Foster but Foster said they would have to have a discussion that day concerning an employee's pay. Riggin then stated they could discuss the matter on Foster's breaktime. Foster described the employee's pay issue and requested relief for the employee. Riggin denied the request. Foster then presented Riggin with a form he had previously filled out showing that Riggin and Foster had just unsuccessfully completed step one of the grievance procedure. Riggin became upset and yelled an insult at Foster. Riggin called the assistant manager to take her place and told Foster to meet her at the upstairs office. In the office, Riggin yelled at Foster and called him stupid. Foster said he was there to discuss a grievance. Riggin told Foster that she had "never had such an insolent employee" and stated, "I won't have anybody like you working for me in this store or in King Soopers." She added, "[Y]our future with this company is limited." Foster stood up to leave but Riggin, who is much smaller than Foster, blocked the door. Riggin told Foster that he couldn't leave until she was finished with him. Foster said he was leaving and that he was taking his break. Riggin responded that Foster didn't deserve a break. Foster said he was going to file a labor charge and Riggin responded, "[Y]ou know a lot about that, don't you."

Riggin testified that when Foster told her that he needed to speak with her, she had no time to speak with him that day. Thus, Riggin would not sign a form indicating that they had a step one meeting. Riggin testified that she took Foster upstairs to her office to inform Foster that step one meetings should be scheduled in advance. Riggin denied making any threats to Foster and denied blocking the office door. Riggin also denied that Foster was on his break when this dispute took place. I

found Foster to be a forthright and credible witness. Rigglin, on the other hand, seemed more intent on denying Foster's accusations than on testifying to the facts. Accordingly, I credit Foster's testimony over Rigglin's denials.

#### Preliminary Conclusions

The discipline or discharge of employees for filing or processing grievances, whether pursuant to a formal contractual grievance procedure or informally in the absence of such a procedure, is generally held to be a violation of Section 8(a)(1). *John Sexton & Co.*, 217 NLRB 80 (1975); *Ernst Steel Corp.*, 212 NLRB 78 (1974); and *Southwestern Bell Telephone Co.*, 212 NLRB 43 (1974). Because grievance meetings are generally heated and emotional an employee's outburst will be protected unless the conduct is indefensible under the circumstances. *Postal Service v. NLRB*, 652 F.2d 409 (5th Cir. 1981); see also *Illinois Bell Telephone Co.*, 259 NLRB 1240 (1982). Here, I find no credible evidence that Foster engaged in insubordination or other indefensible conduct. While Rigglin may have been busy when Foster approached her, Foster's request to discuss the grievance did not lose the protection of the Act.

I find Rigglin's threat to Foster's employment status tends to restrain and coerce Foster in the performance of his duties as a shop steward and in his Section 7 right to process grievances. Accordingly, I find that Respondent through Rigglin violated Section 8(a)(1) of the Act.

#### C. The Alleged Refusal to Furnish Information to UFCW Local 7

##### Facts

Keith Johnson was a meat cutter at Respondent's store 32 in Greely, Colorado. On February 18, 1997, Johnson received a warning for attendance problems. Again on February 25, Johnson received a suspension for attendance infractions. On March 3, a step-one grievance meeting was held pursuant to a grievance filed on Johnson's behalf. Union Representative Kevin Schneider represented Johnson and UFCW Local 7 at this meeting. At this meeting Johnson made a verbal request for information regarding the failure of Respondent to discipline other employees at the store. UFCW Local 7 only represented the meat department employees at store 32.

Schneider did not receive the information that he had requested. Johnson's grievances were taken to the second step of the grievance procedure. At the second-step meeting, Schneider was told that he could have access to the attendance records of meat department employees only. In fact, Schneider did receive access to the attendance records of the meat department bargaining unit employees that day. The issue in this case concerns the attendance records of grocery clerks and other non-bargaining unit employees.

On March 17, 1997, Schneider spoke with Stephanie Bouknight, Respondent's labor relations manager, and requested the attendance records of non-unit employees at store 32. Bouknight told Schneider that he could not have the records of employees that he did not represent. Schneider stated that since all employees at the store were covered by the same policies and attendance rules, he needed the records to see if there was disparate treatment between Johnson and other em-

ployees of the store. On April 21, 1997, Schneider wrote Bouknight reiterating that he was requesting the attendance records of store 32 employees to see if Johnson was receiving disparate treatment.

On June 9, 1997, Respondent issued Johnson a final warning for attendance infractions. Based on this discipline, Schneider filed another grievance on Johnson's behalf. To process this grievance, Schneider sent a letter to Bouknight requesting attendance records, timesheets, schedules, and discipline records related to attendance for seven-named employees and the entire night crew, and schedules and time sheets for three inclement weather dates. UFCW Local 7 did not represent the seven-named employees or any of the night crew employees. Schneider stated that the purpose of the request was to demonstrate that Johnson was treated differently from other employees at store 32. Respondent did not acknowledge this request.

In September 1997, Johnson was discharged. After Johnson's discharge, Schneider again wrote Bouknight requesting attendance records for the period of January 1 through July 14, 1997. Schneider explained that he had been informed that the employees whose records were requested had been observed clocking in late to work and were not disciplined. Schneider took the position that all store 32 employees were subject to the same time and attendance rules. Thus, Schneider argued that the information was relevant to the issue of disparate treatment. Bouknight did not respond to this request.

On June 23, 1998, Schneider again requested the same records from Bouknight. In this request Schneider stated that he needed the information to determine whether to take Johnson's grievances to arbitration. Bouknight replied that Respondent would not release the records of nonbargaining unit employees. Bouknight stated that Schneider could have the records for inclement weather dates but only for bargaining unit employees.

In February 1999, Johnson's grievance was submitted to arbitration. The issue of Local 7's request for the time and attendance records of nonunit employees was submitted to the arbitrator. The arbitrator did not rule on production of the requested information. At the time of the instant hearing, the arbitrator had not yet issued his decision.

#### Preliminary Conclusions

It is well settled that an employer has a statutory duty to provide a union, on request, with relevant information the union needs for the proper performance of its duties as a collective-bargaining representative. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967); and *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). In determining whether an employer is obligated to supply particular information the 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*, supra at 437. As the Supreme Court has stated, the disclosure obligation is measured by a liberal "discovery-type standard," not a trial-type standard, of relevance. *Id.*

The existence of an arbitration procedure does not relieve an employer or union from its duty to furnish the other party with information necessary to determine whether to process a grievance.

ance to arbitration. *Teamsters Local 921 (San Francisco Newspaper Agency)*, 309 NLRB 901 (1992); and *Jewish Federation Council*, 306 NLRB 507 (1992). The duty to furnish the information does not terminate when the grievance is taken to arbitration. *Id.* In *International Harvester Co.*, 241 NLRB 600 (1979), the Board held that a bargaining agreement which vested an arbitrator of a grievance with authority to order disclosure of information did not require deferral of the unfair labor practice charges. In *Teamsters Local 921*, supra, the Board found a violation by the union for an unlawful delay in furnishing relevant information although the union furnished the matter during the arbitration, in a timely matter, after being ordered to so by the arbitrator.

In the instant case, Respondent argues that UFCW Local 7 never established that the requested information was relevant to Johnson's grievance. Further, Respondent apparently contends that Schneider was required to inform Respondent of non-hearsay witnesses to justify production of records of nonunit employees.

The general standard for determining relevance is a liberal "discovery standard." *NLRB v. Acme Industrial Co.*, supra. However, when the requested information deals with matters outside the bargaining unit, the requesting party must establish the relevancy and necessity of the information requested. *Barnard Engineering Co.*, 282 NLRB 617 (1987). The requesting party must show that there is a logical foundation and factual basis for the request. *Postal Service*, 310 NLRB 391 (1993).

In *Postal Service*, supra, cited by the General Counsel, the charging party union requested information in order to process grievances regarding the discipline of two employees for attendance problems. The information requested included timecards of two supervisors. The union stated that the information was needed to show that the employees were treated disparately. The basis for this claim was the alleged observation of the union representative requesting the information. The Board found that the respondent employer's refusal to furnish the timecards of the supervisors was a violation of Section 8(a)(5) and (1) of the Act. The two supervisors and the two employees were subject to the same time and attendance rules. The observations of the union representative were sufficient to establish a logical foundation and factual basis for the request.

In the instant case, the nonunit employees are subject to the same time and attendance rules as Johnson. The information requested by Schneider and UFCW Local 7 could assist the Union in establishing disparate treatment of Johnson. The information could also have established that Johnson had no basis for claiming disparate treatment. In either event, the information would have been relevant to the Union's responsibility of deciding whether, or how, to process the grievances.

The hearsay nature of Schneider's justification for requesting this information does not change the result here. The requesting union would not normally have eye witness evidence of such happenings at the employer's premises. A union would have to rely on oral evidence which would normally not be as accurate as the respondent employer's records. Further, a union should not be required to prove the merits of a grievance before it is entitled to evidence which would tend to prove or disprove that grievance. Accordingly, I find that Respondent violated

Section 8(a)(5) and (1) of the Act, by not furnishing UFCW Local 7 with relevant information concerning Johnson's grievances.

#### D. The Alleged Interrogation of Pam Peek

##### The Facts

As indicated above, employees represented by UFCW Local 7 engaged in a strike against Respondent in June 1996. After the strike, employee Pam Peek, a service clerk at store 22, sent a letter to Don Gallegos, president of Respondent. In her letter, Peek complained that a courtesy clerk was performing work that should have been assigned to an all purpose clerk and that an all purpose clerk was sorting trash. Donna Riggan, manager of store 22, called Peek into her office and told Peek that she did not like Peek sending letters to Respondent's president. Riggan accused Peek of being sneaky. Peek said that she had informed Riggan of the letters so that she did not believe that she was being sneaky. Riggan questioned why Peek had not spoken to her first. Peek answered that she had discussed the assignment of clerks with Riggan on many occasions and without any result.

##### Preliminary Conclusions

Interrogation of employees is not unlawful per se. In determining whether or not an interrogation violates Section 8(a)(1) of the Act, the Board looks at whether under all the circumstances the interrogation reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Rossmore House*, 269 NLRB 1176 (1984); and *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985).

Here, I find that the questioning of Peek did not tend to interfere with or restrain Peek in her union activities. First, there is no background of employer hostility and discrimination against union activities. Respondent has been party to a series of collective-bargaining agreements with the UFCW Local 7. The strike had ended. Thus, this first factor weighs against finding a violation. Second, the fact that Riggan was seeking to find out why Peek had bypassed her and gone to Respondent's president, is a factor weighing towards restraint. Third, the interrogation took place in Riggan's office. However, I find nothing coercive in that location. It seems reasonable to have such a conversation away from customers and other employees. Fourth, while Riggan expressed her dislike of Peek's writing to the Respondent's president, she made no threats. Fifth, Peek was covered by a grievance and arbitration procedure. Sixth, Peek felt free to honestly respond to Riggan's questions. Under these circumstances, I find that Riggan's conversation with Peek did not rise to the level of a violation of the Act.

#### E. The Restriction Imposed on the Bulletin Board

##### Facts

On November 21, 1998, Pam Peek, then a union steward at store 4, posted information concerning proposed legislation in Colorado. The proposed legislation was to make Colorado a "right to work state" and Peek was strongly opposed to that legislation. The information posted by Peek was removed by the store manager. Peek posted the information again and the material was again removed.

Store Manager Lynda Pickett told Peek that the employee could not post any right-to-work material at the store, even on the UFCW Local 7 bulletin board. Peek responded that she was not disturbing anybody and was only talking to employees who were on break and were willing to speak with her. Pickett insisted that information had to be approved by Respondent's director of human relations. Peek had never before been asked to clear material with the store manager or human relations department before posting materials on the union bulletin board.

Pickett testified that the union bulletin board is only for official union business. The collective-bargaining agreement states, "The Employer will provide bulletin board space for the posting of official Union notices." Pickett argued that handwritten notices and notices without a union seal are not official union notices. Pickett took the position that she could decide what could be placed on the UFCW Local 7's bulletin board. Peek credibly testified that the Local 7 bulletin board contained much material that was not official union business and did not have a union logo.

#### Preliminary Conclusions

The evidence reveals that Pickett removed posted information from the union bulletin board and told Peek that she could not post any right to work information in the store. Further, Pickett imposed a new rule that material on the UFCW Local 7 board had to be approved in advance.

Peek was engaged in protected, concerted activities in posting material of general interest to union members. It is well established that there is no statutory right of an employee or a union to use an employer's bulletin board. *Honeywell, Inc.*, 262 NLRB 1402 (1982); and *Container Corp. of America*, 244 NLRB 318 (1979). An employer has a right to restrict the use of company bulletin boards. However, that right may not be exercised discriminatorily so as to restrict postings of union materials. *J. C. Penny, Inc.*, 322 NLRB 238 (1996); and *Guardian Industries Corp.*, 313 NLRB 1275 (1995).

Respondent discriminatorily enforced its rules regarding the bulletin board. The board had been used for a variety of purposes including personal notices. Prior approval was not required until Peek posted materials regarding the "right to work" issue. Similarly, the requirement of union stationery or a union logo was not utilized before or after Peek's attempt to post materials opposed to the "right to work" legislation. See *Central Vermont Hospital*, 288 NLRB 514 (1988); and *Honeywell, Inc.*, supra. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act.

#### F. The Restriction of Internal Union Election Campaigning

##### Facts

In August 1997, UFCW Local 7 was holding an election for union officers. Steve DiCroce, Respondent's director of human resources, testified that he spoke with Gary Hakes, then president of UFCW Local 7, about the locations where campaigning for the internal union election would be permissible. On August 27, DiCroce issued a memorandum setting forth that solicitation could take place outside the store or in the breakroom.

James Hobson, a business agent for Local 7, testified that he campaigned against the incumbent union president in August 1997. On August 2, 1997, Hobson visited Respondent's store 35. Hobson did not usually service this store. Hobson distrib-

uted internal union election materials to employees. During these activities, one store employee, notified Hobson about a dues question. Hobson asked for more information, handling the matter as he would if this was one of his assigned stores.

While Hobson was campaigning in the store, Eddie McClellan, a district investigator in Respondent's security department, approached him. Hobson testified that McClellan told the business agent not to talk to any employees on the sales floor and that Hobson could only talk to employees in the breakroom. Hobson argued that as a business agent for Local 7, he could talk to employees anywhere so long as he did not disrupt or interfere with work. Hobson said he would continue to talk with employees but would not disrupt work. McClellan then told Hobson to leave the store or he would call the police. Hobson did not leave the store but, instead, continued to walk through the store and campaign for the slate of union officers that he was backing. McClellan again approached Hobson, this time with the assistant store manager, Rudy Romero. Romero told Hobson that the business agent could speak with employees outside the store or in the breakroom. Romero said Hobson could distribute his election materials in the breakroom. Hobson said he would not disrupt the work of any employee but insisted that he would continue to speak with employees anywhere in the store. Romero informed Hobson that the police were on their way and asked Hobson to go upstairs. Hobson went to the break room and continued to speak with about the upcoming election. An employee mentioned a scheduling problem to Hobson and Hobson mentioned the problem to Romero.

When the police arrived, Hobson explained to the police that, as a business agent, he believed he had a right to be anywhere in the store. According to Hobson, he was calm but McClellan yelled at him. The police gave Hobson a citation for trespassing and required him to leave the store.

#### Preliminary Conclusions

The General Counsel, alleges that Respondent unilaterally changed the practice and procedure for union election campaigns. Clearly, Respondent and DiCroce did not act unilaterally. The undisputed testimony of DiCroce establishes that he had discussed the election campaign with the Union's president and reached agreement with the union president to limit campaigning so as to minimize disruption to the operation of the store. The right of access of union agents was a creature of the bargaining agreement and the parties clarified how that agreement would apply to the intraunion election.

Next, the General Counsel argues that the incumbent Union could not waive the statutory rights of its opposition slate in the intraunion election. I find no merit to this argument. An agreement to restrict campaigning to nonwork areas of a retail establish is not a waiver of any right. The parties recognizing the disruptive nature of an election, agreed on reasonable limits to such solicitations and distributions. However, those limits are equal to the usual protections of the Act. The limits are only applicable to extended contractual rights that the parties have agreed on. The parties to the collective-bargaining agreement may agree to modify the contract, especially, where as here, there are legitimate business reasons to do so. I find that

that Respondent and UFCW Local 7 did not unlawfully restrict the rights of employees or union agents to campaign against the incumbent union officers.

*G. The Request of the Bakery Workers for Bargaining Notes*

Facts

Bakery Workers Local # 26 represents Respondent's bakery employees at its bakery plant and at numerous stores. The latest collective-bargaining agreement between the parties is effective June 8, 1997, to June 9, 2001. In March 1998, the parties resolved a grievance concerning bargaining unit work performed by supervisors. Respondent admitted that the supervisors performed the work and proposed that employees be permitted to work extra hours to earn what they would have earned absent this breach of contract. The Bakery workers argued that the employees should be made whole by payment of the amounts not earned, without having to work any hours.

In support of its position, Respondent cited the remedy section of the collective-bargaining agreement which clearly states that in the case of a work dispute, the remedy will be to permit the employees to make up the time lost. There is no pay for time not worked in such cases.

In pursuant of a grievance regarding this dispute about the remedy, David Servold, a business representative, for Bakery Workers Local # 26, request the following information:

Copies of bargaining notes taken by all of the company's members that were in the 1997 negotiations. To be more specific, I am requesting copies of notes regarding statements that were made from either side, over the "remedies for errors" proposal. I am not interested in any notes regarding the company's mental impression nor the company's strategy.

On June 23, 1998, Bouknight mailed Servold a copy of the collective-bargaining agreement but not Respondent's bargaining notes. The Bakery Workers made two further requests for the bargaining notes but Respondent did not provide its notes. Prior to the instant hearing, Bakery workers Local # 26 decided not to pursue the grievance.

Conclusions

It is well settled that an employer has a statutory duty to provide a union, on request, with relevant information the union needs for the proper performance of its duties as a collective-bargaining representative. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967); *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). In determining whether an employer is obligated to supply particular information the 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*, supra at 437. As the Supreme Court has stated, the disclosure obligation is measured by a liberal "discovery-type standard," not a trial-type standard, of relevance. *Id.*

Here, the contract issue was so clear and unambiguous that the request for information appears to be of no use to the Union. Further, the issue became moot when the Union dropped

the grievance. Accordingly, I find that Respondent did not violate Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

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

2. UFCW Local 7 and Bakery Workers Local # 26 are labor organizations within the meaning of Section 2(5) of the Act.

3. By threatening the job tenure of employee Willard Foster because of his activities on behalf of the UFCW Local 7, Respondent violated Section 8(a) (1) of the Act.

4. By refusing to furnish to UFCW Local 7 information relevant to the processing of a grievance, Respondent violated Section 8(a)(5) and (1) of the Act.

5. By discriminatorily refusing to permit the posting of union information on the UFCW Local 7 bulletin board, Respondent violated Section 8(a)(1) of the Act.

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

7. Respondent has not otherwise violated Section 8(a)(5)(3) and (1) of the Act.

THE REMEDY

Having found that Respondent engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

ORDER

The Respondent, King Soopers, Inc., Lakewood, Greeley, and Bellevue, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge or other reprisals in order to discourage union activities.

(b) Refusing to furnish information, relevant to grievance processing, to UFCW Local 7.

(c) Discriminatorily denying access to the UFCW Local 7 bulletin board to information of a general interest to union employees.

(d) 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) Within 14 days of a request, make available to the UFCW Local 7 the attendance records requested in June and September 1997 and June 1998, in connection with the grievances concerning employee Keith Johnson.

<sup>2</sup> All motions inconsistent with this recommended Order are denied. 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.

**Jewish Federation Council of Greater Los Angeles  
and Community and Social Agency Employees  
Union, Local 800, American Federation of  
State, County and Municipal Employees, AFL-  
CIO. Case 31-CA-18794**

February 28, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On November 13, 1991, Administrative Law Judge Michael D. Stevenson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party 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,<sup>1</sup> findings, and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Jewish Federation Council of Greater Los Angeles, Los Angeles, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> In adopting the judge's finding that the Respondent was obligated to provide the information the Union requested, we note that the Respondent was obligated to provide the information for the Union to prepare for arbitration regardless of whether or not the Union had already decided to process the grievance to arbitration. See, e.g., *Chesapeake & Potomac Telephone Co.*, 259 NLRB 225, 227 (1981), enf'd. 687 F.2d 633 (2d Cir. 1982); *Fawcett Printing Corp.*, 201 NLRB 964, 972 (1973).

*Julia A. Osborn, Esq.*, for the General Counsel  
*Barton W. Robertson, Esq. (Tyre, Kamins, Katz & Granof)*,  
of Los Angeles, California, for the Respondent.  
*Glenn Rothner, Esq. and Larry Abrams, Esq. (Reich, Adell  
& Crost)*, of Los Angeles, California, for the Charging  
Party.

**DECISION**

**STATEMENT OF THE CASE**

MICHAEL D. STEVENSON, Administrative Law Judge. This case was tried before me at Los Angeles, California, on September 19, 1991,<sup>1</sup> pursuant to a complaint issued by the Regional Director for the National Labor Relations Board for Region 31 on June 6, and which is based on a charge filed by Community and Social Agency Employees Union, Local 800, American Federation of State, County and Municipal

<sup>1</sup> All dates refer to 1991 unless otherwise indicated.

Employees, AFL-CIO (the Union) on April 22. The complaint alleges that Jewish Federation Council of Greater Los Angeles (the Respondent), has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

**Issue**

Whether Respondent is required to provide the Union with certain requested information and documents which pertain to the facts and circumstances surrounding the termination of former unit employee Beryl Stoker, when the Union filed a grievance over the termination and is taking the matter to arbitration.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and to cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of Charging Party and Respondent.<sup>2</sup>

On the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following

**FINDINGS OF FACT**

**I. RESPONDENT'S BUSINESS**

Respondent admits that it is a California corporation which operates a business funding and performing social services and maintains its principal place of business in Los Angeles, California. Respondent further admits that in the course and conduct of its business operations, it annually sends substantial funds to recipients located outside the State of California. Respondent further admits that in the course and conduct of its business operations, it annually derives revenues in excess of \$250,000. Accordingly, it admits, and I find, that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

Respondent admits, and I find, that Community and Social Agency Employees Union, Local 800, American Federation State, County and Municipal Employees, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

**III. THE ALLEGED UNFAIR LABOR PRACTICE**

**A. The Facts**

In mid-March, Beryl Stoker, an adverse witness for Respondent, was terminated from her job. At the time of termination, Stoker had worked for Respondent for 10 to 11 years and was the president of the Union.

Respondent is party to a collective-bargaining relationship with the Union and the applicable collective-bargaining agreement contains a provision guaranteeing bargaining unit employees tenure unless "just cause" exists for separation. In addition, the bargaining agreement contains a grievance and arbitration provision, under which the Union has filed one or more grievances challenging Stoker's termination as

<sup>2</sup> In lieu of a brief, General Counsel cited authority in her opening statement.

lacking just cause. As of the date of hearing, arbitration of the termination had been scheduled for October 7. Although the Union has filed charges with the Board contending that the termination of Stoker violated the Act, a decision on whether to issue a complaint has been deferred pending arbitration. Accordingly, the merits of Stoker's discharge are not in issue in this case. What is in issue concerns the Union's request for certain information from Respondent which it contends it needs to process effectively Stoker's grievance and which it also contends it is entitled to under Board laws.

Sometime in the fall of 1990, the Union hired labor consultant Edward Purcell, General Counsel's sole witness. Shortly after beginning his employment, Purcell had a meeting with Attorney Barton Robertson, Respondent's attorney of record in this proceeding and Respondent's witness at hearing. Despite some insignificant dispute about exactly what was said at the meeting, I find that Robertson told Purcell that Stoker had serious problems with her job performance and had received a prior negative job evaluation which she did not grieve. More specifically, I find that Robertson added that Stoker was in jeopardy of losing her job. When given this information about Union President and union executive board member Stoker, newly hired labor consultant Purcell reacted as might be expected: he advised Robertson that any action to terminate Stoker would be seen by the Union as a "declaration of war" and the Union would fight the termination "all the way."

Sometime in December 1990, Purcell was given official notice that Stoker was to be terminated. Apparently formal separation did not occur until March because Stoker was not working during the period due to disability.

In February, Purcell and Robertson had a conversation in which they agreed to waive preliminary grievance steps and present the matter to the Jewish Federation Personnel Committee, the last step in the grievance procedure prior to arbitration. On February 25, Purcell sent a letter to Robertson. In pertinent part, the letter requests certain information which the Union desired to have before presenting the grievance to the Jewish Federation Personnel Committee:

Also, in preparation for the Personnel Committee meeting on the termination grievance in particular, the Union will need a complete statement of the Employer's reasons for Ms. Stoker's termination, and copies of all documents and statements in its possession which support the Employer's position in this matter. Additionally, we request copies of all disciplinary memos/letters, and all performance evaluations from her file as well as any commendatory statements which may be in the Employer's possession. Should any of the documents reference alleged work attendance deficiencies, please also provide attendance for all periods referred to in the documents.

Thank you for your timely response to this inquiry. [G.C. Exh. 2.]

The Union did not receive the requested information and on March 18, Purcell sent a copy of the February 25 letter to Robertson renewing his request for the information (G.C. Exh. 3).

No hearing was ever held before the Jewish Federation Personnel Committee because it attached a condition which

the Union found unacceptable: that each side must present its evidence outside the presence of the other side. The Union claimed the condition would violate the contract and past practice as established in the processing of prior grievances not connected to Stoker. On March 19, Purcell sent a letter to Sue Wellerstein, Respondent's personnel director, stating the Union's objection to the procedure discussed above and its refusal to participate. In addition, Purcell wrote,

Also, I want to reiterate the Union's need for information relating to the termination case as requested of your attorney on February 25, 1991 and again on March 18, 1991. This information is necessary for us to evaluate the Stoker cases for arbitration as well as to allow the Union to prepare for arbitration hearing should that be decided by us. Given Mr. Robertson's delay in providing this data, I specifically request your intervention to expedite its transmission.

Thank you for your assistance. [G.C. Exh. 4.]

Because the parties could not agree on the correct procedures for presenting Stoker's grievance to the Jewish Federation Personnel Committee, both sides subsequently agreed to proceed directly to arbitration. However, the Union still lacked the information it requested in the letter of February 25. On March 20, Robertson wrote to Purcell setting forth Respondent's reasons for not furnishing the requested information. The letter reads as follows:

I am responding to your "second notice" in this matter. As we previously discussed, there is no provision in the collective bargaining agreement for pre-arbitration discovery and this response should not be construed as implying any such provision.

Beryl was orally advised of the basic reasons for her termination by Mark Friedman when he, I, you and Beryl first met to discuss the possibility of an amicable resolution of this matter.

To summarize them briefly, during the latter part of 1989 and during 1990 Beryl's performance was discussed with her on a regular basis by the Foundation's Director of Finance and Administration and the Foundation's Accounting Manager. These discussions outlined what was required of her, reviewed the adequacy of her performance, and pointed out the problem areas, principally the errors in her accounting work and her failure to follow normal, accepted accounting procedures.

Her performance did not improve. A timely evaluation was done at her anniversary date in July, 1990 and a work plan was written and was discussed with her, with John Garfield being present.

Subsequent to the presentation of the work plan, Beryl's immediate supervisor conducted regular bi-weekly meetings with her to assist her in achieving the goals of the work plan. However, her performance did not improve.

The Foundation's Audit and Fiscal Committee reviewed the situation and concurred with management that she should be terminated. I immediately thereafter notified you and we commenced our ultimately unsuccessful attempts at an amicable resolution.

I trust this satisfies your request for the reasons for the termination. As for any requested documents, it is apparent since you have already advised Federation of your desire to arbitrate this matter that you are seeking pre-hearing discovery to which you are not entitled.

However, as I previously told you, we will cooperate in providing material at the arbitration hearing, which you request in advance of the hearing, without the need for you to have subpoenas issued. [G.C. Exh. 5.]

#### B. Analysis and Conclusions

I begin with a brief general statement of the applicable law as stated by the Board in *American National Can Co.*, 293 NLRB 901, 904 (1989), affd. 924 F.2d 518 (4th Cir. 1991):

It is well settled that an employer has a duty to supply requested information to a union that is the collective-bargaining representative of the employer's employees if the requested information is relevant and reasonably necessary to the union's performance of its responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956); see also *Central Soya Co.*, 288 NLRB 1402 (1988). Disclosure by an employer of requested information "necessary . . . to enable [a union] to evaluate intelligently grievances filed" or contemplated, allows a union to "sift out meritorious claims" and facilitates the arbitral process. *NLRB v. Acme Industrial Co.*, supra at 435, 437-438. The standard for determining the relevancy of requested information is a liberal one and it is necessary only to establish "the 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*, supra at 437. See also *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), and cases cited there.

The duty to supply the requested information does not terminate upon the employer's arbitration of *O & G Industries* and its refusal to provide the requested information to the union's representative effectively and intelligently. . . . The duty to supply the requested information is not limited to cases where the contract is breached by the employer and that the contractual right is respected and vindicated. *Trustees of Boston University*, 210 NLRB 330, 334 (1974). The Union is also hampered in making an informal judgment of the merits of the grievance, whether to pursue it further or drop it. The law no longer requires the bargaining representative to play a game of blind man's bluff in its efforts to protect the employees' interests. *Id.*, p. 334.

Respondent contends that the Union's request for the information in question was not made in good faith. More specifically, Respondent states that the Union always intended to take the Stoker termination to arbitration and was therefore seeking prehearing discovery (Br. p. 7).

Respondent has the burden of proof to show union bad faith. *West Point Pepperell*, 290 NLRB 1242, 1244 (1988). In proving its case, Respondent must produce evidence to overcome a presumption that the Union is acting in good faith. *O & G Industries*, supra at 987. If Respondent can show bad faith in requesting the information in question, the

duty to provide same can be avoided. *J. J. Case Co. v. NLRB*, 253 F.2d 149, 153 (7th Cir. 1958).

In this case, I find that Respondent has failed to show Union bad faith. The Board will find the party requesting information is in good faith if at least one reason for the demand can be justified. *Island Creek Coal Co.*, 292 NLRB 480, 489 (1989). In applying the law cited above to the facts of this case, I fail to find any evidence showing the Union always intended to take the Stoker case to arbitration. Even if Purcell's "declaration of war" and fighting the termination "all the way" statements to Robertson could be so interpreted, the fact remains that the Union had every right under the "just cause" provision of the contract to evaluate the evidence and ensure that Stoker's rights were protected. Had the information been furnished to the Union when requested, the Union would have evaluated it and, I must assume, have acted accordingly. There is no reason shown in this case to believe that the Union would have squandered its limited resources to fight a hopeless case. What would that have accomplished.

In its brief at page 7, the Union appears to suggest that on October 7, the first day of the arbitration, Respondent may have produced some or all of the information in issue. If this is so, I do not see this case as moot, because belated compliance does not exonerate. *Fairmont Hotel*, 304 NLRB 746, 748 fn. 11 (1991); *D. J. Electrical Contracting*, 303 NLRB 820 fn. 1 (1991); *Tubari Ltd.*, 299 NLRB 1223, 1228 (1990).

#### CONCLUSION OF LAW

By failing and refusing to furnish to the Union promptly upon its request, a complete statement of the Employer's reasons for Stoker's termination, copies of all documents and statements in its possession which support the Employer's position in this matter, copies of all disciplinary memos/letters, and performance evaluations from her file and work attendance data, if relevant to the termination, Respondent engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

#### THE REMEDY

Having found that the Respondent engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist and that it take certain affirmative action necessary to effectuate the policies of the Act.

On the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I issue the following recommended<sup>3</sup>

#### ORDER

The Respondent, Jewish Federation Council of Greater Los Angeles, Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

<sup>3</sup>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.

(a) Refusing or failing to bargain in good faith with the Union by withholding from it requested information relevant to the processing of grievances or the administration of their 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 to the Union promptly a complete statement of the Employer's reasons for Beryl Stoker's termination, copies of all documents and statements in its possession which support the Employer's position in this matter, copies of all disciplinary memos/letters, and performance evaluations from her file and work attendance data, if relevant to the termination.

(b) Post at its place of business in Los Angeles, California, copies of the attached notice, which is marked "Appendix."<sup>4</sup> 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 immediately upon receipt and shall be maintained for 60 consecutive days in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

<sup>4</sup>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."

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

#### 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 or fail to bargain in good faith with the Community and Social Agency Employees Union, Local 800, American Federation of State, County and Municipal Employees, AFL-CIO, by withholding from it requested information relevant to the processing of grievances or the administration of our collective-bargaining agreement.

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

WE WILL, on request, furnish to the Union a complete statement of our reason for Beryl Stoker's termination, copies of all documents and statements in our possession which support our position, in connection with the March 1991 termination of a bargaining unit employee, copies of all disciplinary memos/letters, and performance evaluations from her file and work attendance data, if relevant to the termination, which information is needed to enable the Union to process a grievance on that employee's behalf.

JEWISH FEDERATION COUNCIL OF GREATER  
LOS ANGELES