

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

NEW YORK TELEPHONE COMPANY d/b/a
BELL ATLANTIC – NEW YORK
(FORMERLY NYNEX CORP.)

and

TELEPHONE TRAFFIC UNION
UPSTATE/COMMUNICATION WORKERS
OF AMERICA, LOCAL 1112, AFL-CIO

Cases 3-CA-19868
3-CA-20154
3-CA-20257
3-CA-20378
3-CA-20745
3-CA-20906

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Of Albany, New York
For the General Counsel

Steven Martin, Esq.,
Of New York, New York
For the Respondent

DECISION

Statement of the Case

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Albany, New York on April 23 and 24, and May 18, 1998. The charge in Case 3-CA-19868 was filed by Telephone Traffic Union, Upstate/Communication Workers of America, Local 1112, AFL-CIO (hereinafter Union or Local 1112) on February 5, 1996 and an amended charge was filed on November 4, 1996. The charge in Case 3-CA-20154 was filed on July 2, 1996 and the amended charge in this case was filed on November 4, 1996. The charge in Case 3-CA-20257 was filed on August 28, 1996 and an amended charge was filed on November 4, 1996. The charge in Case 3-CA-20378 was filed on November 4, 1996. The charge in Case 3-CA-20745 was filed on June 12, 1997. The charge in Case 3-CA-20906 was filed on September 30, 1997 and an amended charge was filed on December 5, 1997. A second amended charge was filed in this case on January 5, 1998. Region 3 issued an Order Revoking Settlement Agreement, Further Consolidating Cases, Third Amended Consolidated Complaint and Notice of Hearing on January 12, 1998.¹

On the entire record, including my observation of the demeanor of the witnesses, and

¹ An informal settlement of Cases 3-CA-19868, 3-CA-20154, 3-CA-20257 and 3-CA-20378, had been approved by the Regional Director on May 12, 1997. Because of the alleged conduct of Respondent in Cases 3-CA-20745 and 3-CA-20906, the Regional Director vacated the settlement and ordered all of the cases be heard.

after considering the briefs filed by the General Counsel and Respondent on or about September 3, 1998, I make the following

Findings of Fact

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I. Jurisdiction

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New York Telephone Company d/b/a Bell Atlantic-New York, (hereinafter Respondent), a corporation, provides telephone service from a number of facilities in New York State. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

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A. Background and Issues for Determination

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The Union and Respondent, in its various corporate configurations, have had a long – term collective bargaining relationship covering a unit of operators and clerical employees in a number of offices in Upstate New York.² The extant collective-bargaining agreement has a term of April 3, 1994 through August 9, 1998. The labor agreement at Article 14 (Grievance Procedure) provides for a three step process prior to arbitration. In practice, the Union's two area Vice-Presidents, Diane Stangle and Evelyn Kluczynski, take an active role in investigating, processing and presenting grievances at the first two steps. In addition, they attend third step meetings. Executive Vice-President Kim Young generally represents the Union at third step meetings and often participates at the first two steps.

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The Complaint alleges that Respondent unduly delayed supplying the Union with information requested with respect to grievances filed on behalf of Respondent's employees Nancy Nigro, Anthony Taylor, Judith Poppenberg, Lisa Bell, Rosemary Garrett, Margaret Baker, Anna Lipari, Lisa Carpenter, Mary Ann Johnson, Shawn Moore, Adrian Crisp, Barbara Kreigbaum, Gail Seminaor, and Joseph Stamatakis. It also alleges undue delay in supplying requested information relative to grievances filed with respect to Respondent's Upgrade and Transfer Program (hereinafter UTP) for unit members.³

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The controlling principles regarding the duty to provide information are comprehensively reviewed in *Samaritan Medical Center*, 319 NLRB 392, 397-398 (1995):

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"It is well established that a labor organization which has an obligation under the

² Currently, the unit consists of approximately 800 members.

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³ The Respondent has furnished all the information requested, only the matter of the time in which it furnished the information is at issue. In a pre-hearing meeting of all parties, the Respondent proposed a settlement of this dispute in which it laid out a procedure to be followed for information requests in the future. It represented that use of this procedure or one like it would help insure the timely delivery of information requested by the Union. Though for whatever reason the settlement did not appeal to the Union at the time, I will recommend that Respondent be ordered to implement a procedure similar to the one proposed by Respondent. Because of Respondent's size geographically and in number of employees, the traditional remedy is not likely to solve the problem of timely delivery of information as well as would Respondent's proposed procedure.

Act to represent employees in a bargaining unit with respect to wages, hours and working conditions, including collective bargaining, is entitled, by operation of the statute, on appropriate request, to such information as may be relevant to the proper performance of that duty. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Where the requested information concerns items relating to employees in the bargaining unit represented by the union, the information is presumptively relevant to the union's representative function. *George Koch & Sons, Inc.*, 295 NLRB 695 (1989); *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863 (9th Cir. 1977). The Board uses a liberal discovery-type standard to determine whether the information is relevant, or potentially relevant to require its production. *NLRB v. Acme Industrial Co.*, supra; *W-L Molding Co.*, 272 NLRB 1239 (1994).

Moreover, when requested information is presumptively relevant or has been demonstrated to be relevant, the burden shifts to the respondent to establish that the information is not relevant, does not exist, or for some other reason cannot be furnished to the requesting party. *Somerville Mills*, 308 NLRB 425, 440 (1992); *Postal Service*, 275 NLRB 1282 (1985). In evaluating the promptness of the information requested, the Board will consider the complexity and extent of the information sought, its availability and the difficulty in retrieving the information. *Postal Service*, 308 NLRB 547 (1992)."

An employer must provide information requested by a union for the purposes of handling a grievance. *Asarco, Inc.*, 316 NLRB 636, 643 (1995)("The Board, in determining that information is producible, does not pass on the merits of the grievance underlying a request such as was made in this case; and the union is not required to demonstrate that the information sought is accurate, nonhearsay, or even ultimately reliable"); *Safeway Stores*, 236 NLRB 701, 707, n.1 (1978)("Before a union is put to the effort of even arbitrating the question of arbitrability, it has a statutory right to potentially relevant information necessary to allow it to decide if the underlying grievances have merit and whether they should be pursued at all."); Records such as security reports (*New England Telephone Co.*, 309 NLRB 196 (1992); (*Asarco*, supra), disciplinary records; sick leave records (*Postal Service*, 310 NLRB 701, 709 (1993)) and bid records (*Saginaw General Hospital*, 320 NLRB 748, 749 (1996) are typically found by the Board to be encompassed by the duty to provide information.

A statutory bargaining representative is entitled to the production of information in a timely fashion. *Orthodox Jewish Home For The Aged*, 314 NLRB 1006, 1008 (1994)(five month delay in providing information found unlawful); *AAA Fire Sprinkler, Inc.*, 322 NLRB 69, 89 (1996)("I find that the delay between the May and June Union information request letters and the final submission...by letters dated July 18, 1991, was too long given the sensitive context then presented."); *Bundy Corp.*, 292 NLRB 671, 672 (1989)("We find the Respondent's reasons for its delay to be specious, particularly in light of the nature of the requested material, which could readily have been obtained from the Respondent's plant or home offices files.") See also *National Electrical Contractors Assn., Birmingham Chapter*, 313 NLRB 770, 771 (1994)("It is well established that an employer may not simply refuse to comply with an ambiguous and/or overbroad information request, but must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information.") It is well established that the circumstances of each case determine the reasonableness or unreasonableness of any alleged delay, and concomitantly whether the Act has been violated. As the Board held in *Good Life Beverage Co.*, 312 NLRB 1060, 1062 n. 9 (1993), "[I]t is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow." See also *Beverly Health and Rehabilitation Services, Inc.*, 322 NLRB 968, 1997 NLRB LEXIS 83, at *33 (Jan. 31, 1997)(stating that "all of the circumstances in these cases dictate the

reasonableness of the delay.”)

Therefore, if an alleged delay or failure to provide information is “reasonable” under the circumstances, no violation of the Act will be found. For example, in *Dupont Dow Elastomers, L.L.C.*, 1997 NLRB LEXIS 989, at *39 (Dec. 17, 1997), [t]he union claimed the company did not provide requested information in a timely fashion. In rejecting the union’s claim, the Board held that (1) any alleged delay was the result of a “good faith” misunderstanding and (2) the employer did not violate the Act where the union failed to supply a “needed clarification” for the employer to provide the requested information.

Respondent denies that it has violated the Act and offers a number of reasons for any delay in supplying the requested information. Respondent does not argue that any of the information requested was not necessary and relevant to the Union’s responsibilities under the Act and the collective-bargaining agreement. Credibility is really not at issue either as both sides generally agree to the relevant facts. They disagree what legal significance should be accorded these facts. Each Complaint allegation will be discussed below and conclusions made with respect to each of them.

B. The Specific Information Requests, Respondent’s Response and Reasons for Delay

1. The Nancy Nigro Information Request⁴

Following the suspension in September 1995 of Nancy Nigro, a unit member at Respondent’s Call Completion Bureau located in Utica, New York, Union shop steward Wendy Benedetto made verbal request to Respondent’s local manager, Mark Rewkowski, for reports prepared by Respondent’s Security Department. This request was made at the direction of Diane Stangle, who understood that security personnel had conducted investigatory interviews concerning an alleged incident involving Nigro’s possession of a gun while on work premises. Shortly thereafter, Stangle verbally renewed the request with Rewkowski.⁵ Having received no response, Benedetto made a written request, dated January 12, 1996, for the information. In February 1996, Rewkowski, verbally and in writing, informed Stangle that the information would not be provided at the first step.

On February 28 and 29 and March 13, 1996, Stangle, while at Respondent’s New York City headquarters on matters not directly related to the instant case, engaged in conversations with Pat Prindeville, Senior Specialist-Labor Relations, in which she requested copies of security reports for Nigro and Anthony Taylor⁶ in order to file grievances. Prindeville responded that information would not be supplied at the lower level of the grievance procedure because of confidentiality concerns. In the course of the conversation, he acknowledged that Local 1112 was more proactive than other locals and commented that the executive board members of other unions do not get involved at the lower levels of the grievance procedure. Stangle replied that the Local (Local 1112) had a right to the information in order to process grievances in a timely manner and that Prindeville’s professed confidentiality concerns were unwarranted since she would be involved at the first step as well as the third step.

On April 5, 1996, Respondent provided the Nigro security report. Stangle testified that

⁴ The request relating to Nigro is the subject of paragraph VIII(a) of the Complaint.

⁵ The security report in question was not completed until October 26, 1995 and could not have been supplied prior to that date.

⁶ The Taylor request is discussed below at Section B (2).

the delay in providing the information caused great hardship on Nigro since she remained suspended from work without knowing why. Stangle testified that the Union was hampered in taking action since it had insufficient information to process the grievance in an intelligent manner.

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2. The Anthony Taylor Information Request⁷

On December 19, 1995,⁸ shop steward Linda Noto made a written request for the security report underlying the dismissal for alleged theft of Anthony Taylor, a unit employee in the Troy, New York, directory assistance office. The security report itself reflects a preparation date of January 3, 1996, three weeks after the request was made. In February 1996, Stangle, to no avail, verbally renewed the request with Second Level Manager Kathleen Slaver. The security report was finally provided on April 5, 1996, following her meeting with Prindeville. Stangle testified that the hardship caused by Respondent's delay in supplying the requested information is magnified by the fact that the Anthony Taylor arrested for a theft of money was a different Anthony Taylor. Stangle testified also that the delay had a negative impact on unit member Taylor as well as undermining the Union in the eyes of its members. The security report itself reflects that the Respondent did not blame Taylor for the theft which caused the investigation, but dismissed him as a result of his admitting to falsifying his employment application.

It is clear that the delay in providing the security reports for Nigro and Taylor resulted from Respondent's practice of not providing security reports to any of its unions until the third step of the grievance procedure. The record is not clear whether the parties have bargained over this practice, but there presently exists no agreement between the parties modifying or limiting Respondent's obligation to provide relevant information generated by its Security Department. As explained by Prindeville, the policy is based on a concern about the sensitivity of the information and the confidentiality of the issues involved. By not releasing information until the third step, according to Prindeville, the information is limited to "more responsible hands on both the Union side and the company side," and would be "further removed from the workplace." According to Prindeville, if the Union absolutely needed the information earlier, it could either waive steps in the grievance procedure or escalate the issue to higher ups in the organization. Prindeville acknowledged that between 1993 and 1996, he dealt directly with Local 1112 with respect to grievances and offered that he and Stangle had a good professional relationship. Prindeville acknowledged that he was aware that Stangle was involved in all steps of the grievance procedure.

Although there was a delay on the part of Respondent in supplying the Nigro and Taylor security reports, I do not find that Respondent violated the Act by its conduct with regard to these particular reports. It had a pre-existing policy of not providing such reports until the third step of the grievance procedure. This policy was founded on a reasonable desire to keep confidential and sensitive information away from the work area and in the hands of responsible people. Stangle was aware of this practice and could have waived the first two steps of the grievance procedure or could have asked Prindeville personally for the reports at any time.⁹She

⁷ The Taylor request is encompassed in Complaint paragraph VIII(b).

⁸ On brief, General Counsel states that this date was December 15. However, GC Exhibit 4a reflects that the date of Taylor's signed record release is December 19.

⁹ Stangle's testimony at page 57 of the transcript clearly indicates that she knew the Respondent's reason for not supplying the security reports and chose to file a charge rather

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testified that she has frequent contact with him. Even if she were not aware of the policy, once she did ask him for the reports, she received them in a reasonable amount of time. At this point in time, having knowledge of the policy, the Union can either bargain over changing it, or go directly to Prindeville or his successor and get the reports. As noted earlier, in an attempt to settle this dispute, Respondent proposed a detailed procedure to be followed in the future for information requests. This procedure guided the Union to a particular person who would be responsible for responding within set time limits. This approach appeared sound to me at the time it was made and it appears sound to me now. Had such a procedure been in place at the time the Nigro and Taylor requests were made, the matter of the policy restricting release of security reports could have been dealt with immediately.

3. Family Medical Leave Act Information – Poppenberg and Bell¹⁰

Respondent operates an absence control plan under which employees are subject to progressive discipline, including discharge, and limitations on participation in the UTP program.¹¹ By letter, dated May 13, 1997, and hand delivered on May 14, 1997, Evelyn Kluczynski requested from Tom Bonfiglio, Director of Operator Services, certain information regarding the denial of FMLA¹² leave to Poppenberg and Bell. This request asked for the following information:

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1. Why their illnesses did not qualify for FMLA/
2. How was that decision determined? (Patient examination, consultation with the aggrieved employees, physicians, discussion with employee, etc.)
3. Who made the determination that the illnesses did not qualify for FMLA?
4. What are the qualifications of the person responsible for the FMLA denial?

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Following her customary procedure, Kluczynski made follow up calls to Bonfiglio in an unsuccessful attempt to acquire the information. Bonfiglio responded in July 1997 by sending a one-page document, covering six separate requests, including those of Bell and Poppenberg, in which he answered the questions posed in the request as follows:

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1. Not a *serious* medical condition.
2. A review of information submitted by the employee's physician.
3. A physician and a nurse from the Medical Department.
4. Licensed by the State of New York.

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than take the other two approaches available.

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¹⁰ These requests are encompassed in Complaint paragraph VIII(c).

¹¹ Discussed below at Section B(4).

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¹² Kluczynski explained that the information was requested in order to pursue grievances relating to the Family Medical Leave Act (FMLA), a Federal statute providing for mandatory leave under certain circumstances. In making requests relating to medical information, the Union routinely causes the grievant to sign a medical release authorization, authorizing Respondent to release the information to the Union. The authorization accompanies the request. Internally, the Union maintains a copy of the authorization. On occasion it appears that Respondent's local office managers do not forward copies of the release to higher levels of management. It is not unusual in such cases for Respondent to request the Union to forward another copy of the release. According to Kluczynski, certain of the absences relied on to progressively discipline Poppenberg and Bell should have been excused if FMLA leave had been properly granted.

I do not find Respondent's July response to a May request to be unduly delayed, and though not specific, the answers given do respond fully to the questions posed. Kluczynski informed Bonfiglio, in letters dated August 20 and 21, 1996, that his response was wholly inadequate. However, it appears that her initial questions were inadequate to prompt the information actually needed by the Union as she posed four basically new questions which are far more specific than the original ones. Thus for purposes of determining delay, I believe the August dates should be the starting point. Respondent did not provide the information requested in August until February 3, 1997, when the Union received a letter from Bonfiglio dated January 23, 1997. In this instance, I do not believe that Respondent's reasons justify the six-month delay in supplying the requested information.

Respondent correctly notes that the Union was requesting FMLA information not only for Poppenberg and Bell, but also for some 24 other unit members. These are referenced in a letter dated September 30, 1996, sent to Kluczynski by Respondent's Medical Liaison Robyn Russo, in which Russo references the employees involved and states: "I am in receipt of your request regarding the above named employees. Due to the scope of your request it has taken longer than I have anticipated. Please be assured that I will forward the requested information as soon as possible." Beyond this letter, Respondent offered no explanation of why it took five additional months to supply the requested information.

Kluczynski related that by the time the information was finally provided the Bell absence had been approved under FMLA.¹³ She explained that if the information were finally provided promptly, Bell would not have been placed under the strain of being put on third step in absence control and restricted in UTP movement. In addition, as related by Kluczynski, the documentation ultimately provided for Poppenberg established the doctor had qualified her for FMLA leave. Kluczynski explained that without the requested documentation, the Union was not in a position to know what information the Respondent was relying on to deny FMLA leave.

Absent any sufficient reason being given for the delay in responding to the Union's August 1996 information request, I find that the five-month delay was unreasonable and violates Section 8(a)(1) and (5) of the Act. *Orthodox Jewish Home For The Aged, supra*.

4. Upgrade and Transfer Program Requests¹⁴

As memorialized in a side letter to the labor agreement, the parties maintain an Upgrade and Transfer Program, under which employees, in effect, preregister expressions of interest and qualifications for upgraded positions. Stangle related that the Union has successfully resolved grievances arising from situations where temporary employees have been reclassified as full time employees, thus bypassing UTP registries. In early March 1996, Stangle learned that ten temporary customer service administrators "were reclassified to permanent status outside of the upgrade and transfer program which is a violation of our contract."

On March 17, 1996, Stangle delivered a written request to Kathleen Slaver seeking certain information regarding temporary employees reclassified to permanent positions and information relating to UTP registrants for these positions. Thereafter, Stangle verbally renewed the request with Slaver. Slaver responded that she had referred the matter to Pat Prindeville.

¹³ In the course of gathering the information, Respondent reviewed it and reversed its decision to deny leave to Bell. However, even this favorable reversal was not made known to the Union until February 1997.

¹⁴ These requests are encompassed in Complaint paragraphs VIII(e), (f) and (g).

At some point, the Union received information from unit member Rick Parker that Respondent was reclassifying temporary field technicians to permanent status. Thus, on June 24, 1996, shop steward Kim Trinkus delivered a written request to Rewkowski for information concerning net credit service dates of candidates for the position of field technician along with the same information for the persons selected for the positions. Follow up inquiries by Stangle to Rewkowski as to when the information would be provided were unfruitful.

Stangle made a written request, dated June 27, 1996, to Slaver seeking UTP seniority information on behalf of Rosemary Garrett. Stangle related that the request was generated because Garrett felt that she had been incorrectly bypassed in regard to filling a vacant office clerk position in Troy. Stangle made unavailing follow-up inquiries for the information with Slaver and others. Requests for UTP information on behalf of Garrett were renewed in letters, dated February 11, 1997, sent by Union Vice-President Kim Young to John Hann, Respondent's General Manager of Labor Relations.

By letter dated September 24, 1996, addressed to Darryl Douglas, a corporate labor relations officer then headquartered in Boston, Stangle renewed her request for UTP information relating to the reclassification of temporary field technicians in the Utica area.

The UTP requested information was not provided until February 20, 1997. Stangle, in describing the effect of the delay in providing UTP information related, "it rendered us useless in representing our members. We had contract violations in every corner of our jurisdiction regarding the upgrade and transfer plan being violated." She also noted that unit member Rick Parker not only grieved the upgrading but later filed an unfair labor practice charge against the Union for failing to represent him. Stangle testified that the delay in processing Parker's grievance was caused by the failure of Respondent to timely provide the requested information.

Respondent offers two defenses to the Complaint allegations with regard to the UTP information requests. First it asserts that the Union already had in its possession much of the information sought. Second it asserts that the Union requested the information from the wrong management officials. In my opinion, neither of these reasons justifies the delay the Union experienced in receiving responses to the UTP information request. Though the Union was in possession of certain of the information sought, this fact was not pointed out to Stangle until November or December, 1996, months after the information had been sought. Moreover, as can be seen from reviewing the packet of information ultimately given the Union on February 20, 1997, a vast amount of information was not in the possession of the Union.

Respondent's second defense is slightly disingenuous. It first notes that after the first information request was made to Slaver, she made no response. In a follow-up request, Slaver indicated to the Union that she had referred the matter to Prindeville. On brief, Respondent asserts that it should be excused for its delay in responding to the requests because the Union did not hound Prindeville about the matter. I do not agree. If Slaver did in fact refer the matter to Prindeville, he dropped the ball, not the Union. The Union does not have a duty to repeatedly renew demands for information, though in this case it did, including a letter request to Douglas, who the record reflects is a person who regularly deals with labor relations problems with the Union. I find that Respondent has not justified the nine to eleven month delay in providing the UTP information and has violated Section 8(a)(1) and (5) by its unreasonable delay.

The remaining Complaint allegations relate to the efforts by the Union to receive certain medical information to process grievances for some nine different unit members. In general, the

requests for information were filed in late Spring or early Summer, 1997 and adequate responses were not forthcoming until a period ranging from August to December, 1997. Each of the requests sought information that Respondent keeps in its Absence Benefits Center or "ABC." As part of its defense of its actions in regard to responding to these nine information requests the Respondent asserts that during the time frame involved, the Respondent's unions, including Local 1112, were engaging in disruptive job actions which targeted the Respondent's Absence Benefits Center. The ABC is the organization that had to locate and provide the requested medical information. First, the ABC was deluged with hundreds of bogus calls reporting fictitious absences; and second, the ABC was besieged by members of the Respondent's unions, who intimidated the ABC staff and refused to leave the premises. According to the credible testimony of the Respondent's witnesses to these events, not only did these disruptive incidents paralyze the normal operation of the ABC, but the intimidation of the ABC staff by union employees caused the vast majority of the ABC staff to resign from the Respondent – twenty two case workers out of thirty – which literally brought the operation of the ABC to a standstill and created a backlog of work.

The ABC first opened in 1995 and its function was and continues to be the management of employee absence. Whenever a union employee is absent from work, including employees represented by Local 1112, that employee is directed to call the ABC to report the absence through dialing a "1-800" number, which puts the employee into an automated tracking system that records the absence. This automated tracking system requests that the employee provide certain information (e.g., name, social security number, first day of absence, reach number, etc.), and that information is automatically downloaded into a computer database. Thereafter, the automated system notifies the employee's supervisor of the absence, and also assigns the case to a case manager at the ABC through an intra-office computer system. In this manner, the Respondent is able to more efficiently manage employee absence.

After the case manager is assigned a case through the system, he or she is required to call the employee within 24 hours of the report of the absence to find out the nature of the absence, how the employee is feeling, and to find out whether the employee is under the care of a health care provider. In the employee is receiving care, the case manager then requests permission to contact the provider to discuss the illness, etc. Records of the employee's absence, as well as any record of the illness which is release by the employee will then be kept on file at the ABC. If the absent employee cannot be contacted by telephone on the first attempt by the case worker, the case worker must follow up at least twice more in the first 24 hours, and send a letter to the employee's home address, if necessary, to contact the employee.

As of April, 1997, when the Union deluged the Respondent with requests for medical information, the ABC was managing absences of about 67, 000 of its employees, including the employees represented by Local 1112. There were about thirty case workers at the ABC at the time, and each case worker managed about 55 or 60 cases at any given time, including cases already assigned to them, as well as new cases assigned on a daily basis. On a typical Sunday, the ABC would receive about three or five absence calls from employees, and on a Monday, the ABC would receive approximately 100-200 calls from employees reporting absent.

However, on Monday, April 13, 1997 - just four days before the Union began requesting the medical information at issue herein, the ABC received over 1000 calls reporting employees absent. Marie McDonnell – Foley, the Staff Director of the ABC, testified that when she arrived at work on that Monday, she saw over 400 calls logged onto the automated system as of 7:30 a.m.; and throughout the day, scores of calls reporting employee absence were entered into the system until the total reached about 1200 new calls. This was an extraordinary number of calls and they wreaked havoc on the system. Whereas on a normal day each case worker might

have somewhere between twelve and fifteen cases to follow up, each case worker now had sixty or seventy cases on which they had to follow up, which overburdened the case workers.

Moreover, as noted above, the system also reported employee absences to supervisors. On Monday, April 13, supervisors called the ABC to report that the employees who were supposedly absent were actually observed to be on the job. As it turned out the vast majority of the over 1000 phone calls turned out to be bogus absence reports. Subsequently, the Respondent's security department investigated the origin of the bogus calls and it was determined that most of them had been made in clusters. It was also determined that many of the calls had been made from Respondent's facilities, including facilities in the area of the Respondent's operation where union members work, as well as from one Communication Workers of America (hereinafter CWA) office.

Hence it was determined that the hundreds of bogus calls were intended to disrupt the operation of the ABC, and, the scheme worked. Because case workers at the ABC have to attempt to contact the employee within twenty four hours of the reported absence, the case workers were inundated with additional work. They simply could not ignore or write off certain calls, because it was unknown which calls were genuine and which were bogus. The case managers were therefore obligated to call each of the numbers which were input in the system, until it had been determined which calls related to true reports of absence, which created a backlog that set the ABC back for a number of weeks.

About the time the ABC was recovering from the bogus call incident, various CWA members again disrupted the operation of the ABC. On Monday, July 14, 1997, at least fifteen union members wearing red t-shirts with the logo "CWA" entered the ABC facility and refused to leave. This act was troubling as the ABC occupies a restricted area due to the sensitive and confidential nature of the medical information kept on file. In addition to their refusal to leave, these CWA members walked around the ABC offices writing down the names of the case managers, closely examining family pictures which were in the case managers' cubicles. In fact, while examining a picture of one case manager's family, one CWA member made comments about the case worker's children while making notes at the same time. While the union members claimed that they were at the ABC to file grievances, it is clear to me that their intention was to intimidate the case workers, who, among other things, make decisions as to whether union members' leaves of absence under the FMLA will be approved or disapproved.

Foley asked the union members to join her in a conference room away from the case workers to discuss any issues they claimed to have, but they refused to do so. When she attempted to stand between the CWA members and the case workers' area in the ABC, they just walked around her. Without any other recourse, Foley called the police to remove the CWA from the facility. Only after the police arrive did the CWA members finally leave the ABC.

This was not the end of the CWA's efforts to intimidate the ABC case workers. The following Monday July 21, the union members again returned to the ABC. About fifty union members, again wearing their CWA red t-shirts, stood out in the parking lot of the ABC, videotaping the case workers' cars and license plates, and asked them if they worked at the ABC as they entered the parking lot and/or premises. This tactic scared the case workers.

The fallout from this intimidation of the case workers was that it crippled the ABC's operation. In addition to paralyzing the ABC for several days immediately after these incidents, twenty two of the thirty case workers at the ABC resigned between July and August of 1997, as a direct result of the intimidation. Moreover, the morale of those case managers who remained was low at the time they were required to cover the work of three managers. It took several

months to hire and train new staff to deal not only with the average case load, but also with the backlog that was the result of the union job actions. As a result the ABC fell behind in its work, including responding to information requests including those herein involved. It did not overcome the backlog of work until October 1997.

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5. Margaret Baker Medical Request¹⁵

By letter dated April 17, 1997, addressed to Hann, Young requested information, including attendance and disability records, in order to pursue a grievance on behalf of unit member Margaret Barker arising from the denial of FMLA leave. This request was made only days after the bogus call incident at the ABC. Approximately two weeks later, Young called Douglas to remind him of the unfilled request. On or about June 11, Young received a memo from Kim Gianos, Nursing Supervisor, in response to the request. During this timeframe, Douglas had informed the Union that there was not a proper medical release form on file for Baker. After investigation, it was determined that Baker had such a form on file under her maiden name. Douglas requested that Young obtain a new release and Young refused. Douglas was able to get a letter from Baker's supervisor verifying that the release form on file did identify Baker. This was done on July 11, 1997. On June 18 and July 12, 1997 Young called Douglas and told him that the information in Giano's memo was incomplete. On or about July 21, Young received a package of four documents from the Respondent. Young called Douglas to inform him that the response was inadequate. It was inadequate because the Union had not requested in its original request a form called G2553. The information was not provided until September 10. However, in the period from July 25, 1997 through most of August, 1997, Douglas was away from his office caring for his ill mother, a fact known to the Union at the time.

Considering the backlog generated at the ABC by the bogus call situation, the problem with the medical release for Baker, the Union's July request for additional information and Douglas' absence for medical reasons, I do not believe that Respondent violated the Act in the manner and time in which it responded to the information request concerning Baker.

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6. The Anna Lipari Information Request¹⁶

By letter dated April 23, 1997, addressed to Douglas, Young requested certain medical and attendance records in order to pursue a grievance on behalf of unit member Anna Lipari who had been stepped under the absence control plan and denied FMLA leave. Young made unsuccessful follow-up inquiries to Douglas. On or about June 11, 1997, Young received a response to the request. She immediately informed Douglas that she was not satisfied with the response as it did not contain "case note" relating to Lipari. This information was not sought in the original information request. Douglas obtained these notes and supplied them to the Union on July 21, 1997.

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Given the turmoil at the ABC following the April bogus call incident, I do not find that Respondent's June 11 response to an April request constitutes unreasonable delay, nor do I find that a one month delay in supplying the information requested by the Union in June to be unreasonable.

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7. The Lisa Carpenter Attendance Record Request¹⁷

¹⁵ This request is encompassed in Complaint paragraph VIII(g).

¹⁶ This request is encompassed in Complaint paragraph VIII(h).

By letter dated April 23, 1997, addressed to Douglas, Young requested certain medical and attendance records in order to pursue a grievance which alleged the improper denial of leave on behalf of unit member Lisa Carpenter. Approximately two weeks later, Young called Douglas to remind him of the unfilled request. On or about June 15, 1997, Young received a response to the information request. Young thereafter informed Douglas of the inadequacy of the response in that it did not contain case notes for Carpenter. As was the case with Lipari, these notes were not requested in the initial request. On or about July 21, Young received the case notes. On July 24, 1997, she informed Douglas that she wanted a copy of some material known as the "introduction package," material not requested in either of the earlier requests. This information was provided August 12, 1997.

For the same reasons I did not find a violation with respect to Respondent's response to the Lipari information request, I do not find a violation with respect to the Carpenter request. Specifically, I find that the bogus call incident provides sufficient justification for any initial delay and the time taken to respond to the subsequent request was reasonable.

8. The Mary Ann Johnson Attendance Record Request¹⁸

By letter dated May 4, 1997, addressed to Douglas, Young requested information related to the denial of FMLA leave in order to process a grievance on behalf of unit member Mary Ann Johnson. Approximately ten days later, Young called Douglas to remind him of the unfilled request.¹⁹ In mid July, 1997, Young received a response. It did not include information about one of the several absences involved in the grievance. Young called Douglas and pointed out the omission. Douglas then called the ABC and was told that there was no more information. He passed this on to the Union on August 12. The Union again protested. Douglas then went back to the ABC and it was discovered that due to the age of the absence in question, information pertaining to it had been archived. It was retrieved and supplied to the Union in the second week of September.

There is no showing that the Respondent purposely attempted to delay in responding to the Johnson request. The initial response, which Respondent thought was complete was given in a reasonable time frame given the problem the ABC was experiencing. The difficulty in coming up with the missing information justifies the delay. Certainly, Douglas was doing all he could to respond to the fairly large number of requests made during the Summer of 1997. I do not find that Respondent violated the Act by its response to the Johnson information request.²⁰

9. The Shawn Moore FMLA Request²¹

¹⁷ This request is encompassed in Complaint paragraph VIII(i).

¹⁸ This request is encompassed in Complaint paragraph VIII(j).

¹⁹ For the record, I do not find that the Respondent had any legal duty to comply with the Union's arbitrary ten day due date for information. The time in which the Respondent replies would obviously vary based on a number of factors as noted in the case citations given above.

²⁰ As part of its defense to the nine information requests involving the ABC, Respondent notes that each grievance involved an absence that took place a number of months prior to the filing of an information request. Though such delay on the part of the Union may mitigate any assertion that an expeditious response was necessary, it does not bear on the duty of the Respondent to make a reasonably timely response.

²¹ This request is encompassed in Complaint paragraph VIII(k).

By letters dated April 4, 1997, addressed to Greg Marshen, Respondent's Director of Operations, Kluczynski requested medical and attendance records in order to pursue a grievance on behalf of unit member Shawn Moore who had been stepped under the absence control program and denied FMLA leave. Kluczynski made unsuccessful follow up inquiries to Marshen. At an unrelated grievance meeting held on July 17, 1997, Kluczynski asked about the Moore information. Marshen responded that he did not know what had happened to the request. Douglas became aware of the request from another of Respondent's managers in October, 1997 and with his assistance, the information was provided on November 7, 1997. Kluczynski testified that the delay in providing the information put the Union in a bad light.

Aside from the disruptions that occurred at the ABC which would have affected this information request to one degree or another, and the matter of the delay by the Union in filing the request (9 months after the involved absence), Respondent's primary defense is that the Union filed the request with the wrong person. That may be the case, but that person, Marshen, had at least the obligation to tell the Union the person who should receive the request, or to forward the request to that person. There is no explanation of why the request was not processed at least as fast the ones discussed above. Marshen did not testify and thus there is no evidence of what he did or did not do with respect to the Moore request. As Respondent did not offer evidence explaining why the Moore request took some six months to process whereas similar requests took only three or four, even given the circumstances taking place at the ABC, I find the delay in this instance to be unreasonable and in violation of the Act. I find no fault with Douglas' actions in this matter, but do find that the delay engendered while the request was in Marshen's control was unreasonable.

10. The Adrian Crisp FMLA Request²²

By letter dated June 26, 1997 addressed to Betty Dougher, Staff Manager, Young requested medical information and attendance records in order to pursue a grievance on behalf of unit member Adrian Crisp who had been stepped under the absence control program and denied FMLA leave. This request was made to the wrong address and evidently did not get to Dougher. Young brought the matter to the attention of Douglas in September 1997. As young had filed all the previous requests she personally made with Douglas, and he was dealing with her regularly during this timeframe on the similar request, I certainly question the Union's representations about their contacts with Dougher over the Crisp request. The question of the Union's good faith with respect to this request is also called into question by the fact that it did not contact Douglas directly during this period to ask about the delay. Douglas testified that after becoming involved in the matter, he responded to the Union's request on September 22, 1997. At that time the Union indicated it wanted FMLA form completed by Crisp's physician. After a search was made, Douglas informed the Union verbally in mid-October that no such form existed. He put this negative information in writing to the Union in December.

The Crisp information request was handled in a timely manner once Douglas became involved. Because the Union sent the initial request to the wrong address, the fact there is no proof that Dougher ever got it, the Union's act of sending the form to her when it was dealing daily with Douglas on similar requests, I am not finding fault with the Respondent for the time from June 26, 1997 until Douglas was made aware of the request in September, 1997. Accordingly, I do not find that the Respondent violated the Act with respect to this request.

11. The Barbara Kreigbaum FMLA Request²³

²² This request is encompassed in Complaint paragraph VIII(I).

By letter dated July 17, 1997, addressed to Marshen, Kluczynski requested information in order to pursue a grievance on behalf of unit member Barbara Kreigbaum who had been denied FMLA leave. Approximately two weeks later, Kluczynski called Marshen to remind him of the unfilled request. Nothing happened thereafter until Douglas was made aware of the situation on October 1, 1997. He then made a timely response to the request. The information being sought was provided to the Union in late October. At that time, the Union asked if certain other information was in the Respondent's files. Douglas searched for the information and discovered it did not exist. He informed the Union of this fact verbally in November, and at the Union's request, confirmed it in writing in December.

This matter is almost identical to the Shawn Moore request, and I find that Respondent has violated the Act for the same reasons I gave with respect to the Moore request.

12. The Gail Seminaor Information Request²⁴

By letter dated June 26, 1997, addressed to Dougher, Young requested medical and attendance records in order to pursue a grievance on behalf of unit member Gail Seminaor who had been stepped under the attendance control program and denied FMLA leave. As was the case with Crisp, this letter was sent to the wrong address and it is uncertain that it ever reached her. Young testified that she called Dougher about this request, but on cross examination could not remember any specific discussions with her. As was the case with Crisp, the Seminaor request was not mentioned to Douglas though Young was in contact with him regularly during this time about other, similar request. Douglas did become aware of the request in early October and on October 16, sent the Union a response to the request. The Union then requested the Respondent verify that there was no additional material responsive to the request in its files. Douglas investigated, found nothing more and informed the Union of this negative fact in November verbally, and at the Union's request, in writing in December.

I do not find that the Respondent violated the Act for the same reasons I did not find a violation with respect to the Adrian Crisp request.

13. The Joseph Stamatakis Requests²⁵

On May 2, 1997, Stangle prepared a written request for absence records and FMLA information in order to file a grievance on behalf of unit member Joseph Stamatakis. She gave this request on May 2 to Slaver, who was the second level manager at her office. She asked Slaver about the request later but received none of the information requested. At some point between May 2 and July 31, 1997, Kim Young took over the representation of Stamatakis. By letters dated July 31, and August 12, addressed to Harriet Vogel, RN-Absence Benefits Center, Young requested certain medical reports in order to pursue a second grievance on behalf of Stamatakis who had been denied duty modifications which would have allowed him to work following an injury.²⁶ There was no reason advanced why the Union did not give this request to Douglas, who as noted above, was at the time working on a number of other such requests. In any event, Douglas became aware of the request in October. Douglas provided the information

²³ This request is encompassed in Complaint paragraph VIII(m).

²⁴ This request is encompassed in Complaint paragraph VIII(n).

²⁵ This request is encompassed in Complaint paragraph VIII(o) and (p).

²⁶ At some point in August, the Union was advised that Respondent no longer considered Stamatakis to be an employee and was not returning him to work.

requested in December.

5 Given the situation at the ABC in the fall of 1997, I believe that Douglas responded to the Stamatakis requests in a time frame that was not unreasonable. However, as was the case with the handling by Marshen of the requests of Kreigbaum and Moore, there is no reason given for the failure of Slaver to address Stangle's May 2 request. There is also no adequate reason given for the ABC not responding to the request earlier, or involving Douglas at an earlier time. I find the delay incurred by Respondent in responding to the request prior to Douglas's involvement to be unreasonable. I find that Respondent did not handle the Stamatakis request
10 in a reasonably timely manner and thus violated Section 8(a)(1) and (5) of the Act.

Conclusions of Law

- 15 1. Respondent New York Telephone Company d/b/a Bell Atlantic – New York (formerly Nynex Corp.) is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
- 20 2. Telephone Traffic Union Upstate/Communication Workers of America, Local 1112, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.
- 25 3. Respondent engaged in conduct in violation of Section 8(a)(1) and (5) of the Act by:
- a. Failing and refusing to supply in a reasonable time information requested by the Union relative to denial of utilization of the Family Medical Leave Act to its employees Judith Poppenberg and Lisa Bell.
 - b. Failing and refusing to supply in a reasonable time information relating the Upgrade and Transfer Program for unit employees.
 - 30 c. Failing and refusing to supply in a reasonable time information relating to grievances filed by the Union on behalf of unit members, Barbara Kreigbaum, Shawn Moore, and Joseph Stamatakis.
- 4, Respondent did not violate the Act in any other manner alleged in the Complaint.
- 35 5. Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

40 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.

45 To help insure that there will not be future reoccurrence of the unreasonable times Respondent has taken to respond to the Union's information requests, it should be Ordered to establish internal procedures to ensure prompt compliance with appropriate information requests.²⁷

²⁷ Respondent produced at hearing a written procedure for handling future requests. Either this procedure or one similar to it would greatly assist both the Respondent and the Union in handling future information requests.

On these findings of fact and conclusions of law and on the entire record, I issue the

following recommended²⁸

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ORDER

The Respondent, New York Telephone Company d/b/a Bell Atlantic – New York (Formerly Nynex Corp.), its officers, agents, successors, and assigns, shall

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1. Cease and desist from:

a. Failing and refusing to respond to appropriate Union requests for information requests within a reasonable time.

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

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

a. Establish internal procedures to ensure prompt compliance with appropriate information requests filed by the Union.

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b. Within 14 days after service by the Region, post at its facilities in New York State where are stationed any employees who are members of the bargaining unit represented by Local 1112, Telephone Traffic Union Upstate/Communication Workers of America, AFL-CIO, copies of the attached notice marked "Appendix."²⁹ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon 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 Respondent at any time since February 5, 1996.

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²⁸ 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.

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²⁹ If this Order is enforced by a Judgment of the 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."

- 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.

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Dated, Washington, D.C.

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Wallace H. Nations
Administrative Law Judge

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