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Labor Law - Collective Bargaining - Duty of Employer to Allow Union Time Study

Paul A. Heinen S.Ed.
University of Michigan Law School

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LABOR LAW—COLLECTIVE BARGAINING—DUTY OF EMPLOYER TO ALLOW UNION TIME STUDY—A dispute arose between the employer and the union as to whether certain duties performed by an employee should be classified as “special assignments” as defined in the labor contract. If these duties were “special assignments” the employee was entitled to a higher job classification. Before arrangements could be made for the third step of the grievance procedure the union asked for permission to enter the plant and analyze the job. Permission was denied by the management and the union filed a charge of unlawful refusal to bargain. The trial examiner found that by refusing the union’s request the employer had violated sections 8 (a) (1) and 8 (a) (5) of the amended National Labor Relations Act.¹ On consideration by the Board, *held*, since there was no evidence of any dispute as to the duties performed by the employee but only as to the classification of these duties, the union had no right to enter the plant and make a time study. *Westinghouse Electric Corp.*, 113 N.L.R.B. No. 105, 36 L.R.R.M. 1416 (1955).

The Board has consistently held that there are certain types of information which the employer must furnish to the union.² Thus, if any information possessed by the employer is relevant to collective bargaining³ or would aid the union in policing the labor contract,⁴ a refusal to make it known to the union is a violation of section 8 (a) (5). It is also agreed that an employer violates section 8 (a) (1) if he denies union officials access to company property when the refusal unreasonably impedes the free ex-

¹ Labor-Management Relations Act, 1947, 61 Stat. L. 140, 141, 29 U.S.C. (1952) §158 (a) (1) (5).

² Among the cases in which the NLRB has required employers to furnish information to the union are: *Electric Auto-Lite Co.*, 89 N.L.R.B. 1192 (1950) (merit ratings); *Montgomery Ward and Co.*, 90 N.L.R.B. 1244 (1950) (merit ratings); *Stilley Plywood Co.*, 94 N.L.R.B. 932 (1951) (job classifications and rates).

³ *Aluminum Ore Co. v. NLRB*, (7th Cir. 1942) 131 F. (2d) 485; *NLRB v. Leland-Gifford Co.*, (1st Cir. 1952) 200 F. (2d) 620.

⁴ *Hastings and Sons Publishing Co.*, 102 N.L.R.B. 708 (1953).

ercise of the rights guaranteed employees by the act.⁵ There is a substantial difference in the burden of proof involved in the two cases. If the union seeks wage information, it need only show the relevance⁶ of that information, but if it seeks access it must show unreasonable employer interference with the free exercise of employee rights.⁷ Two of the majority members considered the principal case a right-of-access problem while the two dissenters felt that the union's demand should have been treated as a request for information. Although Member Rodgers considered the case more closely analogous to the wage information cases than to the right-of-access cases, he felt that since there was no evidence of a dispute as to the specific duties the employee performed, there was no reason to allow union personnel to enter the plant and make their own time study.⁸ Since the dispute concerned the job classification which the collective bargaining contract gave the employee, it is obvious that information concerning his duties was relevant to the dispute. It is not so obvious why the union should have the right to come onto the company's property and make a time study of the job without showing that the information in their possession was erroneous or incomplete and, if this were the case, without requesting the employer to provide a more detailed description of the employee's duties.⁹ The dissenting view would give the union this right at any time and under any circumstances, unless the employer could show that the resulting disruption in production and discipline would make the union request unreasonable. Requiring the employer to make such a showing before he could refuse to let union officials on his property seems unjustifiable. Traditionally, the owners of private property have had the power to exclude anyone they wished from their property, including union officers. Under its established national labor policy, Congress did not attempt to eliminate the rights of the property

⁵ Thus, access was allowed to company property in *W. T. Carter and Brother*, 90 N.L.R.B. 2020 (1950) (company-owned towns); *Weyerhaeuser Timber Co.*, 31 N.L.R.B. 258 (1941) (lumber camps); *American-West African Lines*, 21 N.L.R.B. 691 (1940) (ships).

⁶ In *Hearst Corp.*, 113 N.L.R.B. No. 130, 36 L.R.R.M. 1454 (1955), the Board held that a union's right to receive relevant information can be waived either expressly or impliedly by the contract and in *Oregon Coast Operations Assn.*, 113 N.L.R.B. No. 127, 36 L.R.R.M. 1448 (1955), the Board used the term "basic information" and implied that there was information which, though relevant, was not basic and that the union had no statutory right to other than basic information. The type of information listed in the cases cited in note 2 *supra* and the type desired in the principal case would qualify as basic information.

⁷ Although the Board has never expressly stated that it was necessary to prove unreasonable interference before access to company property will be allowed, it is notable that in those cases where access to company property has been allowed the Board did find unreasonable interference with employee rights. See the cases cited in note 5 *supra*.

⁸ During the processing of the grievance there had been no controversy as to the type of duties performed by the employee but only as to the classification which these duties warranted.

⁹ The dissent felt that the mere fact that the union wanted to conduct a time study was sufficient evidence that there was a dispute as to the duties performed by the employee even though there was no other evidence of such a dispute.

owner but only to curtail the employer's property rights when they conflicted with the declared rights of employees. It follows that before the Board should require the employer to give up a traditional property right, the employee must show that this is necessary in order to safeguard one of his declared rights. This is the gist of the Board's decision in the principal case. There is no denial of necessary information to the union, nor is the union required to use unreasonable and expensive methods of acquiring the information.¹⁰ The Board has said only that when they feel the union already possesses the necessary information, the union has no basis for claiming a right to come on the company premises to secure this information in a different manner.¹¹

Paul A. Heinen, S.Ed.

¹⁰ The NLRB has previously held that an employer's refusal to furnish information regarding wages is not excused by the fact that the union could conceivably acquire this information by the cumbersome and time-consuming process of consulting individually with all the employees. *B. F. Goodrich Co.*, 89 N.L.R.B. 1151 (1950).

¹¹ A prior Board decision, *Otis Elevator Co.*, 102 N.L.R.B. 770 (1953), held that an employer had to allow a separate time study by the union, but in view of the subsequent circuit court ruling in *NLRB v. Otis Elevator Co.*, (2d Cir. 1953) 208 F. (2d) 176, which enforced that portion of the Board's order requiring the employer to furnish the union with the results of his time study but refused to enforce the portion requiring the employer to allow the union to make its own time study, the Board was justified in not considering itself bound by its prior decision.