

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

# Advice Memorandum

DATE: March 30, 2000

TO : James S. Scott, Regional Director  
Region 32

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: TCI Cablevision of California, Inc. d/b/a  
A.T.& T. Cable Services, 530-6067-6067-3400  
Case 32-CA-17911 530-6067-6067-5200  
530-6067-6067-7100  
530-6067-6067-8100  
530-6067-6067-8150

This case is being submitted for advice as to whether under Anheuser-Busch, 237 NLRB 982 (1978), the Employer unlawfully refused to provide witness statements needed to process a grievance.

### FACTS

AT&T Cable Services (the Employer), and Communications Workers of America, Local 9415, (the Union), are parties to a collective-bargaining agreement effective until February 29, 2000. The contract covers installation, construction, technical and clerical employees at several of the Employer's Bay Area facilities.

In December 1999, the Union filed a grievance on behalf of a local officer contending that he had been physically harassed by a supervisor. During processing of the grievance the Union requested that the Employer provide copies of all statements received from any individuals who were involved in or witnessed the harassment incident. By letter dated January 10, 2000, the Employer provided the Union with the names of the people who had given statements regarding the incident. However, the Employer also advised that it would not be supplying copies of the witnesses' statements to the Union at that time.

In a position statement, the Employer's attorney relies on Anheuser-Busch Inc., 237 NLRB 982 (1978), for its refusal to provide witness statements to the Union. The Employer advises that all witnesses were promised confidentiality at the time they gave their statements.

**ACTION**

We conclude that the Employer violated Section 8(a)(5) by failing to supply the requested information.

We initially conclude that the issue of whether the Employer is required to supply the witness statements should be analyzed by applying the Supreme Court's decision in Detroit Edison<sup>1</sup> rather than the Board's rationale in Anheuser-Busch. In Ormet Aluminum Mill Products Corp.,<sup>2</sup> the General Counsel urged the Board to abandon the Anheuser-Busch per se approach to prearbitration disclosure of witness statements, and instead to apply the Detroit Edison balancing test that the Board applies to all other categories of alleged confidential information.

Applying a Detroit Edison analysis to the instant case, we note initially that the witness statements requested by the Union are relevant. We conclude that the Employer has not offered any legitimate and substantial business justification for failing to turn over these witness statements. The Employer has offered only its bare assertions that the statements are confidential. Bare assertions, standing alone, are insufficient to establish a legitimate and substantial business justification for not turning over relevant information.<sup>3</sup>

Even assuming, arguendo, that the Employer had established a reasonable and substantial business justification, it has not bargained with the Union about a reasonable, good faith accommodation in lieu of providing the actual witness statements. The Employer simply denied the Union's request for the witness statements without bargaining. Therefore, the Employer did not meet its obligations under Detroit Edison.

Further, the Employer has failed to turn over summaries of the witness statements, which, even under Anheuser-Busch, it is required to do.<sup>4</sup>

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<sup>1</sup> Detroit Edison Co. v. NLRB, 440 U.S. 301 (1979).

<sup>2</sup> Case 8-CA-29061, Advice Memorandum dated September 5, 1997.

<sup>3</sup> U.S. Testing Co. v. NLRB, 160 F.3d 14, 20-21 (D.C. Cir. 1998).

<sup>4</sup> Accord: Pennsylvania Power Co., 301 NLRB 1104, 1107 (1991).

Accordingly, the Employer violated Section 8(a)(5) by failing to supply the requested information.<sup>5</sup>

B.J.K.

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<sup>5</sup> Absent settlement, this case appears ideal for presentation to the Board by stipulation since there are no facts in dispute.