York International Corporation *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and its Local No. 1872. Case 4–CA–15760

July 29, 1988

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS JOHANSEN AND BABSON

Upon a charge filed by the Union, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and its Local No. 1872, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that York International Corporation, the Respondent, has violated Section 8(a)(5) and (1) of the Act.

The Respondent filed an answer and the Regional Director issued an order postponing hearing indefinitely. Subsequently, the Union, the Respondent, and the General Counsel entered into a stipulation of facts in which they, inter alia, waived a hearing and indicated their desire to transfer this proceeding directly to the Board for findings of facts, conclusions of law, and issuance of an order. On June 4, 1987, the Board, through the Deputy Executive Secretary, issued an Order approving stipulation and transferring proceedings to the Board. Thereafter the parties submitted briefs in support of their positions.

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

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Delaware corporation, engages in the manufacture, sale, and distribution of air-conditioning equipment at various plants and facilities throughout the United States, including plants in the York, Pennsylvania area, where it annually ships goods valued over $50,000 directly outside the State. The Respondent admits that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges and the Respondent admits that the Union, International Union Automobile, Aerospace and Agricultural Implement Workers of America, UAW and its Local No. 1872, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Reuben R. Barker Sr. was employed as a production employee by the Respondent and was a member of the bargaining unit covered by the collective-bargaining agreement between the Union and the Respondent. In September 1984, Barker was suspended for violation of the Respondent's rules.[1] On September 28, 1984, Barker was terminated after a discharge hearing. On October 3, 1984, Barker filed two grievances over his termination under the then applicable collective-bargaining agreement. The first, Grievance 84–683, alleged that Barker had been unjustly discharged. The second, Grievance 84–685, claimed that the Respondent had allowed various discriminatory practices to continue. Union representative Haven May filed a third grievance, No. 84–689, on October 8, 1984. It alleged that Barker's termination letter was inadequate because it did not state with specificity the reasons for Barker's termination. A fourth grievance, No. 84–681, was filed by employee James T. Hardy Jr. and alleged that Hardy had been reprimanded twice for the same rule infraction.[2]

On October 15, 1984, Barker filed a complaint with the Pennsylvania Human Relations Commission (PHRC) alleging that he had been suspended and discharged because of his race and national origin. On January 22, 1986, Barker amended the PHRC complaint to allege that he had been suspended and discharged also because of his age. On September 28, 1985, Barker, through private legal counsel, filed a complaint in the United States District Court for the Middle District of Pennsylvania. The complaint alleged that Barker had been suspended and discharged on the basis of his race, age, and national origin, in breach of his employment contract, and in violation of Title VII of the Civil Rights Act of 1964. The complaint also alleged that Barker's suspension and discharge were outrageous, defamatory, and libelous and caused him emotional distress.

[1] Barker alleges he was discharged for various discriminatory reasons (see infra) and the Respondent alleges he was discharged for threatening to shoot a fellow employee, having a handgun on the Respondent's premises, and falsifying his employment application by failing to list his last employer

In reaching our decision in this case, we have considered only the evidence contained in the stipulated record. Accordingly, we grant the General Counsel's motion to strike a portion of the Respondent's brief.

[2] Hardy allegedly made a "false, vicious or malicious statement" about Barker.

During March 1986, Barker and his legal counsel held settlement discussions with the Respondent.[3] On March 19, 1986, Barker, his attorney, and the Respondent executed a settlement agreement by which Barker, inter alia, agreed to waive and release all claims he had filed surrounding his termination (including the grievances). Paragraph 10 of the agreement also requires Barker to keep the terms of the agreement confidential.

Arbitration of Barker's grievances was scheduled for March 19, 1986. At the arbitration hearing, immediately before the hearing was opened by the arbitrator, Barker and his attorney informed the Union and the arbitrator that they had resolved all of Barker's pending claims with the Respondent to Barker's satisfaction and, in view of that fact, Barker wished to withdraw the grievances.

The Union requested disclosure of the terms of the settlement agreement, but Barker and the Respondent refused, citing the confidentiality provisions of the agreement.[4] The Union requested the arbitrator to require the Respondent to disclose the terms of the agreement, and on April 18, 1986, the Union filed the charge that resulted in the instant complaint. Subsequently, the arbitrator ruled he did not have the authority to require disclosure.[5] On or about September 11, 1986, the Respondent revealed all the terms of the settlement agreement with the exception of the monetary amount paid Barker and the provision dealing with the type of employment recommendations the Respondent would give Barker. The Union maintained that this disclosure did not satisfy its request for information and the instant complaint issued on September 30, 1986.

Initially, we must determine whether the requested information is presumptively relevant. Certain types of information (e.g., wages of bargaining unit members) are deemed "so intrinsic to the core of the employer-employee relationship that the information is considered presumptively relevant."[6] In such cases the employer has the burden of showing a lack of relevance, or otherwise must justify its refusal to provide the information. The Union, however, must demonstrate the relevance of information, which is not so obviously related to its performance as a bargaining representative, but which allegedly has become so owing to unusual circumstances.[7]

We do not view the information requested in this case (i.e., the monetary amount and type of employment references given a former bargaining unit member as part of a settlement agreement of various claims including a state administrative complaint and a Federal district court complaint) as being so obviously related to the Union's duty as bargaining representative that it justifies a finding of presumptive relevance.[8] Thus, the General Counsel has the burden of establishing the information's relevance.

The standard for determining the relevancy of the requested information "is a liberal, discovery type test whether the information bears on the union's determination to file a grievance or is helpful in evaluating the merits of the grievance and the propriety of pursuing the grievance to arbitration."[9] Further, we need only find a "probability that the desired information is relevant . . . and that it would be of use to the union in carrying out its statutory duties and responsibilities."[10]

In attempting to establish the relevancy of the requested information, the General Counsel and the Union essentially make two arguments. First, they state that the information is relevant to determining whether the Union should prosecute the grievances. They, of course, make no claim that information about the settlement terms in issue here has any bearing on the merits of the grievances. Thus, even granting that the Union may have an interest in obtaining an arbitral ruling on the substantive and procedural propriety, under the contract, of the Respondent's discharge of Barker, the information at issue here will in no way assist the Union in determining how it might fare before the arbitrator on that question. The General Counsel and the Union argue, rather, that the Union cannot properly decide whether to pursue the grievance on Barker's behalf unless it knows whether the Respondent has already offered him a fair settlement. The problem here, however, is that, as already noted (fn. 3, supra), so far as the record shows, the Union made no objection to the initiation of private settlement discussions between Barker, his attorney, and the Respondent in which the contractual grievances

[3] We are not here presented with the issue of whether the Union was unlawfully excluded from the settlement discussions, or any issue of direct dealing. The stipulations do not show that the Union raised any objection to the conduct of the private settlement discussions. Cf. *Postal Service*, 281 NLRB 1013 (1986), in which the Board held that a respondent violates Sec. 8(a)(5) and (1) of the Act by not affording the Union an opportunity to be present at the contractual grievance adjustments as required by Sec. 9(a) of the Act.

[4] The Union also claimed that Barker could not withdraw the grievances

[5] The arbitrator also ruled that the Union had the right to pursue Barker's grievances and that Barker had the right to withdraw from the process.

[6] *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863, 867 (9th Cir. 1977).

[7] *Southwestern Bell Telephone Co.*, 173 NLRB 172 (1968).

[8] Assuming arguendo that the requested information is presumptively relevant, we would reach the same result in this case by finding that the Respondent has rebutted the presumption.

[9] *United Technologies Corp*, 274 NLRB 504, 506 (1985).

[10] See *NLRB v. Acme Industrial Co*, 385 U.S. 432, 437 (1967).

could be coupled with Barker's numerous other noncontractual claims—including ones that had already become the subject of court litigation. It could also have been reasonably anticipated that all the claims might be resolved. Those settlement discussions in fact produced a settlement that satisfied Barker, so the Union's real claim as to a continuing interest in how the Barker grievances were settled consists of the impact on the remaining bargaining unit employees of a decision not to pursue those grievances further in the face of the settlement.

That potential impact essentially forms the basis for the second relevancy argument advanced by the General Counsel and the Union. They contend that the settlement may set a precedent for future grievance settlements. The stipulated record in this case shows, however, that in addition to the two contractual grievances filed by Barker, he also filed a Federal district court complaint alleging constitutional, statutory, and common law violations, and a state administrative complaint alleging discrimination based on race, national origin, and age. These multiple claims, involving as they do different forums and divergent issues, preclude a determination of which portion of the monetary settlement, if any, pertains to the contractual grievances and which does not. Thus, the amount of the monetary settlement is of little precedential value to the Union in processing future grievances. As for the term of the settlement agreement dealing with employment references, it is apparent that this is a response to the allegation in the Federal court complaint that the Respondent gave Barker adverse and false employment references, a matter not within the purview of the filed grievances. Consequently, the circumstances of this case are unique, and thus make the requested information insignificant for purposes of future grievance settlements. Therefore, requiring the Respondent to disclose the requested information does not enhance the Union's ability to represent the employees in future grievance settlement negotiations.[11]

Thus, although we need only find a "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,"[12] we do not reach such a conclusion on the facts of this case.[13]

Accordingly, we grant the Respondent's motion and dismiss the complaint.[14]

ORDER

The complaint is dismissed.

MEMBER BABSON, dissenting.

I cannot agree with my colleagues that the Respondent lawfully refused to furnish the Union with the complete terms of an agreement that purported to resolve two grievances under the parties' collective-bargaining agreement. I would find that the information sought by the Union, the clauses relating to the monetary settlement and future employment references, is presumptively relevant and that the Respondent has failed to rebut that presumption. Further, even if it can be said that the information is not presumptively relevant, I would find that the General Counsel has established the relevancy of the information sought in this case.

[11] Cf. *Columbus Products Co.*, 259 NLRB 220 (1981) (disclosure of information not required when it added "nothing to the union's ability to evaluate the grievances or intelligently pursue it"), *American Standard*, 203 NLRB 1132, 1133 (1973) (information of "such picayune significance that there is no basis whatever for concluding that failure to supply it would impede the [u]nion in its proper functioning or that its possession might enable the [u]nion to represent the employees more effectively," need not be disclosed.

[12] See *Acme Industrial Co.*, supra, 385 U.S. at 437.

[13] Because we have found that the requested information is not relevant, we find it unnecessary to address the Respondent's confidentiality and deferral defenses

[14] In taking issue with us on the merits of this case, the dissent posits that, because the resolution of contractual grievances is "intrinsic to the core of the employer-employee relationship," the information sought is presumptively relevant. However pertinent that observation is in cases limited solely to contractual grievances, we do not find it apt in this one. Here, we are not concerned with the resolution of a contractual grievance so much as we are with a private settlement that has been reached on matters some of which are related to the subject of the grievances filed and some of which are not. Given that mixture, as we have explained above, the terms of the settlement throw no appreciable light either on whether Barker received fair compensation for his contractual claims (and thus on whether the Union should pursue the grievance because of inadequate compensation) or on what position the Union should take on similar contractual grievances in the future That the parties have not apportioned among the numerous claims the monetary amount of the settlement does not lessen the validity of our conclusion that the employment reference provision of the settlement is in response to the Federal court complaint. That conclusion reasonably flows from the fact that the employment reference provision addresses an allegation made only in the Federal district court complaint and not in the grievances Moreover, the amount of the settlement, apportioned or not, and the provision relating to future employment references for Barker, have no bearing, other than tangentially, on the merits of the grievances—which, we are constrained to note, will not likely be decided to the Union's satisfaction without Barker's further participation. This last notation is of interest to the issue of presumptive relevance; for without Barker's cooperation, the information sought, even if provided, is unlikely to resolve the grievances or add to their resolution

Regarding the dissent's assertion that the requested information is relevant even in the absence of the presumption, we note that in such circumstances it is the union's burden to establish the relevance of the requested information. In this regard, unlike the union in *East Dayton Tool & Die Co.*, 239 NLRB 141 (1978), the Union here has not "expressed concern that it may be required to defend against a charge of unlawful discrimination based on alleged acquiescence in the Respondent's hiring practices .' Essentially, this aspect of the dissent's argument states that the requested information is relevant because the Union must assess the settlement's fairness. As previously stated, there is no indication before us that the Union objected to the settlement negotiations. In any event, we fail to perceive the relationship between the requested information and a possible breach of fair representation claim, especially in light of Baker's approval of the settlement agreement.

The information sought is presumptively relevant because it concerns the settlement of contractual grievances that purportedly arose under the bargaining agreement in effect between the Union and the Respondent.[1] The resolution of contractual grievances is "intrinsic to the core of the employer-employee relationship"[2] and is of vital concern to the parties that *negotiated* that agreement and are responsible for its administration. To hold that the Union is not entitled to this information is particularly inexplicable, inasmuch as an arbitrator already has ruled that the Union has the absolute right to pursue the grievances notwithstanding Barker's settlement.[3] For the Board to permit the Respondent to withhold from the Union information the Union needs to make an informed decision concerning its further obligations respecting the grievances undermines the Union's ability to intelligently administer the grievance provisions of the collective-bargaining agreement.[4]

Furthermore, the majority's decision understates the practical reality that the settlement of Barker's grievances may serve as precedent to the settlement of future grievances. Settlements of grievances regarding discharge often involve monetary payments and provisions relating to future employment references. Although Barker agreed to keep the terms of the settlement confidential, the Respondent has *not*, and there appears to be no reason why it cannot use this settlement to its advantage in the future.[5] Although the settlement agreement encompasses several of Barker's claims, contractual and otherwise, this fact goes to show much weight the parties will give the settlement as precedent in future negotiations. In this regard, the majority inappropriately equates the "relevance" of the information to the "importance" of the information and, because the majority concludes that the information is of "picayune" and "insignificant" importance, finds that it is not relevant and the Union is not entitled to it.

Even if the information sought by the Union were not presumptively relevant, I would conclude that the Union has established the relevancy of the information in this case. In *East Dayton Tool & Die Co.*, 239 NLRB 141, 142 (1978), the Board stated that:

> [T]he [u]nion's expressed concern that it may be required to defend against a charge of unlawful discrimination based on alleged acquiescence in [a r]espondent's hiring practices is not inconsistent with its representative function.

This concern implicity supported our conclusion in that case that the information sought was relevant. See also *Westinghouse Electric Corp.*, 239 NLRB 106 (1978), enfd. in relevant part 648 F.2d 18 (D.C. Cir. 1980). The rationale and logic of *East Dayton Tool* is applicable here.[6] The bargaining agreement between the Respondent and the Union contains a nondiscrimination clause, and Barker's grievances allege that the Respondent has engaged in discriminatory employment practices. Although Barker has settled his claims against the Respondent, Barker did not waive any claim he may have against the Union if he can establish that the Union violated its duty of fair representation.[7] Thus, the Union has the right to review the terms of the settlement agreement in this case to enable it to satisfy its statutory obligation to fairly represent Barker.

As I conclude that the information sought by the Union is both presumptively relevant and relevant to the facts presented in this case, I would find that the Respondent violated the Act when it refused to furnish the Union with the complete terms of the settlement agreement.

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[1] Although the majority contends that this case is "not concerned with the resolution of a contractual grievance so much as . . . a private settlement" of a variety of causes in several forums, which is hardly an unusual phenomenon these days, the practical reality is that this settlement nonetheless affects the Union's ability to pursue grievances filed under the contract. When contractual grievances are involved, the union has a responsibility to exercise its judgment respecting pursuit of those grievances and a continuing obligation to the unit employees to administer the contract. Moreover, whether the light shed by the information requested is "appreciable" is, under the circumstances, a judgment better made by the Union than by the Board It is apparent here that the Union preferred "some light" to none at all.

[2] *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863, 867 (9th Cir. 1977)

[3] I note that the majority does not rely on the Respondent's asserted defenses that the information is confidential or that the Board should defer this case to arbitration In this regard, I would find those defenses to be without merit. I also would find that the Union has not waived its right to the information.

[4] In this regard, the majority errs when it asserts that it is "apparent" that the clause in the settlement agreement relating to future employment references is in "response" to Barker's Federal court complaint and thus this information, impliedly, would be of no use to the Union. Because the parties were unwilling or unable to apportion the settlement terms among Barker's claims, the Board has no basis for assuming that the employment reference clause relates solely to Barker's lawsuit rather than his grievances. The Board should not apportion the settlement agreement when the parties have not seen fit to do so.

[5] See *Culinary Workers Local 226 (Caesars Palace)*, 281 NLRB 284 (1986) (in which the Board found that the union violated the Act by refusing to turn over to the employer copies of unpublished arbitration decisions because those decisions could serve as precedent in future arbitrations).

[6] Both the General Counsel and the Union contend that the information is relevant to determining whether the Union should proceed with processing these grievances. That decision can only be made after reviewing the settlement agreement between Barker and the Employer in light of various factors, including the Union's continuing legal obligation to Barker.

[7] Barker's settlement with the Employer obviously does not affect any claims he may have against the Union.