Curtiss-Wright Corporation, Wright Aeronautical Division *and* International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, (UAW), AFL–CIO, and its Local Union No. 300. *Case No. 22–CA–1277. November 21, 1963*

DECISION AND ORDER

On August 7, 1963, Trial Examiner Frederick U. Reel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief, and the Charging Party filed a brief in support of the Intermediate Report.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case,[2] and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner.[3]

[1] The Charging Party's request for oral argument is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

[2] We hereby correct the following inadvertent error in the Intermediate Report, which does not affect the Trial Examiner's conclusions nor our concurrence therewith: It was the amended complaint and not the complaint which was issued on November 20, 1962.

[3] The Recommended Order is hereby amended by substituting for the first paragraph therein, the following paragraph:

> Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Curtiss-Wright Corporation, Wright Aeronautical Division, its officers, agents, successors, and assigns, shall:

INTERMEDIATE REPORT AND RECOMMENDED ORDER

This case, heard at Newark, New Jersey, on July 8, 1963, pursuant to a charge filed June 18, 1962, and a complaint issued November 20, 1962, raises issues concerning the right of a bargaining representative to obtain job descriptions and wage data covering administrative and confidential employees who are outside the bargaining unit. The facts are not in dispute and in large part are stipulated.[1] The

[1] The stipulations contained certain typographical errors which were corrected by a later stipulation executed after the hearing and herewith received in evidence as Trial Examiner's Exhibit No. 1.

conflicting contentions of the parties are set forth in their respective briefs, which have been carefully considered. Upon such consideration, and upon the entire record in the case,[2] I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY AND THE LABOR ORGANIZATION AND BARGAINING UNIT INVOLVED

Respondent, a Delaware corporation, herein called the Company, is engaged in Wood-Ridge, New Jersey, in the manufacture, sale, and distribution in interstate commerce of aircraft parts, missile components, and related products, of which over $500,000 worth are annually shipped to points outside the State. The Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Charging Party, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act. For many years the Union has represented all the salaried office clerical and engineering employees at the Company's Wood-Ridge plant, with certain specific exceptions. Among those excluded from the unit represented by the Union are confidential and administrative employees. Confidential employees are those whose work is regularly concerned with, and who have access to, information or records which relate directly to the problem of labor relations or knowledge of the same which would be advantageous to any union in its negotiations with the Company. The category of confidential employees includes, but is not limited to, secretaries and stenographers who work principally and directly for executives, staff members or directors or managers; employees in the employee relations division; job analysts and all employees who fix rates of pay for employees included in the bargaining unit. Administrative employees are defined and delimited in apparent conformity with an earlier regulation of the Administrator of the Wage and Hour Division under Section 13(a)(1) of the Fair Labor Standards Act. See 5 Fed. Reg. 4077; 29 Code of Federal Regulations (1949 bound volume, *not* pocket supplement) 541.2(b)(1), (2), and (3).

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Union's requests for data and the Company's responses thereto*

On April 2, 1962, the union president wrote the Company's director of industrial relations requesting "a summary of job classifications and/or titles of confidential and administrative employees . . . a job description or summary of duties and functions of such employees . . . a summary of the total number of such employees in each job classification and/or title . . . [and] the regular rate of pay, including the grade or range for each confidential and/or administrative employee classification or title. . . ." In explanation of its request, the Union stated in its letter:

> As you know, the union and the company have been confronted with numerous problems involving the relationship of "included" and "excluded" employees at the company's New Jersey plants and the work and function performed by each. Many of these problems have failed in informal resolution and have culminated in formal grievances which have been processed through various steps of the grievance procedure. Lack of relevant and material information concerning job functions, duties, hours, and rates of pay for excluded employees directly concerned with these disputes has severely handicapped the union in the administration of the collective bargaining agreement and processing of contractual grievances. Since the work of excluded confidential and administrative employees in many situations bears a close and substantial relationship to that performed by employees covered by the collective bargaining agreement, complete information concerning such excluded employees is essential for the union to discharge its obligations under the collective bargaining agreement and to intelligently administer that agreement.
>
> Moreover, the foregoing information is requested by the union for any collective bargaining that may ensue between the parties on the subject of work functions and duties for included and excluded employees at the company's New Jersey plants.
>
> We request that this information be furnished to us as soon as possible in a form that is convenient to the company. In the event you have any questions concerning our request, we will be glad to provide further details.

[2] Respondent's representative in a letter dated July 26, 1963, called my attention to a number of errors or alleged errors in the transcript.

The Company's director of industrial relations replied to this request in a letter to the union president, dated May 9, 1962, as follows:

> As you know, for the many years during which the relationship between this Division and your Union has been governed by collective bargaining agreements, in which certain provisions have properly excluded from your representation all confidential and administrative positions, the Division has been alert to its responsibility of making certain that such provisions have been followed. To that end, we have regularly reviewed this matter.
>
> Because of our close attention over the years to this matter, we are certain that administrative and confidential positions excluded by our Agreement are correctly excluded. However, on receipt of your letter of April 2, 1962, we again initiated a review and preliminary results verify the correctness of the exclusions. I have delayed reply to your letter until the preliminary results were available. Our review will continue over the next several months. If, in the course of the review, any specific incorrect exclusions are found, you will be advised, discussion arranged and correction made.
>
> Your request for complete information on rates of pay, job description, head count by job classification, etc., is denied. Your request for information concerning more than 900 confidential and administrative personnel is beyond the scope of matters to be bargained with Local 300; a compilation would be in such volume as to be unduly burdensome to the Division; nor is it pertinent to pending grievances or administration by you of the collective bargaining agreement, or for the purpose of future negotiations.
>
> I suggest that we resolve any specific items in this matter in keeping with the provisions of the bargaining agreement, which is through the orderly process of the grievance procedure.
>
> On your return from your national convention, I would be happy to meet with you on any further questions you may have.

On June 18, 1962, the Union filed the charge initiating this proceeding. On September 10, 1962, the Union again wrote the Company, requesting the identical information requested the previous April. On September 28, 1962, the complaint issued in this case. On October 19, 1962, the Union and the Company executed a 3-year contract; the preceding contract had run for 1 year and had expired September 30, 1962. Both contracts contained a detailed grievance procedure, culminating in arbitration.

Early in December 1962, the Company notified the Board's Regional Office that the Company would furnish the Union a list of the titles of the administrative jobs and the names of the individuals occupying those jobs. The Company stated:

> We believe that we are not obliged under the Act to furnish the Union with this information.

and that

> The submission of the listing to the Union is not to be considered as a precedent, nor as a waiver or abandonment of any rights or defenses . . . .

On December 14, 1962, the Company furnished the Union with the names, number, job classifications, and titles of all the administrative employees, and on December 28, 1962, the Company furnished similar data covering the confidential employees. In making the latter material available, the Company indicated that its views as to its lack of obligation to furnish this data were the same as with respect to the data covering the administrative employees.

On January 15, 1963, the Union wrote the Company, asking for "Job descriptions and other summaries of duties" for some 80-named administrative or confidential job classifications, including, *inter alia,* "Administrative Controlled Materials & Cancel"; "Liaison Commercial or Military Cust"; "Analyst Service engrg. Sr."; "Specialist Service Methods Programs"; and "Adm. Service Product Performance." Again on February 21, 1963, the Union repeated its request of January 15, and in addition requested that the Company furnish it, with respect to each of the 80-job classifications or titles, the number of employees, the wage rates, "the grades and ranges, if any," and the economic benefits other than wages received by employees for each job classification or title.

On or about February 8, 1963, and at various times thereafter, the Company and the Union met to discuss the Union's questions concerning the job classifications listed in the Union's letter of January 15. At each of those meetings the Company provided the Union with job descriptions or a summary of the duties and functions

of the particular job being discussed. As a result of those meetings it was ascertained that:

(a) The work being performed by employees in the administrative job classification of "Administrative Controlled Materials and Cancellations" was work which should have been performed by employees represented by the Union.

(b) Employees in the administrative job classifications of "Liaison Commercial/Military Customer," "Analyst Service Engineering, Sr.," and "Specialist Service Methods Programs" were performing some work which should have been performed by employees represented by the Union.

Thereafter the Company:

(a) Recognized the job of "Administrator Controlled Materials and Cancellations" as a job covered by the collective bargaining agreement between the Company and the Union.

(b) Transferred six administrative employees to the bargaining unit job classifications of "Correspondent Technical," "Analyst Service Engineering Liaison" and "Analyst Service Methods," and assigned them to perform the bargaining unit work which was previously being performed by the employees in administrative job classifications.

(c) Laid off one employee classified as "Liaison Commercial/Military Customer," one employee classified as "Analyst Service Engineering, Sr.," and one employee classified as "Administrator Service Products Performance."

Finally, on or about March 12, 1963, the Union orally requested that in addition to being furnished job descriptions of the Respondent's employees in the job classifications set forth in the Union's letter of January 15, 1963, it also be furnished with a list of "job evaluation factors" for these job classifications. The "job evaluation factors" are a part of the total "job description" sheet which the Company prepares for each job in the bargaining unit and also for a number of the administrative jobs outside the unit. Each of those sheets contains on one side a narrative description of the duties and functions of the particular job. The reverse side is a printed form listing 11 "job factors," and blank spaces opposite each for filling in the appropriate "degree" and the "basis of rating." The sum of the 11 "degrees" [3] gives the total point rating of the job, which in turn determines the wage. The "basis of rating" on each factor is a sentence or two explaining the degree assigned. The 11 factors are "scholastic requirements," "previous related experience," "qualifying period," "scope of duties," "initiative exercised," "frequency of verification," "contacts required," "degree of concentration," "working conditions," "number directed," and "supervisory responsibility."

As stated above, these forms are used not only for employees in the bargaining unit, but also for a number of administrative employees. When the Company on or about February 8, 1963, gave certain "job descriptions" of administrative employees to the Union, the information given consisted only of the narrative side of the job description sheet; the information as to the 11 factors was withheld (except on two occasions), and was the subject of the Union's oral request on or about March 12, 1963.

The parties have stipulated that:

On or about April 2, 1962, and at all times material herein since that date, including on or about May 9, and September 10, 1962, and February 28, 1963, Respondent has failed and refused and continues to fail and refuse to furnish the Union with the wage rates, grades, and ranges, and other economic benefits of Respondent's employees at its Wood-Ridge plant classified as confidential and administrative employees.

On or about March 12, 1963, and at all times material herein since that date, Respondent has failed and refused and continues to fail and refuse to furnish the Union was the "job evaluation factors" for the job classifications set forth in the Union's letter of January 15, 1963.

Respondent's counsel stated at the hearing that the various material the Company gave the Union on December 14, and 28, 1962, and also the job descriptions given at the meetings on or about February 8, 1963, and thereafter was material which the Company gave as an "accommodation," and that in the Company's view it would be within its legal rights in declining to give any such data.

[3] Actually, the "degree" is a letter ranging from A to F, but each letter for a particular factor represents a certain number

B. *The conflicting contentions; the Union's reasons for seeking the data, and the Company's reasons for withholding it*

The Union urges that the data it has requested, and to some extent failed to receive, is relevant to its proper discharge of its function as bargaining representative. In this connection, the Union points to what it considers an erosion of the unit and the creation of what it terms an "imbalance" of administrative jobs. According to union estimates, not challenged on the record, in 1957 it had from 4,500 to 4,700 in the bargaining unit, and the excluded group numbered about 2,100, but over the intervening years the percentages had shifted until the excluded group exceeded the number within the unit. The Union believes that, at least in part, this situation has been caused by having so-called administrative employees doing work properly allocated to persons in the bargaining unit.

In the Union's view, the grievance procedure in the contract had proved inadequate and unsatisfactory as an exclusive method of correcting these encroachments. According to union representatives, when they attempted to use the grievance procedure to correct the situation, they found that adequate investigation and preparation of the grievance resulted in a sharp increase in the amount of time lost from work, a matter which brought immediate complaint from the Company. In the Union's view, moreover, the early steps of the grievance procedure as applied to this problem were largely wasted, as the Company without making a careful investigation would simply answer that the employee in question was doing administrative work proper to his classification. The Union also urged that as the Company had some 768 administrative and some 100 confidential jobs, the cost of arbitration would be prohibitive. Finally, the Union argued that if it had the information it is now requesting, it would be better able to ascertain whether a particular complaint from one of its members had merit and should be pressed as a grievance, or whether the Union should "write it off."

At the time of the hearing, the Union had pending some 259 active classification grievances in the later, but prearbitration, stages of the grievance procedure, and it estimated that perhaps an equal number had been processed to final solution (or withdrawn) since 1955 Only three cases had gone to arbitration, and of those the Union had won one and lost two.

With respect to the job evaluation factors, the Union urged that this information was necessary to determine whether the narrative job description was accurate or was misleading. For example, if the factor of "initiative exercise" was given a low degree or if "frequency of verification" was given a high degree, such matters would tend to disprove a claim that the job carried true administrative responsiblity.

As to wage rates, the Union argued that information as to the wages paid to, and other benefits received by, alleged administrative employees would be helpful in determining whether such employees were properly classified as administrative, and also would be helpful to the Union in determining whether at the next contract negotiations it could reasonably seek better provisions in those respects for employees in the unit.

The Company's basic position is that the Union has no right to data concerning employees outside the unit it represents, as this is matter which concerns management alone. The Company is also of the view that the grievance and arbitration provisions furnish an adequate remedy for any errors in classification which may occur. As the company representative put it, in discussing the Union's allegation that people in administrative jobs were performing bargaining unit work. ". . . there is a possibility that that does go on. This is not a small outfit, and you do get people who overreach their jobs." The Company further pointed out that the job evaluation factors for confidential employees were, in large measure, already in the Union's possession, as many of these employees are secretaries or stenographers whose job is the same (except for its confidential character) as that of a similar employee within the unit.

C. *Concluding findings*

The Union is charged with the statutory duty of representing the employees in the bargaining unit. In the exercise of that duty, it has a right to information as to wage rates, job descriptions, and similar matters which is relevant, or reasonably necessary, in the discharge of its bargaining obligation. In my view, its right to such data turns, in the final analysis, not on whether the employee to whom the data refers is in the unit, but on whether the data itself is relevant or related to the Union's role as bargaining representative.[4] This is not to say, however, that the

[4] To be sure, in some cases the Union's right to data has been held to turn on whether the employee in question was within the bargaining unit. See, e.g., *N.L.R.B.* v. *Leland-*

employee's inclusion or exclusion from the unit is irrelevant in determining whether the data is relevant. Stated simply, I believe there is a presumption of relevance when the data covers employees within the unit (see *Boston-Herald Traveler Corporation* v. *N.L.R.B.*, 223 F. 2d 58, 62–64 (C.A. 1)), and that no such presumption exists when the employee is outside the unit.

In the instant case, therefore, the Union to be entitled to the data it seeks must establish, unaided by any presumption of relevance, that the material bears a reasonable relation to the Union's role as bargaining representative. I find nothing in the record to establish any such relevance with respect to *confidential* employees; the proof offered by the General Counsel and the Union goes exclusively to *administrative* employees. With respect to such employees, however, the record shows that the Union had good cause to believe that certain misclassifications had occurred, and, indeed, as a result of the information eventually furnished by the Company (after issuance of the complaint, and coupled with a contention, since repeated, that the Company had no legal obligation to furnish the data) several changes were made in the composition of the bargaining unit. It seems clear to me that where the production of such data accomplishes such results, the Union has shown that the material was relevant to its discharge of its obligation to represent the employees.

The Company's contention that the Union should be left to the grievance and arbitration procedures is answered by the holdings in *Hekman Furniture Company*, 101 NLRB 631, 632, enfd. 207 F. 2d 561 (C.A. 6), and *Leland-Gifford Company*, 95 NLRB 1306, 1322, enfd. 200 F. 2d 620, 624 (C.A. 1), that the statutory obligation to furnish data to the bargaining representative "is not satisfied by a substitution of the grievance procedure of the contract for [the employer's] obligation to furnish the Union with information it needed to perform its statutory function." See *J. I. Case Company* v. *N.L.R.B.*, 253 F. 2d 149, 154, 155 (C.A. 7), where the court not only rejects a "grievance procedure" contention identical to that advanced here, but also points out that the Union needed the data to determine whether to file or support grievance claims. Accord: *N.L.R.B.* v. *Otis Elevator Co.*, 208 F. 2d 176, 180 (C.A. 2), where the court observes that the Union should not "be forced to grope somewhat blindly through the very stages of grievance procedure, where adequate information is most likely to lead the parties to amicable agreement, to await an arbitrator-conducted study to the same end." [5]

I conclude, in short, that the Union has a statutory right to job descriptions and related data concerning administrative employees, including salary information and job evaluation factors (where they exist), provided, of course, that the data is requested in good faith to assist the Union in fulfilling its statutory duties as bargaining representative. In view of the evidence which establishes that a number of persons classed as administrative employees perform work plainly different from that performed by people in the bargaining unit, I do not believe that the general "shot-gun" request of the Union in its letters of April 2 and September 10, 1962, was appropriate. The more specific and limited requests of January 15, February 21, and March 12, 1963, dealing with specific data for specific jobs were appropriate, however, insofar as they dealt with administrative jobs. While the Company granted these requests in part, it did so while maintaining (erroneously, in my view) that it had no legal obligation to supply the data, and also it withheld some of the requested material. To the latter extent, at least, it has violated Section 8(a)(5) and (1) of the Act.

III. THE REMEDY

The instant case presents a narrow and novel issue of law, raised and litigated in proper fashion by highly sophisticated representatives of competing interests. Although I have found a technical violation of the Act, the amount of data furnished many months before the hearing in this case comes close to making this a declaratory judgment matter, if not a moot case. I shall recommend a narrow order designed to cover the violation found and to prevent such future violations as may be thought to inhere in the Company's insistence that it had no legal duty to furnish the data it did supply. The "cease and desist" aspect of the order will therefore be somewhat narrower than that part of the order dealing with affirmative action. I see no purpose to be served by posting a notice to all employees in this case, as the dispute was between the leaders of the Union and the Company on a narrow legal point. To

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Gifford Company, 200 F. 2d 620 (C.A. 1). But in those cases no claim was made that the data had any relevance if the employee was not in the unit.

[5] But cf. the majority and dissenting opinions in *Sinclair Refining Company* v. *N.L.R.B.*, 306 F. 2d 569 (C.A. 5).

require the Company to post a notice would, in my judgment, unnecessarily stigmatize it, would serve no useful purpose, and might create rather than quiet labor troubles.

CONCLUSIONS OF LAW

Respondent, by withholding certain data requested by the Union with respect to the job evaluation factors and wage rates for specific administrative jobs, has committed an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) and Section 8(a)(1) and (5) of the Act.

ORDER

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in this case, I recommend that the Respondent, Curtiss-Wright Corporation, Wright Aeronautical Division, its officers, agents, successors, and assigns, shall:

1. Cease and desist from refusing to furnish International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) AFL–CIO, and its Local Union No. 300, with the job evaluation factors and with the wage rates, grades, and ranges, and other economic benefits of particular administrative employees, when requested to do so by said organization.
2. Take the following affirmative action necessary to effectuate the policies of the Act:

Upon request of the above-named labor organization, furnish it with respect to the particular administrative employees or jobs as to whom the request is made with the names or number of employees in each requested job classification or title, and with other relevant data pertaining to the classification of the job or jobs in question as "administrative," including such matters as the job description, the job evaluation factors, and the wage rate, grade, and range, and other economic benefits pertaining to the job or jobs.

Randolph Electric Membership Corporation *and* International Brotherhood of Electrical Workers, Local Union No. 485, affiliated with International Brotherhood of Electrical Workers, AFL–CIO. *Case No. 11–CA–2149. November 21, 1963*

DECISION AND ORDER

Upon a charge duly filed on May 23, 1963, by the Union as Charging Party against Randolph Electric Membership Corporation, the Respondent, the General Counsel for the National Labor Relations Board by the Regional Director for the Eleventh Region, issued a complaint and notice of hearing on June 14, 1963, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) of the Act. Copies of the complaint, the charge, and notice of hearing were duly served upon the Respondent and the Charging Party.

With respect to the unfair labor practices, the complaint alleged that on or about May 10, 1963, the Charging Party had been certified in Case No. 11–RC–1738 as the exclusive collective-bargaining representative of Respondent's employees in an appropriate unit of production and maintenance employees, as the result of an election conducted on May 2 which the Union won; and that commencing on or about May 20 the Respondent refused to bargain with the Union as the said exclusive bargaining representative.