WLVI-TV, Inc. *and* International Brotherhood of Electrical Workers, Local 1228, AFL–CIO. Case 1–CA–37457

April 20, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND WALSH

On July 12, 2000, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent filed exceptions and a supporting brief, the Union filed an answering brief, and the General Counsel filed a brief in support of the judge's decision.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, WLVI-TV, Inc., Boston, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

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

"(a) Furnish to the Union in a timely manner the following information requested by the Union: the names of the bargaining unit employees who have received safety training for ENG/SNG vehicles; the dates when such training took place; the names and qualification, if any, of the people who did the training; and any written or other materials used by the trainers for such training and/or any materials handed out to the employees."

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

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to furnish to the International Brotherhood of Electrical Workers, Local 1228, AFL–CIO, information relating to our safety training for the operation of ENG/SNG vehicles.

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

WE WILL furnish to the Union in a timely manner the following information requested by the Union: the names of the bargaining unit employees who have received safety training for ENG/SNG vehicles; the dates when such training took place; the names and qualification, if any, of the people who did the training; and any written or other materials used by the trainers for such training and/or any materials handed out to the employees.

WLVI-TV, INC.

Thomas Morrison, Esq., for the General Counsel.
James Kulas, Esq., for the Respondent.
Susan F. Horwitz, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was heard by me in Boston, Massachusetts, on May 2, 2000. The charge was filed on July 27, 1999, and the complaint was issued on October 12, 1999. In substance, the complaint alleges that WLVI-TV, Inc. (Respondent) has failed and refused to provide certain information relating to safety concerns that was requested by International Brotherhood of Electrical Workers, Local 1228, AFL–CIO (the Union).

On the entire record in this case, including my observation of the demeanor of the witnesses and after reviewing the briefs filed, I hereby make the following

FINDINGS OF FACT

I. JURISDICTION

The parties agree and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It is also agreed and I find that the Union is a labor organization as defined in the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

WLVI-TV is one of 23 television stations owned by the Chicago Tribune Company. This particular station operates in Boston, Massachusetts.

The Company and the Union are signatories to a collective-bargaining agreement which runs from January 1, 1999, through December 31, 2001. This contract covers a group of

[1] We have modified the judge's recommended Order to require the Respondent to provide the Union with the information that it has requested, without the necessity of making a new request. See *I & F Corp.*, 322 NLRB 1037 fn. 1 (1997).

about 60 technicians employed by the Respondent. At article XVIII the agreement provides that "the company agrees to maintain a safe and healthful work environment in conformity to all applicable federal and state laws." The contract also contains a typical grievance and arbitration procedure for resolving contract disputes.[1] Additionally, at article XX, section 3, the contract contains a provision whereby union and management are to meet at least twice a year for the purpose of discussing training issues.

Some of the employees in the bargaining unit are assigned to operate vehicles which have retractable microwave antennas used to transmit video signals back to the station. (They are referred to as ENG or SNG vehicles.) These vehicles may be dispatched to cover news stories at anytime and during good or bad weather. Because the extendable antenna is quite high, the operator of the van has to make sure that it does not come into contact with an overhead power line. For if it does, this can and has resulted in fatal injuries.

Ken Flanagan, the Union's business manager, attended a safety seminar in February 1999. During this course a fellow union member named Mark Bell gave a presentation regarding the dangers to technicians from overhead power lines, wind, and lightning. Bell also published a booklet dealing with this subject called "Look Up and Live."

On March 5, 1999, Flanagan sent a letter to the Respondent addressed to Franco LaPietra, the chief engineer. Asserting that microwave antenna masts can come into contact with overhead power lines and that such equipment seems to fall within the Code of Federal Regulations (CFR) requiring safety training and certification, the Union requested certain information which can be summarized as follows:[2] (a) The names and dates when unit members have been trained or certified, (b) The identities and qualification of the persons who did the training, including the identities of the trainers' trainers, (c) Whether the training included the danger of operating microwave vehicles, the actions to be taken if the mast contacts an overhead power line, and what to do about injuries, (d) A demand for copies of all policies regarding the operation of masts in the vicinity of power lines including operator manuals, (e) A description of what if any actions the station has taken to prevent unattended raising and lowering of such masts and what if any actions the station has taken to make sure that employees read and comply with its operating manuals, and (f) A demand that the company provide any relevant information or documentation that addresses the company's compliance with its alleged obligations under 29 CFR 1910.268 or State regulation.

By letter dated March 15 LaPietra responded by stating that he had forwarded the Union's request to Jim Kulas.

By letter dated April 2, 1999, Jim Kulas, Respondent's senior labor counsel stated in pertinent part:

> I am sorry I didn't answer your letter sooner, I unfortunately have spent most of March on the road. To put this answer as succinctly as possible, WLVI is in compliance with all OSAHA laws and regulations. With respect to the three SNG/ENG vehicles, all are manufactured by Wolf Coach with safe operation a primary concern of their design engineers.
>
> All have powerful lights that illuminate the mast and the area above it for safe operation. The controls are designed to be used outside so it can be directly observed by the operator when being raised and lowered. There are safety interlocks, warning devices and placards in various locations to prevent unsafe operation. Operators have received training from experienced staff of WLVI and we are beginning formal training presented by Tribune Company Safety professionals and industrial hygienists that will give in depth safe operation training to all of our operators. This will be periodically repeated to refresh employee knowledge and promote safety awareness.
>
> We too are concerned with the safety of our employees. If you wish to further discuss this topic at any time please call me directly.

Sometime in April 1999 the Respondent had some kind of safety training program which it gave to the bargaining unit employees. Among other things, it distributed a copy of a four-page memorandum prepared in February 1999 which dealt with safety issues involving ENG/SNG vehicles. (R. Exh. 4.)

On May 19, 1999, Flanagan wrote another letter and stated that he had received information that the company had developed and distributed a safety manual that might relate in part to ENG microwave vans. (Presumably this would refer to the above-described exhibit). He stated that he would like the company to provide the Union with a copy of such safety manual and/or copies of "any other safety documents, policies, directives, and/or the like issued to any WLVI-TV Technicians) and/or otherwise directed at any WLVI-TV Technicians."

On or about June 3, 1999, the company's director of human resources, Susanne Council, sent a package of information to the Union. Although containing a number of documents relating to various company policies, including its injury and illness prevention program, the package did not contain any information relating to ENG/SNG safety matters. Specifically it did not provide the document prepared in February 1999 which specifically dealt with these matters.

On June 18, 1999, Flanagan wrote to Council expressing his dissatisfaction with the information so far provided and made a 3-1/2-page request for information, some of it old and some new. Without listing all of the items the letter can be generalized as being a request for any documents (including videotapes) of any training that bargaining unit employees had already received, the names of the persons trained, the times and places of such training, the materials used for the training, and the identity and qualifications of the persons who did the training.

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[1] The Union also represents similar categories of people employed by other companies.

[2] It is arguable whether the cited regulation 29 CFR Sec. 1910.268 would apply to this type of operation as the regulation deals with the telecommunications' industry which is not the industry in which the Respondent is engaged. Nevertheless, a microwave transmission of the type involved in the present case is a form of radio wave communication. In my opinion it is not necessary for me to decide whether this regulation is applicable to the operation of the Respondent's equipment.

On June 25 the Union received another package which contained what appeared to be overhead projection sheets containing very little information and none of the information that had been requested by the Union.

On June 28 Flanagan prepared another letter to Kulas, again requesting information about ENG/SNG safety procedures and training activities done by the company.

In the meantime Flanagan shared his correspondence from the company with Bell who published Kulas' April 2 letter in a newsletter of his own. (Called the "Broadcast Professional.") The problem as the company saw it was not simply that Bell published the company's correspondence with the Union, but that Bell used it as a vehicle for making insulting and ridiculing statements about WLVI-TV's management including its labor counsel. Thus, the company points to the May 19, 1999 edition of the "Broadcast Professional" and points specifically to the following excerpts which it deems offensive.

> "Far fetched? The so-titled Chief Engineer at WLVI, for example, is an ex non-heralded news photographer, admittedly not an engineer, named to the post by virtue of some sort of corporate eyesight. What's amazing is that this person without engineering expertise would actually engage in debates with real engineers about what had to be done. One rumor suggested that he gets a bonus or extra pay for coming in under budget, providing motivation for items to stay in disrepair, or not be maintained. That' s the tip of the iceberg about a company that doesn't value its industry or its professionals."
>
> Engineers? When a "Chief" is not one, for instance, like at WLVI, nobody need to be one. All that Tribune has done with such titling is bring down a standard, just like those of integrity and honesty."
>
> Tribune was given notice of my discontent.
>
> Letter to Tribune President and CEO, John W. Madison:
>
> I recently left WLVI-TV in Boston (voluntarily) due to the working conditions and lack of ethics of the operation.
>
> It is appropriate at this point to inform you that I've reviewed a letter from Senior Counsel Kulas to IBEW 1228 in Boston stating that WLVI is in compliance with all OSHA laws and regulations.
>
> "Attorney Kulas' written word regarding compliance with "all" OSHA laws and regulations displays ignorance, and such a statement is an outright fabrication. In short, Tribune is operating in violation of federal law and your Senior Counsel is on written notorious record as being either ignorant and/or lying about it."
>
> My employment for Tribune was insulting, demeaning, and of no career value.
>
> What you have done by over-promoting this man [LaPietra] is cruel, as he will most likely never be qualified for his title in comparison to other Chief Engineers and must assume a level of subservience unrelated to the typical tasks of the position in order to keep it. It is also cruel that those who need to have continual patience with his unqualified authority, lack of safety and engineering knowledge, and the associated risks and waste.
>
> I should be questioning the qualifications of Attorney Kulas as well.
>
> "Tribune, through the information from Atty. Kulas's letter, along with advice given to Atty. Sinnot, which was apparently ignored, again shows a disregard perhaps even willful negligence toward working-class employees."

Although the contents of the "Broadcast Professional" are determined by Bell, the involvement by the Union's business manager, Flanagan, was quite extensive. For one thing, Flanagan admitted that he turned over to Bell the company's correspondence to him on the ENG/SNG safety issue. Flanagan also received and made comments to Bell regarding the letter that Bell sent to Madigan and which Bell published in his newsletter. It therefore is clear that the rantings of Bell as expressed in his May 1999 newsletter were participated in and, at the least, condoned by Flanagan.[3] The question is whether this somehow excused the company from furnishing the requested information to the Union.

By letter dated June 29, 1999, Kulas informed the Union that the company had given it all that they were entitled to under law and that it was refusing to turn over any more information because the Union had misused company communications and given them to a third party who used them for the "dissemination of false, libelous, slanderous, and disparaging information about Respondent and its agents."

III. ANALYSIS

The General Counsel contends that certain information, relating to the health and safety of bargaining unit employees, is relevant to the Union's performance of its duties as the collective-bargaining representative. The company's principle contention is that by making its letters to the Union available to a third party who then used these as the basis for making inappropriate and defamatory statements about company management in a newsletter published in the hope of making a profit, the Union forfeited its right to any more information.

The particular information involved here would relate to any actual training conducted by the company with bargaining unit employees regarding the safe handling of ENG/SNG vehicles and would include the names of those persons who received the training; the dates on which they received training; any written materials or videotapes used by the trainers and/or given to the employees in the course of such training; and the identity and qualifications of the trainers. Among the documents which are in existence but not turned over to the Union, was the four-page memorandum prepared in February 1999 and, which was designated at the hearing as Respondent's Exhibit 4. This document apparently was used by some company personnel in conducting a safety training session in April 1999 regarding the use of the ENG/SNG vehicles.

First, I want to set out what I am not deciding. I make no finding that the operation of SNG/ENG vehicles are subject to the provisions of 29 CFR Section 1910.268 of the Code of Fed-

[3] The close relationship between Flanagan and Bell is further demonstrated by the fact that Bell has been used, from time to time, by the Union as a paid consultant and that Flanagan in turn, has contributed several articles to Bell's newsletter.

eral Regulations which is applicable to telecommunications. I make no finding that the company is required to conduct safety training and I make no finding as to the adequacy of the safety training efforts which the company did make with respect to these vehicles. In this regard, I have no opinion about and make no conclusions as to whether the company's safety efforts regarding these vehicles was either required by or conformed to Federal or State laws. Finally, I make no conclusions as to whether Bell's comments in his newsletter would constitute defamation under the standards probably applicable to statements made in a labor relations context. See *Linn v. United Plant Guard Workers Local 114,* 383 U.S. 53 (1966).

Both sides to a collective-bargaining relationship have a duty to supply to the other requested information which is relevant either to the bargaining process itself or to the administration of any contract that the parties have agreed on. Further, there may be situations during the life of an existing agreement where new issues arise or where the parties may want to alter, modify, or change existing practices or procedures. In those situations too, information in the hands of either party may be relevant to the process and the party holding the information may be forced to disclose it to the other. The basic case law underlying these principles are set out in *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co*., 351 U.S. 149 (1956); and *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979).[4]

Information relevant to the health and safety of employees who are within the collective-bargaining unit is, in my opinion, presumptively relevant to the Union's representational function both during contract negotiations and during the lifetime of any existing agreement. *New Surfside Nursing Home*, 322 NLRB 531, 534 (1996); *Detroit Newspaper Agency*, 317 NLRB 1071 (1995). Moreover, once relevancy has been established, it is no defense for the employer to assert that a union may have alternative sources to obtain the information. *Detroit Newspaper*, supra. Also, a claim that information sought is confidential, requires the Respondent to affirmatively establish that the information is indeed confidential. Moreover, even if confidentiality is established the Board will then balance the Union's need for the information versus the employer's confidentiality interest. *Detroit Newspaper*, supra.

That said, a request for information must be made in good faith which means that the information must be sought in furtherance of a legitimate representational function. If the *only* reason that a union makes a demand for information is to harass the company, then the request may legally be denied. *Hawkins Construction Co*., 285 NLRB 1313 (1987), enf. denied on other grounds 857 F.2d 1224 (8th Cir. 1998). However, a union's good faith can be established where *any* of its reasons for seeking the information can be justified. *Island Creek Coal Co*., 292 NLRB 480, 489 (1989), enfd. mem. 899 F.2d 1222 (6th Cir. 1990).

In my opinion, information regarding the safety training which was undertaken by the Respondent in relation to the operation ENG/SNG vehicles is information about which the Union has a legitimate interest in obtaining in furtherance of its role as the employees' bargaining representative.

The company contends that by giving its correspondence to Bell, who then used it to publish for profit, opprobrious comments about the company's management, the Union forfeited any further right to the information in question. I don't agree.

I do agree with the Respondent that Bell's published comments regarding the company's correspondence was intemperate and insulting. For example, I do not see any objective basis or justification for Bell's remarks that the company's senior labor counsel was either ignorant or a liar when he wrote that in his opinion, the company was in compliance with OSHA. That these assertions by Bell ticked off Kulas is completely understandable. Moreover, it was reasonable for Kulas to conclude that Bell was acting as an agent or with the approval of the Union inasmuch as Bell admittedly was a union consultant and Flanagan disclosed the contents of the company's correspondence to him.

Nevertheless, whatever the motivation of Flanagan in providing the correspondence and whatever Bell's motivation in publishing, with insulting commentary, the correspondence, this does not detract from the fact that the Union did, in fact, have an otherwise legitimate interest in obtaining information which was relevant to the health and safety of its bargaining unit employees. For better or worse, collective bargaining requires that both sides thicken their skins and sometimes put up with rudeness that might not be acceptable in other contexts. See for example, *Felix Industries,* 331 NLRB (2000).

In my opinion, the Respondent's reliance on *Pony Express Courier Corp*., 297 NLRB 171 (1989), is not controlling. In that case, the Respondent defended its refusal to bargain and furnish information to newly certified unions on the ground that they should be disqualified from representing its employees because of a conflict of interest by a union official. The Board, concluded that the union official was the owner of a business enterprise which provided consulting services for companies that were competitors of the Respondent. Relying on *Harlem River Consumers Cooperative*, 191 NLRB 314, 319 (1971), the Board held that this person's extra-union business enterprise presented a conflict of interest and therefore the Union was not in a position to fairly represent the Respondent's employees.

However one might characterize Bell's enterprise, it does not compete in any way with the Respondent and does not remotely present the same type of conflict of interest situations that were present in *Pony Express* or *Harlem River*. Further, despite Flanagan's occasional participation in Bell's enterprise, there was no showing that the Union, through Flanagan or Bell, was engaged in a business enterprise in competition or in conflict with the Respondent.[5]

[4] In *Detroit Edison*, the court upheld an employer's refusal to supply psychological aptitude test questions, answers, and individual scores, finding that the Union's interest in obtaining information relevant to contract administration was outweighed by the employer's interest in maintaining test security and employee confidence in the testing program.

[5] As a union, the Charging Party obviously acts, at times, in conflict with WLVI-TV and all other employers with whom it deals. But this type of conflict of interest is inherent in and protected by the labor laws.

In my opinion, what the Respondent's defense boils down to is an understandable fit of pique at finding its correspondence appear in a third party publication accompanied by insulting comments. This, in my opinion, is not legally sufficient for it to refuse to provide to the Union otherwise relevant information relating to employee health and safety issues.

CONCLUSIONS OF LAW

1. By refusing to furnish to the Union certain information regarding safety training of bargaining unit employees, the Respondent has violated Section 8(a) (1) and (5) of the Act.

2. The aforesaid violation affects commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed 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[6]

ORDER

The Respondent, WLVI-TV Inc., Boston, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to furnish to the Union information regarding the safety training that it engaged in with respect to the operation of ENG/SNG vehicles.

(b) In any like or related manner interfering with, restraining, or coercing employees in 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 the following information. The names of the bargaining unit employees who have received safety training for ENG/SNG vehicles; the dates when such training took place; the names and qualification, if any, of the people who did the training; and any written or other materials used by the trainers for such training and/or any materials handed out to the employees.

(b) Within 14 days after service by the Region, post at its facility in Boston, Massachusetts, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since March 5, 1999.

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

[6] 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.

[7] 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."