**Armstrong World Industries, Inc. *and* United Rubber, Cork, Linoleum and Plastic Workers of America, Local 285. Case 4-CA-10726**

**March 10, 1981**

## DECISION AND ORDER

**On November 18, 1980, Administrative Law Judge Bernard Ries issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in answer to Respondent's exceptions.**

**The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.[1]**

## ORDER

**Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Armstrong World Industries, Inc., Lancaster, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.**

[1] Respondent asserts that the Administrative Law Judge's recommended Order is defective because it does not specifically limit Respondent's obligation to turn over copies of its policies to the Union to the turning over of "relevant" policies. In his Decision, the Administrative Law Judge discusses, at length, the scope of Respondent's obligation. In that portion of his recommended Order excepted to by Respondent. the Administrative Law Judge directs Respondent to provide the Union with copies of its policies "in the form and at the times set out in the Decision of the Administrative Law Judge . . . ." We find that the recommended Order is clear of ambiguity and wholly adequate.

## DECISION

### STATEMENT OF THE CASE

BERNARD RIES, Administrative Law Judge: This matter was heard in Lancaster, Pennsylvania, on July 10 and 14, 1980. The complaint, denied in all material respects, alleges that on two occasions in 1979, Respondent Armstrong World Industries, Inc.,[1] refused to provide information to the Charging Party and thereby violated Section 8(a)(5) of the Act.

Briefs have been received from counsel for the parties. Based on the entire record[2] in the case, I make the following:

[1] As amended at the hearing.

[2] Respondent has filed an unopposed motion to correct the transcript which has been granted.

### FINDINGS OF FACT

#### I. THE REQUEST FOR WAGE AND PAY POLICIES

The complaint alleges that Respondent violated the Act by refusing, since on or about June 20, 1979, "to furnish the Union with 'complete copies' of all of Respondent's policies concerning wages and methods of payment of employees in the unit."

Respondent is engaged in the manufacture of flooring products in Lancaster, Pennsylvania. There it employs a total of 5,000 employees. Some of these employees are represented for purposes of collective bargaining by the International Association of Machinists, some are unrepresented by a union, and about 1,800 production and maintenance employees are represented by the Charging Party.[3] The relationship between Respondent and the Charging Party is of long duration and has been manifested in a number of successive bargaining agreements.

The record shows that Respondent has, for many years, maintained a manual for the use of, and distributed to, management officials and supervisors, which details the approved practices and procedures on various subjects. Robert Gage, Respondent's manager of plant employee relations, testified that the "manual" consists of two looseleaf binders divided into various topics. One topic deals with engineering, building, and grounds; another with laboratory materials and processes; another with benefit programs; another with personnel policies; and another, the relevant one here, treats "hours of work and payment."

The statements of policy set out in the latter section are drafted, said Gage, whenever management perceives a need for written guidance to its 120 supervisors. The policies contained in this section, Gage further testified, are a mixed bag. Some of them relate exclusively to wages and methods of payment for, respectively, unrepresented employees, employees represented by the Machinists Union, and employees represented by the Charging Party; and some of the policies deal collectively with combinations of these groups. Gage further stated that "many of [the statements of policy] are probably considerably out-of-date." They are sometimes modified, he said, whenever an issue arises "where we detect a need for update in the policy as new guidance to supervisors," but this is not always done. "Amendments" to, or "interpretations" of, the policies are made in different ways: oral interpretations of the policies are "frequently" made, often to only one supervisor without further dissemination; amendments may also be made in writing, either by revising the policies themselves, by memoranda, by inclusion in the bimonthly supervisory newsletter, or by "a variety of other means."

Union President Donald Eves and Vice President Dennis Brommer testified that they not infrequently have heard reference made by supervisors to "company policy" on one subject or another, usually without fur-

[3] The pleadings establish that Respondent is engaged in commerce and that it is appropriate for the Board to exercise jurisdiction in this case. They further show that the Charging Party. United Rubber, Cork. Linoleum and Plastics Workers of America, Local 285, is a labor organization as defined by Sec. 2(5) of the statute.

ther explication. They stated that employees have told them that supervisors have said that a particular decision was based on "policy," and they have heard the term "company policy" used by supervisors informally and during grievance processing and arbitration. Brommer specifically testified that such reference had been made with regard to grievances about the method of payment for employees testing a new product, for mechanical downtime, and for "wage protection" for training and other purposes. Gage testified that some of these policies have been explained to the Union upon request.

The record contains documentation of two grievance proceedings in 1978 and 1979 in which the first-step company representative referred to "Company policy" ("Company policy states that an employee 'in training' shall be paid what he would have earned had he remained on his regular job, or he shall be paid the same *hourly* earnings *as* other employees working on the job for which he is being trained, whichever is lower." "This was done properly based on the Company pay policy.")[4]

Gage testified that prior to the June 20, 1979, letter, discussed below, which gave rise to this complaint allegation, the Union had requested a statement in writing of company policy on a single subject, that of training pay. The record shows that on June 19, 1979, Gage furnished the Union a "description of the Plant practice" as to training pay which, he testified, was "abstracted" from the policy contained in the manual.

On June 20, 1979, the Union wrote to Gage, requesting that it "be provided with complete copies of all Armstrong Floor Plant policies concerning wages and methods of payment." The letter stated that the policies were needed "in order to resolve problems and to process grievances more effectively." Gage responded by letter of June 26 that the Company would not comply with the request, but further stated that wherever the Union had a "legitimate interest," Respondent would supply a statement of the "practice" followed by Respondent which resulted from a particular "policy," as it had in the very recent case of training pay. It is on the basis of this request and refusal that the present complaint allegation rests.

"There can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties." *N.L.R.B* v. *Acme Industrial Co.,* 385 U.S. 432, 435–436 (1967). The word "needed," as used by the Court, unquestionably has a more restrictive connotation than the Court intended; later in its opinion, the Court observed that when the Board in that case had (correctly) ordered the employer to furnish certain data "[the Board] was only acting upon the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." Thus the test, as I understand the *Acme* case, is whether the information requested relates to the statutory obligations and functions of a union and might be useful to the union in discharging those duties and offices.[5]

Some types of information have come to be regarded as "presumptively relevant," i.e., the nature of the date sought, such as wage information pertaining to unit employees, is so clearly relevant to the union's general authority that it need make no special showing of pertinence, *Emeryville Research Center, Shell Development Company* v. *N.L.R.B.*, 441 F.2d 880, 887 (9th Cir. 1971); in these situations, the burden shifts to the employer to demonstrate a lack of relevance or some other good reason for refusing the demand, *Prudential Insurance Company of America* v. *N.L.R.B.*, 412 F.2d 77, 84 (2d Cir. 1969). It is easy to conceive of situations in which the requesting union has no need, as such, for the wage or other presumptively relevant data; that will not preclude operation of the presumption.

Counsel for General Counsel does not contend on brief that the requested policies at issue here are properly assignable to the "presumptively relevant" category. He does argue that they are in fact relevant, or probably relevant, to the functions of the Union, in that they would "permit . . . the Union to understand the Respondent's interpretation of a wide variety of matters all of which relate directly to the bargaining unit employees." So far as I can ascertain, the Board has not squarely passed on the validity of the kind of request under consideration here.

In *N.L.R.B.* v. *Truitt Manufacturing Co.,* 351 U.S. 149, 153–154 (1956), the Supreme Court noted, regarding the duty to furnish information, "Each case must turn on its particular facts. The inquiry must always be whether or not under the circumstances of the particular case the statutory obligation to bargain in good faith has been met." In "the circumstances of the particular case" presented, it seems to me that it might be useful for the Union to have in hand statements of Respondent's policies with respect to "wages and methods of payment." It is true that the request is somewhat unusual, in that it seeks policy statements as opposed to the statistics and data more commonly sought. These policy statements would, however, seem to be potentially helpful, in varying degrees, to the Union.

The record indicates that the policy statements relevant here fall into two categories. The first includes policies respecting interstitial matters not expressly touched on by the bargaining agreement. An example is the practice with regard to the reimbursement of employees for damage to their personal property. Respondent has evidently formulated and applied a policy with respect to this area, but the contract is silent on the matter.[6] It seems safe to say that such a practice constitutes a condition of employment, the dimensions of which the Union is entitled to be made aware, particularly since supervisors refer to these statements of policy for guidance in

[4] I very much doubt that company "policies" have been referred to at arbitration proceedings, and I credit Gage, a more impressive witness than Eves and Brommer, on this point.

[5] See, e.g., *Florida Steel Corporation, 235* NLRB 941, 942 (1978): "[I]t is sufficient that the Union's request for information be supported by a showing of 'probable' or 'potential' relevance."

[6] Union Vice President Brommer testified without contradiction that on one occasion Production Superintendent Harry Ritter told him that the Company "has a policy" on this subject, but would not furnish a copy to Brommer, although he did "explain" the policy to Brommer.

determining courses of action. There may indeed be existing policies beneficial to employees of which the Union has no knowledge at all, and therefore would not think to ask about, and it would obviously be valuable to the Union to be cognizant of them.[7]

The other relevant policy statements, for our purposes, are those which offer guidelines to supervisors in interpreting and applying the bargaining agreement. It might be thought that an argument would be advanced here that Respondent's instructions and interpretations are confidential in nature, but no such contention has been made. The failure to do so bespeaks a commendable attitude on Respondent's part, since there should properly be no room in a bargaining relationship for secrecy about the terms and conditions of employment and an employer's view of their metes and bounds. From what this record shows, some 120 supervisory officials are applying the contract, in an infinitude of situations, with the assistance of the policy guidelines. It seems to me that it would be useful for the Union to have copies of those guidelines. They might disclose benefits or approaches or resolution of problems not previously considered by the Union. If the Union were to have possession of the policies, a steward might be able to point out to a first-line supervisor that what the latter thinks is "company policy" is not that at all, thus making more efficient use of company and union time and resources by obviating what might otherwise end in resort to the grievance procedure. The policies may, on the other hand, alert the Union to questionable procedures not previously brought to its attention, thus perhaps resulting in the correction of practices which are improper under the contract.

A case which offers a meaningful analogy to the present one is ***Western Massachusetts Electric Company*** v. ***N.L.R.B.***, 589 F.2d 42 (1st Cir. 1978), enfg. 234 NLRB 118. There the employer had developed and was using certain guidelines "for a starting point in laying out" new meter reader routes. At a time prior to the layoff of any employees, and without any grievance pending, the union requested a copy of the guidelines. The Board and the court held that the union was entitled to see them.

The court's opinion (District Judge Dumbauld dissenting) made several observations which are apposite here. It pointed out, for one thing, that, like the Board, it considered unimportant the fact that no grievance had been filed: "There is no principle that a grievance be filed before the Union may obtain information relevant to assessing and effectively processing a potential grievance." *Id.* at 48.[8] The court stated, "The Board could infer that had the information been provided promptly, it would have helped the Union anticipate the configuration of routes yet to come, hence better gauge their impact on members." *Id.* at 46, fn. 6. A similarly speculative impact statement could be made here about the value to employees of the policies sought by the Union—a real possibility exists that they would presently or in the future be of use to the represented employees.

The court noted further that there were "possible strategies" available to the union which were "certainly real enough to give substance to the Union's inquiry." The strategies were "possible grievance action or even, though less likely . . . mid-term bargaining." *Id.* at 47-48. Those possibilities also exist here, and I might propose, as another "possible strategy," the potential use of persuasion; in proper circumstances, a union may be entitled to information even when the only arrow in its quiver is the right to discuss and entreat. See ***Texaco. Inc.***, 170 NLRB 142, 146 (1968), enfd. 407 F.2d 754 (7th Cir. 1969), where the union was said to be entitled to certain information to "bolster its arguments and try to persuade Respondent to return operations to the ***status quo ante.***"

As against the "discovery-type standard" of "probable relevance" fashioned in ***Acme Industrial, supra,*** the court in ***Western Massachusetts*** thought that the employer had raised no real justification for disallowing discovery. ***Id.*** at 46, fn. 6. While the study in question was "developed by management to serve ends most often viewed as part of the management function . . . [t]hat fact alone is insufficient reason to withhold the information from a union." ***Id.*** at 47. As earlier stated, in the present case Respondent has not asserted that the material sought is confidential; similarly, it has not claimed that furnishing it would be in any way burdensome. In essence, Respondent seems to say that the Union may not have it simply because the Union is not entitled to it, and that the material also may not truly assist the Union. Putting the last contention aside, Respondent's failure to offer any of the normal justifications was treated by the First Circuit in ***Western Massachusetts*** as follows: "[T]he Company has not argued that release of the information presents particular perils or hardships, nor has it identified and sought to withhold portions that relate exclusively to management concerns of a possibly confidential nature. We might be more sympathetic had the Company made a proffer or showing along these lines." ***Id.*** at 46. fn. 6.

It appears to me that the ***Western Massachusetts*** decision is, although not on all fours, effectively controlling here.[9] Here, as there, the Union has asked for material which may be of some use to it, although no formal controversy pends; here, as there, the employer has not resisted by citing the "perils or hardships" often asserted in

[7] While Union President Eves testified that the June 20 letter was seeking only policies "that relate to the contract," it is a fair reading of his testimony that he considers virtually any condition of employment to be so related. Thus, his professed belief that the "Safety and Health" article of the agreement covers reimbursement for the breakage of eyeglasses is, speaking charitably, a startling construction of that provision. The fact is, however, that the contractual grievance procedure carefully permits processing through the first three steps of the procedure "any difference . . . between any employee or employees and the Company," while only making thereafter arbitrable "a grievance arising out of differences with respect to the meaning and application of any provisions of this Agreement . . . ." It therefore appears that even grievances relating to matters not spelled out in the agreement may be processed through the first three steps of the procedure and, to that extent. "relate to the contract."

[8] Accord, *Curtiss-Wright Corporation, Wright Aeronautical Division* v. *N.L.R.B.*, 347 F.2d 61, 70 (3d Cir. 1965); *Vertol Division, Boeing Company*, 182 NLRB 421.426 (1970).

[9] *General Aniline and Film Corporation*, 124 NLRB 1217 (1959), and *The Kmger Company* v. *N.L.R.B.*, 399 F.2d 455 (6th Cir. 1968), cited by Respondent, seem quite distinguishable on their facts, but the *dicta* in *Kroger (Id.* at 457-458) tends to support the present conclusion.

this arena.[10] There seems to be a sufficient predicate of unrebutted probable relevance, but one substantial problem remains.

Respondent's testimony that many of the policy statements are outdated and have been modified piecemeal and in several ways is, necessarily, not controverted. For this reason, Respondent's offer to make available a current statement of practice on any subject specified by the Union has appeal. Nonetheless, such a procedure would require a certain amount of shooting in the dark by the Union; it may not know that there are items for which it should ask, or it may not know precisely how to ask for them. Furthermore, when a supervisor and a steward are discussing company policy, it seems most useful for them to be referring to the same piece of paper, rather than bandying words about the implications of a paraphrased document.

It would, however, be mischievous to require Respondent to turn over to the Union documents upon which it no longer relies,[11] or which refer to nonunit employees. An order to that effect would scarcely contribute to industrial harmony. It seems appropriate, therefore, to order Respondent to make available to the Union only those policies, with pertinent amendments in whatever form, which it considers to represent Respondent's current policies. It may, if it wishes, delete references to nonunit employees.[12]

It should be recognized that this decision is limited to the particular facts presented. It allows the Union no fishing expedition nor the right to rummage through Respondent's files. It affords access only to official statements of policy about terms and conditions of employment which have been disseminated to supervisors, which may be of assistance to the Union, and as to which Respondent has raised no meaningful objection other than that some of the material may be outmoded, an objection which the remedy here accommodates.

### II. THE REQUEST FOR EMPLOYEE NAMES AND ADDRESSES

The second substantive allegation of the complaint asserts that "[s]ince on or about July 31, 1979, the Union has requested Respondent to furnish the Union with the names and addresses of the employees in the unit;" the Respondent's refusal is said to violate Section 8(a)(5) of the Act. The investigation and drafting of this allegation has given rise to a rather complicated procedural issue which requires treatment.

The complaint, as indicated, claims that since "on or about July 31, 1979," the Union has been requesting "the names and addresses of the employees in the unit." The allegation was plainly based on a letter to Gage from Eves of the given date; in that letter, however, Eves asked only for the correct addresses of about 80 named union "members" in order to mail the union newspaper to them, as well as for Respondent's "cooperation in the future in order to keep our address system updated, that you notify the union when a member has a change of address." The July 31 letter, then, did not constitute a request for "the names and addresses of the employees in the unit," but rather only sought changes of address of the union members.[13]

Respondent replied to this letter on August 15, expressing sympathy for the Union's problems and refusing to "depart from our long-standing custom of declining to supply employee addresses to someone outside the Company." The reply went on, however, to suggest two alternatives: Respondent proposed that union stewards could secure current addresses from members, and it also offered to deliver to each member whose address was desired a note from the Union requesting such information.

Union President Eves gave testimony not particularly helpful to the General Counsel's effort to show that after July 31 the Union broadened its request. Eves answered in the affirmative a leading question by counsel for General Counsel as to whether, during contract negotiations in and after September 1979, he requested the "names and addresses of bargaining unit members." While Eves then said that the purported request "was submitted as a proposal," the only written contract proposal made by the Union in evidence shows that the Union offered a clause stating merely, "The Company will notify the Union of all address changes of their employees and retirees in the bargaining unit weekly." Despite this language, Eves testified that what the Union really "wanted" was "addresses of all new employees hired and all employees in the bargaining unit and nonunit [sic],"[14] a request which he said the Union had been unsuccessfully making to Respondent since the 1960's.[15] Nonetheless, in explaining the limited nature of the contract proposal, Eves stated that the bargaining committee "knew we weren't going to get the nonmembers' names in a proposal. So, we started out to try and get a little bit at a time." Thereafter, however, Eves continued to assert that, in its 1979 proposal, the Union was truly seeking "the addressses and changes of addresses for all employees in the bargaining unit."

The evidence presented by General Counsel thus offers a somewhat tenuous predicate for the claim assert-

[10] Some further support appears in *The Leavenworth Timer*, 234 NLRB 649. 671 (1978). where the employer was required to provide "meaningful information to the Union regarding past sick leave allowances," and *Canal Electric Company*, 245 NLRB 1090 (1979), where the Board stated, in *dicta.* that a union was entitled to evidence pertaining to application of a new and undefined sick leave policy even if no grievances were pending at the time of the request. See also *Westinghouse Electric Corporation*, 239 NLRB 106 (1978), where race and sex data was held presumptively relevant for purposes of investigating whether the employer was engaging in discrimination.

[11] While I have no reason to disbelieve Gage's testimony that many of the written policies are "probably" obsolete, it is hard to conceive that an efficient business would allow a manual intended to provide guidance to a constantly changing group of supervisors to fall into serious disorder.

[12] It might be that Respondent has already, in prudent contemplation of an adverse decision in this case, taken steps to completely update its manual. In that event. I could see no purpose in permitting the Union to sift through the ashes of history, and I would limit the Union to materials which Respondent, in good faith, catalogues as its present policies.

[13] The record shows that about 1,500 of the 1.800 unit employees are union members.

[14] Eves evidently intended to say here "union and nonunion."

[15] Eves in fact produced from union files a 1966 letter in which the then-president of the Union had asked for the "addresses both of members and nonmembers."

ed in the complaint that the Union "on or about July 31, 1979," or at any time thereafter, "requested Respondent to furnish the Union with the names and addresses of the employees in the unit."[16] However, when Gage returned to the stand to discuss this issue, he made it appear that the Union may have indeed broadened its request at the bargaining table. Gage testified that, as the Union's information proposal was discussed, its character varied:

> In subsequent conversation, the interpretation had changed back and forth across the table over a matter of several days as we got back to that subject. Sometimes it seems to me they would have been satisfied with address changes for union members. Sometimes they wanted address changes for all bargaining unit members and *sometime they change it to say they want addressesfor everybody,* and I'm not too sure in our response to that we ever got down to the point of seriously considering whether we would do any of that in bargaining, but to me it was not surprising because in bargaining these things get defined and redefined. [Emphasis supplied.]

Subsequently, in answer to a question as to whether the Union at one point requested "the names and addresses of all bargaining unit employees," Gage said, "I think one of the many forms, as the proposal took as we went around, went on to something else. Yes, it's very possible."

In summary, while Eves did not testify in so many words that the Union ever expressly expanded its written proposal,[17] Gage indicated that at some point the Union asked for "addresses for everybody." Although Respondent argues on brief that there was inadequate evidence of a request for names and addresses of nonunion employees, I am inclined to believe that there is a sufficient foundation for concluding that such a request was made and that the legal questions engendered by the request should be addressed. It would be absurd to require the Union to make another, more carefully phrased, request; Respondent, which declared in its August 1979 letter its "long-standing custom of declining to supply employee addresses to someone outside the Company," would surely refuse such a request, and another Board proceeding would as surely follow. Since administrative proceedings are designed to expeditiously resolve the kind of problem presented here, and since Respondent has been afforded full opportunity to make its case, a failure to decide the issue now would be untoward deference to a foolish formality. "Litigation is the pursuit of practical ends, not a game of chess." *City of Indianapolis* v. *Chase National Bank of City of New York,* 314 U.S. 63, 69 (1941).[18]

***Standard Oil Company of California, Western Operations. Inc.,*** 166 NLRB 343 (1967), enfd. 399 F.2d 639 (9th Cir. 1968). appears to have been the first case in which the Board ordered an employer to honor a union request for names and addresses of unit employees.[19] There the Board based its conclusion that the information was relevant upon the relationship between the union's statutory obligations and the evidence of problems the union had encountered in attempting to communicate with unit employees by means other than mailing (*id.* at 345):

> In this case the relevance of the unit employees' address list is apparent from a comparison of the Union's statutory duty of fair representation with the difficulties it faced in attempting to reach those to whom it owed such duty. The Union's duty extends to nonunion unit employees as well as to union members. Because of the relatively low union membership in the unit, the absence of a union-security clause in the collective-bargaining agreement, the residential dispersion of unit employees over a five- or six-county area, the apparent ineffectiveness of the steward system, the lack of adequate exposure of unit employees to union bulletin boards, and the inefficiency of handbilling efforts, the Union could not in any effective manner communicate with the beneficiaries of its statutory obligation.

In ***Prudential Insurance Company,*** 173 NLRB 792, 793 (1968), the Board engaged in a similar meticulous analysis of the evidence pertaining to need, and concluded that "[o]n the basis of the evidence before us, we are convinced that the information the Union requested from Respondent was necessary and relevant to collective bargaining and the administration of the collective-bargaining agreement." The opinion of the Court of Appeals for the Second Circuit on review of that case, in ***Prudential Insurance Company*** v. ***N.L.R.B.,*** 412 F.2d 77, 84 (1969) (Judge Friendly dissenting), is evidently the first holding that name and address information is at least presumptively relevant: "The kind of information requested by the Union in this case has an even more fundamental relevance than that considered presumptively relevant . . . [D]ata without which a union cannot even communicate with employees whom it represents is, by its very nature, fundamental to the entire expanse of its relationship with the employees . . . . Because this information is therefore so basically related to the proper performance of the union's statutory duties, we believe any special showing of specific relevance would be superfluous." The court did, however, discuss in detail the evidence tending to show the union's inability to adequately communicate with employees through means other than mailing, thereby establishing the "[n]ecessity" for the requested information. 412 F.2d at 81.

[16] It could be contended, however. that the contract clause seeking "all address changes of their employees . . . in the bargaining unit" was an inartful request for the addresses of all employees.

[17] At one juncture, he answered affirmatively a leading question as to whether, during negotiations, he made an "oral request for names and addresses." but then he immediately referred to a proposal "for changing the names and addresses of employees in the bargaining union [sic]."

[18] The related argument made by Respondent. that a request for a contract provision differs from a direct request for data, seems to me, on reflection. to *be* insubstantial. The proposal of a contract clause requiring that certain information *be* furnished is not materially different from a demand for the information itself.

[19] In *McCulloch Corporation*, 132 NLRB 201, 209–210 (1961). the Board had adopted without comment a recommendation by a trial examiner to deny such a request.

Thereafter, the Trial Examiner in ***United Aircraft Corporation (Pratt & Whitney Aircraft and Hamilton Standard Division),*** 181 NLRB 892, 903 (1970), relying on the Second Circuit's ***Prudential*** decision, concluded that the name and address information was "presumptively relevant," but he also engaged in an elaborate survey of the "alternative means of communicating with employees" before holding that they were inadequate. Since then, a number of cases have described such data as "presumptively relevant," and that clearly appears to be the current position of the Board. ***DePalma Printing Co.,*** 204 NLRB 31, 32 (1973); ***California Blowpipe & Steel Company Inc.,*** 218 NLRB 736, 742–743 (1975); ***Georgetown Associates d/b/a Georgetown Holiday Inn,*** 235 NLRB 485, 486 (1978); ***Aydin Energy Division,*** 245 NLRB 468 (1979); ***Helca Mining Company,*** 248 NLRB 1341, 1343 (1980).

The theory of the Board in ***Standard Oil*** seems to have been that the duty of fair representation is an imperative which elevates to statutory dignity a union's desire to communicate with the employees it represents, and that the union may rightfully call upon the employer to furnish information assisting it to do so when it has been established that, aside from the mails, no other adequate conduits for communication with the unit employees are available. In many of the cases decided since ***Standard Oil,*** the Board and/or administrative law judges have embarked upon discussions, some of exhaustive length, speculating on the adequacy in the particular circumstances of the alternative methods of communication available to the union. See, e.g., ***General Electric Company,*** 176 NLRB 605, 606–609 (1969); ***A. W. Thompson, Inc.,*** 216 NLRB 710, 712 (1975); ***The Kelly-Springfield Tire Company,*** 223 NLRB 878, 879–880 (1976); ***Sumner Home for the Aged,*** 226 NLRB 976, 981–982 (1976).

In others, some of them more recent cases, however, there has been little or no analysis of the availability of alternate means. E.g., ***Hotel Enterprises, Inc.,*** 224 NLRB 810 (1976); ***Sahara-Tahoe Corporation,*** 229 NLRB 1094, 1096 (1977); ***Alvin J. Bart and Co., Inc.,*** 236 NLRB 242, 252 (1978); ***Big Bear Supermarkets #3,*** 239 NLRB 179, 184 (1978); ***Southwestern Bell Telephone Company,*** 247 NLRB 27 (1980) (here, the Board noted only the circumstance that the bargaining unit consisted of 65,000 employees located in five States). The language of the two later cases, which I have found focus on this point, indicates that the Board no longer believes it necessary that the evidence demonstrate a union's inability to communicate adequately through means other than postal.

In ***Autoprod, Inc.,*** 223 NLRB 773 (1973) (then-Chairman Murphy dissenting), the panel majority required that names and addresses be furnished despite the fact that the bargaining unit consisted of only 14 employees at a single location. The majority first noted that the area was densely populated and that a search for addresses would burden the union. It then continued (223 NLRB at 773, fn. 2):

> Moreover, the fact that the Union may have been able to obtain the addresses of the employees by other means does not diminish the obligation of the Employer to furnish relevant information. For it is clear that Sec. 8(a)(5) imposes on an employer the duty to furnish a union with information ***relevant*** to the union's intelligent performance of its representative function.

This language appears to state flatly that a union is entitled to the addresses of unit employees, whether or not those addresses could be obtained by other means and, ***a fortiori,*** whether or not the union might be able to disseminate information to unit employees by other means than mailing.

In a subsequent case, an administrative law judge reached the same result, as a practical matter, by a somewhat different analysis. He read the earlier cases on alternative means "as suggesting that the availability of such alternate channels is a factor to be weighed against the potential burden to the employer of compiling and furnishing such a list . . . . Where, as here, however, Respondent can furnish the list with ease and efficiency, this factor renders the availability of such alternative channels relatively insignificant to the statutory merits of the Union's demand." The Board adopted the foregoing discussion without comment. ***Helca Mining Company, supra,*** 248 NLRB 1341, 1343 (1980).

It thus appears that the mainstream of Board law no longer requires proof that a union is unable adequately to communicate with unit employees by other means before an employer will be ordered to divulge names and addresses upon request. This progression in the law seems salutary. Litigation of the issue of alternative channels has been, as the cases show, an exhausting and demanding effort; in his dissent in ***Prudential Insurance Company, supra,*** 412 F.2d at 1150, Judge Friendly labeled it a "painful and time-consuming task." I have, moreover, discovered no case in which the Board or a court has concluded that adequate alternative means of communication were present. The reason seems evident: mailing a letter or questionnaire to an employee which can be studied and digested in the comfort of a home plainly provides a superior and more effective opportunity for communication than a hurried glance at such plant bulletin boards as might be available, or a hasty message from a steward, or catch-as-catch-can handbilling at the plant gates, or some literature placed in a distribution rack. There is no satisfying reason why the Board should not take notice of this obvious fact of life, at least with respect to a bargaining unit of any size at all.[20]

In view of the undoubted likelihood that furnishing the names and addresses of the unit employees would impose no undue burden upon Respondent,[21] I conclude that the names and addresses sought are presumptively relevant to the discharge of the Union's responsibilities, without regard to the alternative means available for

[20] In the present case, the Union has a membership of 1,500 employees in a unit of 1.800. As other facts of life, it is fair to assume that many of the members neglect to notify the Union of their changes of address, and that securing the new addresses of these members, and the names and addresses of the 300 nonmembers, would be an arduous and wasteful task for the Union, as would be attempting to communicate information through means other than the mails.

[21] This issue was not alluded to at the hearing. Respondent. however, raised no defense premised on burdensameness. It seems safe to believe that a 5.000-employee plant is sufficiently equipped with modern electronic means to supply the information without particular effort.

communicating with the unit members. Such an approach seems harmonious with the general rule against remitting a union to painstakingly search out relevant information for itself: "Although the information might be secured from the employees themselves, this did not relieve the company from this duty." ***N.L.R.B. v. Northwestern Publishing Company,*** 343 F.2d 521, 525 (7th Cir. 1965); ***Texaco, Inc.*** v. ***N.L.R.B.,*** 407 F.2d 754, 758 (7th Cir. 1969).

"Presumptive relevance," of course, raises only a presumption which, one assumes, may be rebutted. In the present case, the Union itself offered none of the more usual reasons for desiring the names and addresses (such as soliciting views on contract proposals and preferences, informing employees about contract benefits, and encouraging employee participation in policing the bargaining agreement, see ***Prudential Insurance Co., supra,*** 173 NLRB at 794). Union President Eves testified that he wanted the changed addresses of members in order to mail the union newspaper to them, and he desired the names and addresses of nonmembers so that the Union could inform them of the "special dispensation periods" during which they could join the Union without paying fees. May it be argued that the Union, by advancing only these justifications for the requested information, has in effect itself rebutted the presumption of relevancy?

The answer appears to be a negative one. In ***Prudential Insurance Company*** v. ***N.L.R.B., supra,*** 412 F.2d at 84–85, the court found "of no moment" the employer's (and dissenting Judge Friendly's) suspicion that the request was in truth motivated by the union's desire to solicit new members. The court said:

> As the Board has so appropriately indicated, there is no clear distinction between informing nonmember agents about the benefits it has obtained and hopes in the future to secure for them and its solicitation of their support. In any case, union solicitation is itself hardly an evil—especially where, as here, the union is already the exclusive bargaining representative of the employees it is soliciting. Moreover, the Supreme Court has upheld the propriety of a Board order requiring an employer to submit a list of the names and addresses of its employees eligible to vote in a representation election to facilitate solicitation by unions participating in the election. ***N.L.R.B.*** v. ***Wyman-Gordon Company,*** 394 U.S. 759, 89 S.Ct. 1426, 22 L.Ed.2d 709 (April 23, 1969).

And, in addressing the same sort of argument, the Board has stated to like effect in ***Standard Oil Company of California, Western Operations, Inc., supra,*** 166 NLRB at 346: "The Union's effectiveness as an employee representative was necessarily dependent on its bargaining strength, and this in turn was dependent on continued employee adherence and support." This position was reaffirmed in ***Harvey's Wagon Wheel, Inc.***, 236 NLRB 1670, 1694 (1978) ("It is immaterial" that the union wanted the information in order to respond to the employer's messages to employees or for organizational purposes.)

In this case, Respondent offered the Union other methods of obtaining the names and addresses of the unit employees, the most promising, perhaps, being an offer to itself mail and send to all the employees a printed union request for such information. The problem with this sort of alternative, however, is that it hardly guarantees that the Union would thereby come into possession of a complete mailing list. But if the Union has a legitimate right (or, perhaps, duty) to attempt to communicate with all the employees it represents, and if a mailing list may easily be supplied, this kind of alternative, certainly promising an incomplete list, would frustrate the Union's ability to communicate with the entire unit.

The interest which Respondent avowedly seeks to serve here is the "right of privacy" of the employees. There was no testimony that any employees have ever notified Respondent that they did not want the Union to have access to their names or addresses. This particular aspect of the "right of privacy" does not seem to be one of the more inviolable branches of that right. It is freely invaded every day, with businesses, charitable organizations, and political groups busily selling to one another the names and addresses of potential patrons and subscribers. And early on, in ***United Aircraft Corporation, supra,*** 181 NLRB at 903, the Board rejected any abstract "right of privacy" claim when weighed against the interest of a union in receiving the desired information.

There is, however, a limited context in which the right of privacy may become pertinent. The Second Circuit stated, in ***United Aircraft Corporation*** v. ***N.L.R.B.***, 434 F.2d 1198, 1207 (2d Cir. 1970), "In determining whether a disclosure of addresses violates the employees' right of privacy, the crucial factor appears to be the likelihood of a clear and present danger to the employees involved."

As previously stated, Respondent's August 15 refusal letter gave no specific reason for withholding the change-of-address information sought by the Union other than "our long-standing custom of declining to supply employee addresses to someone outside the Company."[22] At the hearing, however, Respondent introduced through Employee Relations Manager Gage certain evidence offered to show that Respondent entertained a well-founded fear of harassment of its employees as a result of revelation of their addresses.

Entered in evidence were 11 departmental lists of nonmembers found posted in the plant in 1979. One of these has the words "Scab List" handwritten on it, and another, also in handwriting, denotes certain employees as "Tile Scabs" and names an employee who "pulled out of Union right before contract was signed."[23] Another posted document was a list of 23 employees who benefited from a grievance settlement; 4 of the names are marked "scab," with the legend, "If you want to keep getting free money, join the Union. This will be the last time a scab gets paid for a grievance." In addition, there is in evidence a posted notice to nonmembers urging them to join the Union, which states, ***inter alia,*** "We

[22] The letter also noted a preference not to "assume responsibility for maintaining your mailing list."

[23] This list is dated November 1979, after the requests for, and refusal of, information.

want to *inform you, the non-members,* that we think it is our *duty* as leaders of this organization, to inform the dues-paying members the *names* of those who are sitting back and *reaping* all the benefits and not carrying their share of *responsibility.* Those who have not taken advantage of this open signup period will have their *names* listed by department and distributed throughout the plant in the near future." Also entered is a copy of a union newspaper article containing a list of some nonmembers and asking, "How must their conscience feel knowing someone else is paying their way?" and "Whose name will appear in the next issue of the Spot Light? Will your name be on the list? Let's hope not!" Finally, four timecards of an employee had the word "Scab" written on them.

Gage also gave testimony about harassment of employees. One employee came to him and said that he was being called names because of his nonmember status. Another telephoned Gage and said that she wanted Respondent to protect her from harassment; her tires were later slashed in the parking lot. A supervisor told Gage that an employee had asked to be transferred because he was "on the verge of a nervous breakdown" as a result of "getting so much trouble on the job." A fourth employee, a janitor, who had refused to join the Union, found paint sprayed on mirrors and sliced soap on a floor he had already cleaned. There is no evidence that the Union itself was responsible for the asserted harassment of employees or for the "scab" and other references on the posted documents.[24]

In *Shell Oil Company* v. N*.L.R.B.,* 457 F.2d 615 (9th Cir. 1972), the court denied enforcement of a Board order to supply names and addresses. The request for information there had followed a strike in which there had been, *inter alia,* harassment of nonstriking employees "at individual employees' homes." *Id.* at 616. A union representative testified at the hearing that the addresses were desired not only for purposes of mailing, but also to "make personal visits to employees' homes in order to organize them." *Id.* at 617. The employer, concerned that the addresses might fall into the wrong hands, offered to pay for the cost of unlimited mailings of union correspondence to the employees by a commercial service. The court concluded, contrary to the Board, that there was a "likelihood of clear and present danger to the employees involved" and that the employer's concern was "bona fide." *Id.* at 618–619 and 620.

The Board's Decision in *Shell Oil,* of course, controls my own. It seems clear that if the Board would require the furnishing of names and addresses in that case, it would do so here, and I think that the *Shell Oil* court might agree. The postings here were relatively innocuous. None of the four employees to whom Gage referred had indicated to him that any union partisans had come to their homes to harass them, nor is there evidence that any of the 300 nonmember employees had been so bedeviled; if there were union zealots who wanted to pursue that course, presumably they might have found a way to secure the addresses of some nonmembers on their own initiative.[25]

*N.L.R.B.* v. *A. S. Abell Company,* 624 F.2d 506 (4th Cir. 1980), cited by Respondent, is distinguishable. The union there had requested and received the names of employees represented by it who had been trained to perform the work of another union in the event of a strike. The day after receipt of the information, the recipient union posted bulletins labeling such employees as "scabs," and made no other use of the information. When the union subsequently asked for information about a second group of trainees, the company declined to furnish it. The Board (Member Walther dissenting) held that the union was entitled to the data sought, 230 NLRB 1112 (1977). The Fourth Circuit reversed, relying in part on the union's prior misuse of similar information to "insult the employees involved." I must, beyond question, apply Board law. Beyond that, however, I note that *Abell* involved a request for information only about potential use of unit employees to perform nonunit work and, as well, a showing that the same information previously requested had been used exclusively for a purpose which might fairly be termed illegitimate. Neither circumstance obtains here.

Accordingly, I conclude that Respondent was obliged to honor the Union's request for a list of names and addresses of employees in the bargaining unit, and that it violated Section 8(a)(5) by refusing to do so. I shall recommend that Respondent be required to furnish information as to the current names and addresses of all unit employees not already in the possession of the Union, and to further inform the Union, at quarterly intervals, of changes of identity and addresses of unit employees.

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

3. By refusing, since on or about June 26, 1979, to furnish the Union with copies of Respondent's policies concerning wages and methods of payment, and by refusing, since in or about September 1979, to furnish the Union the current names and addresses of employees in the bargaining unit, Respondent has violated Section 8(a)(5) and (1) of the Act.

4. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursu-

[24] It would appear, however, that the Union was responsible for posting the lists of nonmembers, as indicated in the union newsletter. Eves also testified. "We made up . . . notices of nonmembers lists and we put them on the bulletin boards and the company tore them down."

[25] If an element of the test is whether the employer's concern is "*bona fide*," as the *Shell Oil* court held. then Gage's testimony as to the incidents related to him by the four employees is relevant, not for the truth of the matters asserted, but as bearing upon his state of mind. On the other hand, the test of a "likelihood of clear and present danger," also adopted by the court, compels an appraisal of the reasonableness of such a state of mind. Gage convinced me that these four employees had in fact complained to him; but I cannot overlook that Respondent refused the first request on the basis of a "long-standing custom" of not disclosing addresses, which I assume would have dictated the answer to any such request whether or not there had been harassment.

ant to Section 10(c) of the Act, I hereby issue the following recommended:

## ORDER[26]

The Respondent, Armstrong World Industries, Inc., Lancaster, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Rubber, Cork, Linoleum and Plastic Workers of America, Local **285,** by refusing to furnish copies of its relevant policies concerning wages and methods of payment of bargaining unit employees and by refusing to furnish current names and addresses of employees in the bargaining unit represented by the Union.

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

**2.** Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Furnish the Union, in the form and at the times set out in the Decision of the Administrative Law Judge, copies of Respondent's policies concerning wages and methods of payment, and the names and addresses of the employees in the bargaining unit.

(b) Post at its Lancaster, Pennsylvania, facility copies of the attached notice marked "Appendix."[27] Copies of said notice, on forms provided by the Regional Director for Region 4, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 4, in writing, within **20** days from the date of this Order, what steps Respondent has taken to comply herewith.

[26] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations. be adopted by the Board and become its findings, conclusions. and Order, and all objections thereto shall be deemed waived for all purposes.

[27] In the event that 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 Judgement of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all parties were represented and had the opportunity to present testimony, the National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post this notice.

WE WILL NOT refuse to bargain collectively with United Rubber, Cork, Linoleum and Plastic Workers of America, Local **285,** by refusing to furnish information to which the Union is entitled under the National Labor Relations Act.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the National Labor Relations Act.

WE WILL furnish to the Union copies of our policies concerning wages and methods of payment of the employees represented by the Union, and WE WILL make available to the Union the names and addresses of those employees, in the form and at the times directed by the Board.

ARMSTRONG WORLD INDUSTRIES, INC.