United Technologies Corporation *and* Industrial Aircraft Lodge 1746, Aeronautical Industrial District No. 91, International Association of Machinists and Aerospace Workers, AFL-CIO. Cases 39-CA-789 and 39-CA-956

28 February 1985

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 30 March 1984 Administrative Law Judge Harold B. Lawrence issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] only to the extent consistent with this Decision and Order.

The consolidated complaint alleges, inter alia, that the Respondent violated Section 8(a)(1) and (5) by refusing to supply certain requested information to the Union, Section 8(a)(1) and (3) by twice suspending an employee, and Section 8(a)(1) by instructing its employees to remove buttons protesting an employee suspension. In its answer, the Respondent raised as an affirmative defense that the complaint allegations should be deferred to the existing contractual grievance-arbitration procedures. Deferral was not directed,[2] and the underlying hearing before the judge was held.

Before the judge's decision issued, the Board extended its deferral policies in *United Technologies Corp.*, 268 NLRB 557 (1984). Shortly after issuance of *United Technologies*, the Respondent forwarded a letter to the judge, requesting application of that Board decision to the instant case. Cognizant of this recent change in prevailing Board policies on deferral, the judge requested that the parties brief the effect of this policy change on the deferral issues raised by the instant case. In response to the judge's request, the Respondent argued for complete deferral of the case, while the General Counsel urged limiting deferral to only the 8(a)(1) and (3) allegations involving, inter alia, the protest buttons and the employee suspensions.

As set forth in his decision, the judge determined that the Respondent had abandoned its deferral defense by not asserting this defense in oral argument at trial and in its first posthearing brief to the judge. The judge also indicated that, had the Respondent not waived this defense, he still would not consider deferral appropriate for any portion of this case. The judge then passed on all allegations of the complaint.

Contrary to the judge, we find that the Respondent properly raised its deferral defense at an appropriate stage in the case and preserved its position for deferral throughout the proceedings. Unlike the employers in *Cutten Supermarket*,[3] *Conval-Ohio, Inc.*,[4] and *Asbestos Workers Local 22 (Rosendahl, Inc.)*,[5] who unsuccessfully requested deferral for the first time in a posthearing brief to the judge or with the exceptions to the Board, the Respondent affirmatively pled deferral in its answer and renewed its arguments for deferral in its supplemental brief to the judge. We also observe that the record itself contains evidence sufficient to determine the appropriateness of deferral in this case and that the Respondent's pursuit of its defense to the judge may have been tempered by the Board's then prevailing deferral policies. We further note that the General Counsel does not oppose deferral on *all* issues. The General Counsel only opposes deferral of the 8(a)(5) allegations.

With regard to the particular allegations of unfair labor practices in this case, we find that the judge misapplied the principles of *United Technologies* and erroneously refused to defer the 8(a)(1) and (3) allegations involving the two employee suspensions and the protest buttons. Prior to *United Technologies*, the Board developed a kind of checklist of unfair labor practices for possible deferral if certain other criteria also were satisfied. As seen by the chronology contained in *United Technologies*, the kind of unfair labor practices qualifying as candidates for deferral has fluctuated over the years since *Collyer Insulated Wire*, 192 NLRB 837 (1971). In *National Radio*, 198 NLRB 527 (1972), the Board extended its deferral policy to cases involving 8(a)(3) allegations. But, in *General American Transportation*, 228 NLRB 808 (1977), the Board decided to decline to defer cases alleging violations of Section 8(a)(1) and (3). Now, with *United Technologies*, which overruled *General American Transportation*, allegations involving Section 8(a)(1) and

[1] In the absence of exceptions, we adopt the judge's findings that the Respondent's treatment of employee Ruby Graham did not constitute harassment violative of Sec 8(a)(1) and (3) of the Act In doing so, we do not pass on whether these allegations should have been deferred to the parties' contractual grievance procedure in existence Our affirmance of these findings does not imply that we agree with the judge's analysis of the deferral issue on this matter

[2] The employee suspension allegations admittedly were deferred initially Later, deferral was rescinded to include these allegations in the same complaint, pleading the protest buttons allegation as an unfair labor practice

[3] 220 NLRB 507, 509 (1975)

[4] 202 NLRB 85 (1973)

[5] 212 NLRB 913 (1974)

(3) again are possible candidates for deferral if the other established deferral criteria are met.

In the present case, the 8(a)(1) and (3) allegations concerning the employee suspensions and the protest buttons satisfactorily meet the established deferral criteria and are eminently well suited for deferral. We point out that the Respondent and the Union were parties to a collective-bargaining agreement which contained provisions identical to those contractual provisions drawn into question in *United Technologies.*[6] In this regard, we note that the contract between the Respondent and the Union at article VII[7] establishes the same multistep grievance procedure with final and binding arbitration as found in the earlier reported decision. Article IV,[8] like that found in the reported decision, provides for the resolution of disputes involving alleged discrimination under the Act. The Board majority in *United Technologies* interpreted a contract provision identical to this article IV as encompassing a threat and coercion allegedly violative of Section 8(a)(1).[9]

The 8(a)(1) and (3) allegations pertinent here concern two separate suspensions of Union Steward Lucille St. Marie, who was purportedly disciplined for conduct arising out of the performance of her steward functions.[10] The remaining 8(a)(1) allegation involves instructions from supervisors to various employees to remove the buttons they wore in protest of St. Marie's second suspension, referred to above. We find that these allegations are encompassed by the discrimination language of article IV of the parties' contract and, thus, amenable to the applicable grievance mechanisms. Moreover, the Respondent has expressed its willingness to arbitrate these matters and impliedly has waived any timeliness provisions of the applicable grievance-arbitration procedures. Accordingly, consistent with *United Technologies*, we shall order that these 8(a)(1) and (3) allegations be deferred to the parties' grievance-arbitration procedure and that the related portions of the consolidated complaint be dismissed. As in *United Technologies*, we shall retain jurisdiction for the purpose of entertaining a motion for further consideration upon a showing that either (1) the disputes have not been resolved in the grievance procedure or submitted to arbitration, or (2) the grievance or arbitration procedures have not been fair and regular or have reached a result which is repugnant to the Act.

We, however, conclude that the 8(a)(5) allegations are not properly deferrable. *United Technologies Corp.*, supra, in broadening the scope of deferral, did not vary the law concerning 8(a)(5) allegations involving an employer's refusal to furnish information requested by an exclusive collective-bargaining representative. See *General Dynamics Corp.*, 268 NLRB 1432 (1984), and *General Dynamics Corp.*, 270 NLRB 839 (1984). The Board recently indicated that it is unwilling to institute a "two-tiered arbitration process" whereby a request for information relevant to a grievance and then the underlying grievance itself is submitted to the parties' grievance-arbitration mechanisms. *General Dynamics Corp.*, 268 NLRB at fn. 2. We observe that the Union's separate information requests were for the purpose of pursuing pending or future employee grievances. Thus, under current Board principles, the 8(a)(5) allegations involving the refusal to supply requested information are not appropriately deferrable.

We next turn to the judge's findings relating to the 8(a)(5) allegations. The Union requested certain information from the Respondent which the Union claimed was relevant to the processing of grievances filed separately on behalf of unit employees Deborah Belesano, Joseph Cotnoir, Ruby Graham, and Michael Lovely. The Respondent refused to supply the requested information. The judge found violations relating to the Respondent's refusal to comply with the Belesano, Cotnoir, and Graham requests. He found no violation relating to the Lovely request. As more fully explained below, we affirm only his findings relating to the Belesano and Cotnoir requests. We find no violation regarding the Graham request, and we shall remand the Lovely request for further findings and conclusions of law by the judge in light of the rationale discussed below.

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[6] *This reported decision involves operations of the Respondent not involved herein*

[7] Art VII, sec 1, states in pertinent part

In the event that a difference arises between the company, the union, or any employee concerning the interpretation, application or compliance with the provisions of this agreement, an earnest effort will be made to resolve such difference in accordance with the following procedure which must be followed

Art VII, sec 3(a), states in relevant part

[T]he following grievances, if not settled at Written Step 4 of Section 1 of this Article, shall be submitted to arbitration upon the request of either party hereto filed in accordance with the provisions of this Article 1 A grievance alleging violation of Article IV

Art VII, sec 3(d), states

[T]he decision of the arbitrator shall be supported by substantial evidence on the record as a whole and shall be final and conclusive and binding upon all employees, the company and the union

[8] Art IV states in pertinent part

The company and the union recognize that employees covered by this agreement may not be discriminated against in violation of the provisions of the Labor Management Relations Act, 1947, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, and the Vocational Rehabilitation Act of 1973

[9] Accord *Postal Service*, 270 NLRB 979 (1984)

[10] The first suspension of Union Steward St Marie resulted from her comments during the processing of an employee grievance Her second suspension arose from her questioning a foreman about a job assignment made to another employee

It is well established that an employer has an obligation to supply requested information which is reasonably necessary to the exclusive collective-bargaining representative's responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). Included in such responsibilities is the processing and evaluating of employee grievances. The Board has held that an employer is obligated to furnish information requested for the purpose of handling grievances. *United-Carr Tennessee*, 202 NLRB 729 (1973); *Safeway Stores*, 236 NLRB 1126 (1978). An actual grievance need not be pending at the time of the information request, nor must the information requested clearly dispose of the grievance. *Ohio Power Co.*, 216 NLRB 987, 991 (1975); *Los Angeles Chapter, Sheet Metal Contractors*, 246 NLRB 886, 888 (1979). The standard for the union's entitlement to the information requested is a liberal, discovery-type test as to whether the information bears upon 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. *Los Angeles Chapter, Sheet Metal Contractors*, supra.

In agreement with the judge, we find that the *Belesano* and *Cotnoir* information requests were reasonably necessary to the Union's collective-bargaining functions, i.e., processing Belesano's and Cotnoir's grievances. Employee Belesano had filed two grievances. One protested the Respondent's promotional and transfer policies as being discriminatorily applied and the other alleged misrepresentations by the Respondent in connection with the first grievance. The Union requested a copy of an employee record to ascertain whether a promotion had been offered in disregard of contractual promotional criteria. Employee Cotnoir had filed a grievance disputing the accuracy of his recent suggestion award. The Union requested various production records to ascertain the accuracy of Cotnoir's award.

For the Belesano and Cotnoir requests, the Respondent has not disputed their relevance to the pending grievances in question.[11] Rather, the Respondent has defended its refusals in these matters on the basis that the grievances of Belesano and Cotnoir were not arbitrable under the applicable contract, citing *Otis Elevator Co.*, 269 NLRB 891 (1984), in support.

The Respondent's arbitrability defense is without merit, and its reliance on *Otis Elevator* is misplaced.[12] The Board consistently has rejected similar arbitrability arguments. *United-Carr Tennessee*, supra; *Worcester Polytechnic Institute*, 213 NLRB 306 (1974); *Safeway Stores*, supra; *PPG Industries*, 255 NLRB 296 (1981). The Board's reasoning in this area is best expressed as follows:

> It is the teaching of *United-Carr Tennessee* and *Worcester Polytechnic* that, before a union is put to the effort of arbitrating even 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. [*Safeway Stores*, 236 NLRB 1126 at fn. 1.]

Requiring the information to be supplied when the employer contends the underlying grievance is not arbitrable does not place the employer at a disadvantage. The employer need not recede from its contract interpretation nor is it bound to any particular construction of the contractual provisions at issue when it must furnish the requested information for a grievance which may not be arbitrable. *United-Carr Tennessee*, supra at 731. Accordingly, the Union was entitled to the information it sought concerning the Belesano and Cotnoir grievances.

In disagreement with the judge, we find that the *Graham* information request was not related to any of the four grievances concerning Graham pending when the request was submitted. On 7 July 1981 employee Graham filed four separate grievances claiming various kinds of mistreatment from Supervisor Robbins. These grievances addressed very specific incidents of harassment by Robbins. The Union requested several times, the last occasion being in August 1981, a letter written by Graham's immediate supervisor, Larry Majors, to his superior, Supervisor Robbins. The letter described Majors' assessment of Graham's attitude and performance and Majors' version of an incident which gave rise to a disciplinary warning issued to Graham by Robbins 6 July 1981.[13] It is undisputed that none of the four pending grievances of Graham contained any reference to her 6 July 1981 disciplinary warning. It is further undisputed that

[11] Because the Union's requests for information concerning the Belesano and Cotnoir grievances were submitted at the second step of the grievance procedure, the Union's right to this information was not contractually waived unlike the information concerning the Graham grievance discussed later

[12] In *Otis Elevator*, the Board (Member Dennis concurring) recently held that an employer lawfully refused to bargain with a union over its decision to consolidate and transfer its research and development functions from one facility to another In view of this holding, the Board concluded that the employer was not obligated to provide certain information requested by the union for the purpose of the union's bargaining over the employer's relocation decision With the need for the information gone, the employer was not required to furnish the data

[13] Majors' letter was submitted by the Respondent as a record exhibit, provided to the parties at the hearing

the actual grievance on Graham's 6 July warning was filed 10 December 1981, 5 months after the warning was issued to her. As found by the judge, the Union's stated purpose for seeking access to the Majors' letter was to prepare for the filing of a future grievance relating to the warning itself and not because it had some bearing on any of Graham's pending grievances.[14] In these circumstances, we are unable to see the relevance of Majors' letter to the pending grievances.

The judge correctly observed that generally a union has a right to information in connection with the preparation of a future grievance and that Majors' letter was arguably relevant to Graham's grievance filed 10 December 1981. However, the judge failed to consider whether the Union's right to the information had previously been waived by the Union. Upon our examination of the record, we find the Union's right to this letter at this step of the grievance procedure was waived.

A union may contractually relinquish a statutory bargaining right if the relinquishment is expressed in clear and unmistakable terms. *Timken Roller Bearing Co.*, 138 NLRB 15, 16 (1962). In *C & P Telephone Co. v. NLRB*, 687 F.2d 633, 636 (2d Cir. 1982), enfg. 259 NLRB 225 (1981), the court stated:

> [N]ational labor policy disfavors waivers of statutory rights by unions and thus a union's intention to waive a right must be clear before a claim of waiver can succeed. Waivers can occur in any of three ways: by express provision in the collective bargaining agreement, by the conduct of the parties (including past practices, bargaining history, and action or inaction), or by a combination of the two. The language of a collective bargaining agreement will effectuate a waiver only if it is "clear and unmistakable" in waiving the statutory right. [Citation omitted.]

The mere existence of a grievance procedure is not sufficient to constitute a waiver of a union's statutory right to request information from the employer. *Timken Roller Bearing Co.*, supra; *Hekman Furniture Co*, 101 NLRB 631, 632 (1952).

With these principles in mind, we have examined article VII, section 1, written step 2[15] of the collective-bargaining agreement between the Respondent and the Union and Letter X,[16] which is a letter of understanding supplementing their agreement We construe this provision and document as constituting a clear and unmistakable waiver on the part of the Union for information in anticipation of filing an employee grievance.

Article VII, section 1, written step 2 provides for the information to be submitted to the Union which the Respondent considers pertinent and necessary to resolution of the grievance and other information which the Union requests for the same purpose. Letter X embodies an agreement whereby in exchange for certain records and documents at certain specified times without prior advance requests submitted, the Union will forgo other requests for information from the Respondent. In particular, paragraph 3 of Letter X shows that the Union relinquished a right to all information except: the items enumerated in Letter X itself in paragraphs 1 and 2; the items referred to by the contract itself (e.g., art. VII, sec. 1, written step 2); and those items concerning pensions or insurance necessary to bargaining for future collective-bargaining agreements.

The request for Majors' letter does not fit any exceptions to the Union's waiver of information. The request for Majors' letter was for information in anticipation of filing a later grievance concerning Graham's warning. Written communications between supervisors are not covered by the items enumerated in Letter X, paragraphs 1 and 2. The subject matter of Majors' letter does not concern pensions or insurance necessary for bargaining purposes. In light of the above, we find that the Union waived its right to the Graham information.

We also must reverse the judge's findings with respect to the *Lovely* information request. The Union filed a grievance protesting the suspension

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[14] No exceptions to this finding were filed

[15] Art VII, sec 1, written step 2 provides, in pertinent part

> The company will produce at this step of the grievance procedure at its own cost the records it considers pertinent and necessary to the resolution of the grievance If the senior steward considers other relevant records to be necessary to the resolution of the grievance, the company will produce such additional records, without cost, if it does not impose an unreasonable burden on the company to obtain such records Where the senior steward's request for additional records does impose an unreasonable burden on the company, the union agrees to reimburse the company for the actual costs incurred by the company in locating and procuring such additional records If the union wishes to be provided with photocopies of records so produced, it will pay to the company the actual costs of reproduction

[16] Letter X is an agreement between the Union and the Respondent effective 28 November 1977 In par (1) of the letter, the Respondent has agreed to furnish the Union with the name, clock numbers, and home addresses of unit employees in January of each year and the home addresses of nonunit employees who are transferred to unit positions on a monthly basis In par (2) of the letter, the Respondent has agreed to furnish monthly copies of the following records "employee service," "put-on," "change of status," "termination," "employee performance," "performance appraisals," and "physical demands " Par (3) provides

> (3) In consideration of the above, it is understood and agreed that, except as otherwise provided for in the aforesaid agreement, the Union shall not request nor receive during the life of that said agreement any other information, data, or listings related to the wages, hours or working conditions of employees covered by this agreement This waiver, however, shall not affect any right the Union may have with respect to information concerning pensions or insurance necessary to bargaining for agreements in the future

and subsequent discharge of employee Lovely. The Union requested various records, including supervisor audit reports, audit departmental procedures, and investigation reports. The Respondent has refused to supply the requested data. One of its reasons for its refusal is that the Respondent claims that these materials do not exist.

At the hearing the parties disputed the existence of these materials, and conflicting evidence in support of their respective positions was submitted. Without ruling as to whether any of these materials actually existed, the judge found that none had to be produced in any event because they did not pertain to the issues of the Lovely grievances which had been narrowed by the Union's defense in behalf of Lovely.

The judge observed that the materials requested by the Union pertained to Lovely's guilt. The Union's position regarding Lovely was that improper supervision had fostered his alleged misconduct and the need for severe punishment. The judge found that, in view of the Union's position, Lovely's guilt was not at issue. The judge then reasoned that, because the request did not relate to an issue in the grievance procedure, the Respondent could refuse to supply the data otherwise relevant. According to the judge, the Union's defenses to be argued for these grievances narrowed the scope of its entitlement to this information.

We find the judge erred and misconstrued the applicable Board standards on relevancy. As previously discussed herein, the test for relevancy is whether the information assists in evaluating the merits of the grievance and the propriety of pursuing the grievance to arbitration. The Union's defenses on behalf of the grievant do not constitute a waiver of the right to information. Regardless of its defenses, the Union is still permitted to ascertain if the disciplinary action complied with the applicable contractual standards. Information is not rendered irrelevant by the particular defenses pursued at the grievance-arbitration proceedings. *Conrock Co.*, 263 NLRB 1293 (1982).

Accordingly, we shall remand to the judge that portion of the case regarding the Lovely information request for findings of fact pertaining to the existence of the information requested, making credibility resolutions where necessary, and for conclusions of law in light of the Board principles reiterated herein, addressing any applicable defenses which timely and properly were raised by the Respondent.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusions of Law 3 and 4 of the judge's decision.

"3 By refusing to furnish an employee record section of Robert Jones' personnel record in connection with the grievances of Deborah Belesano and certain production records, time studies, and other data requested in connection with the grievance of Joseph Cotnoir, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

"4. The General Counsel has failed to prove that the Respondent unlawfully refused to furnish the requested Supervisor Majors' letter in connection with the grievances of Ruby Graham."

THE REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (5) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent is directed forthwith to turn over to the Union the information requested in connection with the grievances of Deborah Belesano and Joseph Cotnoir.

ORDER

The National Labor Relations Board orders that the Respondent, United Technologies Corporation, Hartford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Industrial Aircraft Lodge 1746, Aeronautical Industrial District No. 91, International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive bargaining representative of the employees in the following bargaining unit by refusing to furnish it with information that it requests which is relevant and reasonably necessary to the processing of employee grievances:

> All production and maintenance employees of the United Technologies Corporation, Pratt & Whitney Aircraft Group (Commercial Products Division and Manufacturing Division) at their facilities in and around East Hartford, Connecticut (including the DE Lab, the Willgoos Lab, and facilities located at Manchester, Rocky Hill, and Bradley Field), and Power Systems Division at its facility located at South Windsor, Connecticut, including inspectors, crib attendants, material handlers, factory clerks and working leaders, but excluding timekeepers, engineering and technical employees, laboratory technicians, foremen's clerks, salaried office and clerical employees,

medical department employees, first-aid employees, plant protection employees, executives, plant superintendents, division superintendents, general foremen, foremen, assistant foremen, group supervisors, watch engineers, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

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

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

(a) Furnish, in timely fashion, to the Union, the following information: the production records, time studies, and other data requested by the Union in connection with the grievance of Joseph Cotnoir and the "Employee Remarks" section of the personnel record of employee Robert Jones requested by the Union in connection with the grievances of Deborah Belesano.

(b) Post at its facility in Hartford, Connecticut, copies of the attached notice marked "Appendix."[17] Copies of the notice, on forms provided by the Officer in Charge of Subregion 39, 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.

(c) Notify the Officer in Charge in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

The complaint is dismissed with respect to the allegations pertaining to the two suspensions of Lucille St. Marie and the instructions to employees to remove buttons protesting the second suspension of Lucille St. Marie.

Jurisdiction of these allegations regarding St. Marie's suspensions and the protest buttons is hereby retained for the limited purpose of entertaining an appropriate and timely motion for further consideration on a proper showing that either (a) the dispute has not, with reasonable promptness after the issuance of the Decision and Order, either been resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration, or (b) the grievance or arbitration procedures have not been fair and regular or have reached a result which is repugnant to the Act.

IT IS ALSO ORDERED that the allegations pertaining to the Union's request for information in connection with the grievances of Michael Lovely be remanded to Administrative Law Judge Harold B. Lawrence for the limited purpose of making credibility determinations, findings of fact, and conclusions of law in accordance with this Decision and Order.

IT IS FURTHER ORDERED that the judge shall prepare and serve on the parties a supplemental decision setting forth the resolution of such credibility issues, findings of fact, and conclusions of law and recommended order with respect thereto. Copies of such supplemental decision shall be served on all parties, after which the provision of Section 102.46 of the Board's Rules and Regulations shall be applied.

In all other requests the complaint is dismissed.

APPENDIX

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

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

WE WILL NOT refuse to bargain with Industrial Aircraft Lodge 1746, Aeronautical Industrial District No. 91, International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive bargaining representative of the employees in the following bargaining unit by refusing to furnish it with information that it requests which is relevant and reasonably necessary for the processing of employee grievances:

> All production and maintenance employees of the United Technologies Corporation, Pratt & Whitney Aircraft Group (Commercial Products Division and Manufacturing Division) at their facilities in and around East Hartford, Connecticut (including the DE Lab, the Willgoos Lab, and facilities located at Manchester, Rocky Hill, and Bradley Field), and Power Systems Division at its facility located at South Windsor, Connecticut, including inspectors, crib attendants, material handlers, factory clerks and working leaders, but excluding timekeepers, engineering and technical em-

[17] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ployees, laboratory technicians, foremen's clerks, salaried office and clerical employees, medical department employees, first-aid employees, plant protection employees, executives, plant superintendents, division superintendents, general foremen, foremen, assistant foremen, group supervisors, watch engineers, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

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

WE WILL furnish, in timely fashion, to the Union the production records, time studies, and other data requested by the Union in connection with the grievance of Joseph Cotnoir and the "Employee Remarks" section of the personnel record of employee Robert Jones requested by the Union in connection with the grievances of Deborah Belesano.

UNITED TECHNOLOGIES CORPORATION

DECISION

STATEMENT OF THE CASE

HAROLD B. LAWRENCE, Administrative Law Judge. This case was tried before me on May 9, 10, 11, and 12, 1983, at Hartford, Connecticut, on an amended consolidated complaint issued April 15, 1983. The charges were filed on August 11 and December 15, 1981, by Industrial Aircraft Lodge 1746, Aeronautical Industrial District No. 91, International Association of Machinists and Aerospace Workers, AFL–CIO (the Union). The Respondent, United Technologies Corporation, at its Pratt and Whitney Plant in East Hartford, Connecticut, is alleged to have violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act).

Section 8(a)(1) and (5) of the Act are alleged to have been violated by Respondent's treatment of two shop stewards, Lucille St. Marie and Ruby Graham. It is contended that St. Marie was discriminatorily suspended on two separate occasions, on May 4 and November 30, 1981.[1] With respect to Graham, it is contended that Respondent's course of conduct toward her since June 1 amounted to harassment: the attribution to her of certain unacceptable work, the misscheduling of first-step grievance proceedings, the issuance of an adverse evaluation of her work, the imposition of a requirement that she sign for each separate document when requesting employee personnel files in her capacity as union shop steward, and the issuance of a warning to her. This is claimed to constitute harassment inflicted upon her because of her union activities and in order to discourage employees from engaging in protected activities

Section 8(a)(1) of the Act is alleged to have been violated by instruction to employees to remove union buttons. Section 8(a)(1) and (5) is alleged to have been violated by refusal to furnish information and documents requested by the Union in connection with four pending grievances by various employees.

Respondent denied all allegations of wrongdoing and statutory violation and alleged certain affirmative matter in its denials, which are considered in connection with the particular allegations to which they pertain. Respondent also pleaded, as an affirmative defense, citing *Dubo Mfg. Corp.*, 142 NLRB 431 (1963), that "each and every matter" referred to in the amended consolidated complaint involved "disputes concerning the interpretation and application of the collective bargaining agreement between the Company and the Union" and should therefore be referred to resolution by the grievance procedure agreed to by the parties in the collective-bargaining agreement, "which culminates in final and binding arbitration."

Respondent did not press the defense at the hearing, waiving opening and closing statements wherein its merits might have been argued, made no motion and introduced no evidence with respect to it, and did not mention it in Respondent's posthearing brief. Accordingly, the defense is deemed abandoned. It would have been dismissed on the merits in any event.

The resolution of disputes by the parties themselves is to be encouraged under appropriate circumstances,[2] as when a collective-bargaining agreement expressly provides for grievance procedures which culminate in arbitration.[3] The collective-bargaining agreement between Respondent and the Union refers some 29 categories of disputes to arbitration.[4] Nevertheless, the issues relating

[1] All dates are in 1981 except as hereinafter otherwise indicated

[2] *United Technologies Corp*, 268 NLRB 557 (1984), see *Collyer Insulated Wire*, 192 NLRB 837 (1971)

[3] *United Aircraft Corp*, 204 NLRB 879 (1973), enfd 525 F 2d 237 (2d Cir 1975)

[4] Sec 1 of art VII of the collective-bargaining agreement, entitled "Grievance Procedure," provides as follows

> Section 1 In the event that a difference arises between the company, the union or any employee concerning the interpretation, application or compliance with the provisions of this agreement, an earnest effort will be made to resolve such difference in accordance with the following procedure which must be followed

A multistep grievance procedure is then set forth Sec 3(a) of art VII provides,

> The following grievances, if not settled at written Step 4 of Section 1 of this Article, shall be submitted to arbitration upon the request of either party filed in accordance with the provisions of this Article

A list is then set forth of 29 types of disputes Sec 4 provides that the arbitrator's jurisdiction "shall be limited to the specific grievances listed in Subsection (a) of Section 3 " With one exception, these relate to monetary matters easily disposed of by arbitration The solitary exception pertains to disputes arising under art IV of the agreement, providing inter alia, that Respondent and the Union recognize that employees covered by the agreement may not be discriminated against in violation of the provisions of the Labor-Management Relations Act, 1947 as amended, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, and The Vocational Rehabilitation Act of 1973

Continued

to Ruby Graham, Lucille St. Marie, and the button campaign do not primarily relate to the parties' private interests, questions of contractual interpretation and application or policing of the contract. Instead, they involve acts and motivations of Respondent's personnel which, if proved, would affect basic rights of employees under the Act and would evince an intention to evade legal and contractual requirements. The gravamen of the allegations is not misinterpretation or misapplication of contractual terms, but alleged courses of conduct, some of it grossly tortious and in bad faith, calculated to undermine employees' legal rights and circumvent lawful processes [5]

The collective-bargaining agreement expressly provides that disputes arising from Respondent's refusal to furnish information be arbitrated. This provision would normally prevail in the three grievances in which arbitration was not held, even over arguments that mean sending the parties back to the very procedures obstructed by Respondent or that the Union's right to the information which it requested derives from the Act rather than from the agreement.[6] However, Respondent itself does not appear to have requested arbitration and the issues have already been litigated before me While that would not necessarily preclude deferral to arbitration, in the present case it would be wasteful in the extreme because the resolution of the original grievances in which the information was requested would be delayed while arbitrators handled four new proceedings relating to the information request despite the fact that I have already decided the issues.

Accordingly, the affirmative defense having been waived and the matters having been heard and resolved in this forum, where most of them belong, the defense is dismissed.

The parties were afforded full opportunity to be heard; to call, examine, and cross-examine witnesses; and to introduce any relevant evidence Posthearing briefs have been filed by the General Counsel and Respondent.

On the entire record and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

There is no issue as to jurisdiction. The amended consolidated complaint alleges and Respondent admits that Respondent is a Delaware corporation having its main office in Hartford, Connecticut. Its Pratt and Whitney subsidiary operates a facility located in East Hartford where it engages in the manufacture and nonretail sale and distribution of aircraft engines and related parts During the calendar year ending December 31, 1981, Respondent sold and shipped from the East Hartford facility in the course of its business products, goods, and materials valued in excess of $50,000 directly to points outside the State of Connecticut. It is alleged and admitted, and I accordingly find, that Respondent is now and has been at all material times herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is now and has been at all material times herein a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES[7]

A. *Lucille St. Marie*

Respondent admits having suspended Lucille St. Marie on May 4 and November 30, but denies that in doing so it violated the Act.

Lucille St. Marie has worked at the Pratt and Whitney plant in East Hartford since February 20, 1979, and is currently a multimachine operator in department 1423. She was elected a shop steward in September 1979. Her jurisdiction covers all the 1400 groups in the shop. It is her responsibility to file grievances with the Company on behalf of the employees, to police the collective-bargaining agreement, and to organize workers. She is normally involved in the oral step and the first written step of grievance proceedings. The collective-bargaining agreement provides that an "earnest effort" will be made to resolve differences between the Company, the Union or any employee concerning matters within the provisions of the agreement.[8] An employee having a grievance may take it up directly with his foreman or he may initially bring it to the shop steward, who will then take it up orally with the foreman on his behalf. If no accommodation is reached at the oral step, within 5 working days, excluding Saturdays, Sundays, and holidays, after the foreman's disposition, the matter must be reduced to writing on a form provided This is written step 1. The dispositions made at written step 1, 2, and 3 of the grievance procedure are noted on the form and signed by the representatives of the Company and the Union in attendance at these steps. In a written step 1, the foreman must furnish a written answer on the form within 5 working days after presentation of the grievance If the matter is

The provision for furnishing of information requested in connection with written step 2 commits the company to produce at this step of the grievance procedure the records it considers pertinent and necessary to the resolution of the grievance If the senior steward considers other relevant records to be necessary to the resolution of the grievance, the company will produce such additional records

[5] *Joseph T Ryerson & Sons*, 199 NLRB 461 (1972)

[6] *United Carr-Tennessee*, 202 NLRB 729 (1973)

[7] The facts of the case as hereinafter set forth are a narrative composite of the undisputed and credited testimony, admissions in the answers, and data contained in the exhibits

[8] The appropriate bargaining unit is defined as follows

All production and maintenance employees of the United Technologies Corporation, Pratt & Whitney Aircraft Group (Commercial Products Division and Manufacturing Division) at their facilities in and around East Hartford, Connecticut (including the DE Lab, the Willgoes Lab, and facilities located at Manchester, Rocky Hill, and Bradley Field), and Power Systems Division at its facility located at South Windsor, Connecticut, including inspectors, crib attendants, material handlers, factory clerks and working leaders, but excluding timekeepers, engineering and technical employees, laboratory technicians, foremen's clerks, salaried office and clerical employees, medical department employees, first-aid employees, plant protection employees, executives, plant superintendents, division superintendents, general foreman, foremen, assistant foremen, group supervisors, watch engineers, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action

not resolved, it goes to the next regularly scheduled step 2 meeting, at which it is taken up by the senior steward representing the plant area and the shop steward with the superintendent for that plant area and a personnel advisor. These are normally scheduled on a weekly basis A decision must be rendered within 5 working days

The first suspension imposed on St. Marie arose out of her activities as shop steward in connection with the oral step and written steps 1 and 2 of a grievance filed by an employee named Sarah Thomas. The suspension was imposed for use of foul language by St. Marie toward a supervisor in the course of the grievance procedure.

Sarah Thomas was a longtime employee on the first shift who had been working on the burr bench She developed a hip problem and respiratory trouble She suffered from asthma and had been referred to the medical department on a number of occasions. A respirator had been tried unsuccessfully, to see if she could remain at the burr bench. The medical department finally restricted the type of activity in which she was permitted to engage and recommended that she be reassigned. Management proposed to reassign her to vein-bending, a type of quality control check, and in connection with the change asked her to transfer from the first shift to the second shift.

The proposed move was unsatisfactory to Thomas because it involved a reduction from grade 9 to a lower-paying position, conflicted with evening ministerial work in which she and her husband had been engaged for many years, and made it difficult to fulfill her family responsibilities. It had such far-reaching effects on her way of living that she feared she might be compelled to refuse available work.

The oral step of the grievance was handled on April 9, 1981, immediately after John Moriglioni, the general foreman, directed Thomas to report on the second shift. She requested that a steward be called and Lucille St Marie entered the picture. St. Marie told Thomas' immediate foreman, Donald Risi, that it would be a hardship for Thomas to transfer and she inquired as to whether or not another first-shift position was available Risi's response was that there was nothing he could do and so a grievance form was written up, as follows:

> That the company is discriminating against me because of my medical restrictions caused by company working conditions and environment by forcing me to accept work on second shift thereby causing me undue hardship and mental stress.

The remedy requested was "that the company provide me with work on first shift and that this discriminatory practice cease and desist."

The proceedings on the written first step were actually conducted in two parts, at which the persons present were Moriglioni, Risi, St. Marie, and Thomas On the first occasion, St. Marie raised certain pertinent questions which arose from her belief that circumstances permitted Thomas' retention on the first shift. Moriglioni indicated he would look into the prospect for keeping her on that shift and the proceedings were put off to enable him to make the investigation He did not answer any of the questions she had raised. When they met again on April 25, he had no new proposal He listened to St Marie raise the same questions, said that he had discovered nothing with respect to other first-shift employment for Thomas, and remained impassive when St. Marie repeated her questions. He remained equally uncommunicative when Thomas herself made a plea

Moriglioni did not testify at the hearing, but Risi gave an account of what happened from which it appears that St Marie kept repeating the same questions and Moriglioni kept repeating the same answers: that the personnel department had been investigating and was trying to do something about Thomas' situation. Marie wanted to know where they were looking, who was working on it, and who was trying to see that the employee stayed on the first shift. This went on at both of the first step sessions. Risi testified, "Lucille's questions were basically who was trying to do something for her and where were they looking And she got the same answers and she continually repeated her questions And she was being given the same answers." The answers which she was getting, according to Risi, were that supervision was investigating and looking in various areas within the shop to try to find a place for Thomas on the first shift She specifically pointed out to Moriglioni that another employee was retiring from the same job in the first shift in the same work center the following month so that an opening for Thomas existed on the first shift and that they had enough people already working in vein-bending on the second shift, so that Thomas was not actually needed there. According to St. Marie, "I posed those questions to the General Foreman and he just sat there. He didn't say anything and it seemed like some time went by, just a few seconds, but there was silence." When she asked why he did not respond to the point she made, he simply asked for the grievance form. She refused to give it to him. He therefore took a separate sheet of white paper, wrote "grievance examined" and dated it April 25, 1981, at 11 25 a.m

Risi testified that the meaning "was brought to an end" when St. Marie called the general foreman "a fucking incompetent asshole." Risi testified that his disbelief was such that he asked her what she had said and she told him that she had called Moriglioni "a fucking incompetent asshole " Moriglioni became red in the face and ended the meeting when she repeated it the second time

On May 4, 1981, St. Marie was suspended for 5 working days (May 5, 6, 7, 8, and 11, 1981) "for directing vile and abusive language toward general foreman Moriglioni. Any further recurrence of this nature will be cause for more severe disciplinary action."

Without endorsing St. Marie's use of the epithet quoted, I hold that Respondent improperly suspended her. Her language was vile, but uttered at a time when she was clearly engaged in the performance of her duty as shop steward, attempting to obtain answers to specific questions directed toward the problem of Sarah Thomas' reassignment. In pressing her inquiries as to who was working on the situation and what was actually being done about it, she was soliciting information to which

she was entitled She was trying to avoid a runaround and was trying to achieve a result Moriglioni's attitude and his stonewalling are claimed by St. Marie to have been the cause of her anger and loss of temper: She refused to be put off by the evasive answers she was getting Since she was acting in the course of her duties as shop steward, her transgression into improper conduct and language, clearly in the heat of the activity, is excusable.[9] Consequently, her suspension on May 4 violated the Act

I do not reach the same conclusion with respect to her second suspension on November 30 On that date, she was suspended 10 working days, from December 1 to 14, because "despite previous disciplinary action, you again directed abusive language in a disrespectful manner toward a member of supervision." She was further warned that recurrence of this behavior would be cause for more severe disciplinary action, up to and including dismissal. The second suspension is questionable only to the extent that its length and the accompanying warnings were predicated to some extent on the previous disciplinary action, which made the second offense a repeat offense

On this occasion, the difficulty arose from the fact that, because of a shortage of personnel in a neighboring department on St. Marie's floor, Respondent was shifting personnel around in order to keep production moving. There had been two layoffs within a short period of time, the most recent occurring at the end of October. St. Marie testified (without contradiction) that supervision admitted having lost more people than originally intended. However, they were getting busy and in order to get the work done people were being moved from one occupational group and type of work to another. St. Marie testified that, on November 19, Foreman Meehan assigned a VTL operator, Douglas MacDonald, from across the aisle to work on a milling machine, which she felt was a contract violation. St. Marie testified that she walked up to Meehan, who was standing in the aisle near her machine, and asked him why he had made the assignment, to which she says he responded, "I do what I want around here." She reminded him that he was not above the contract at which point he just stared at her. She stared back at him and called him a punk. She testified that she then launched into a speech about people being laid off and the resultant tremendous hardship, and that if the Company needed someone to work on the milling machine they should recall the people who were laid off. He started walking away without responding to her She followed him in order, as she testified, to complete her statement He told her it was not her problem and walked away.

St. Marie asserts that no one was near them and the people at their machines probably did not hear what was being said because of the noise of the machines, which were in operation at that point

There is no question that she left her work station in order to talk to Meehan, persisted in continuing her speech after he indicated his disinterest in her opinion, and called him a punk. However, the day before the Thanksgiving holiday, Foreman Bielonko approached her and accused her of having called Meehan "a fucking asshole," which she denied It is noteworthy that the language she is accused of using is not quoted in the warning notice

She served the 10-day suspension On her return to work she noticed that Douglas MacDonald was back working on the VTL line, which was his proper job.

I do not concur in the argument advanced by the General Counsel that the suspension of St. Marie for her conduct on this occasion violated the Act. There was a shortage of personnel and Respondent was shifting personnel around in order to keep production moving. St. Marie protested to the supervisor that if personnel were needed the proper procedure was to recall workers who had recently been laid off; he responded that it was out of his hands and walked away, she followed him for some distance continuing her argument in a heated fashion, and finally insulted him.

The collective-bargaining agreement explicitly provides for the occasions on which shop stewards may leave their work stations in order to carry on union activity. She was not involved in any grievance proceeding at this time or performing any function as a shop steward which authorized her departure from her work station under the agreement. Her conduct was not in the course of "policing the contract," for her duties in that respect did not extend beyond reporting the circumstancees of an apparent contract violation to the proper union officials charged with the duty of determining the course of action to be taken in the event of an apparent contract violation. (This is not a situation in which an employee is merely exercising his rights guaranteed in Sec. 7 of the Act, by attempting to enforce the provisions of a collective-bargaining agreement. St. Marie was a shop steward with a clearly defined sphere of authority and the existence of a contract violation was a question yet to be determined by those to whom she was supposed to report such circumstances.) Furthermore, a shop steward is not responsible for negotiating the recall of employees who have been laid off.

Accordingly, I find that although the first suspension of St. Marie violated the Act, the second suspension did not

B. *The Buttons*

Paragraph 9 of the complaint, as amended, alleges that on December 1, 1981, Respondent, acting through three foremen, David Fracchia, Joseph Carrier, and Shirley Bisson, instructed employees to remove union buttons. The evidence wholly fails to sustain this allegation

The incidents underlying the allegation occurred in the aftermath of St. Marie's second suspension. A number of employees began wearing buttons which bore slogans such as "Suspend the punk, not Marie" and "Suspend harassment, not Marie." It is plain that the reference to "the punk" was a reference to the supervisor, Meehan, whom she had insulted. There is no evidence as to how the button campaign got started, whether it was spontaneous or whether the Union was in any way involved in it or supported or approved of it. The buttons them-

[9] *Postal Service*, 250 NLRB 4 (1980)

selves were made out of paper by the employees themselves

The evidence establishes that some of the supervisors felt either that the buttons were an insult to supervision generally, or to Meehan, the particular supervisor involved.

General Foreman David P. Fracchia testified that when he saw an employee wearing a button stating, "Suspend the punk, not St. Marie" he approached him and asked him to please remove it The employee asked him if the foreman, apparently referring to Meehan, worked for Fracchia and Fracchia replied in the affirmative. The employee complied. Another employee whom he approached (James Tackett) asked him if removing the button was "a condition of employment" Fracchia testified, "I said, all I'm asking if you would remove the badge" Tackett complied. Fracchia recalled approaching only two employees. Foreman Joseph Carrier testified that he spoke to employees and told them that "we would appreciate it if they would remove them." He was instructed by Fracchia to approach them with that message Shirley Bisson testified that she found the "Suspend the punk, not Lucille" buttons personnally offensive and felt that they should be removed She felt they clearly referred to the foreman who suspended St. Marie but asked the employees to remove the buttons "because I found it offensive to supervision."

Nothing contained in the testimony of any of the employees tends to alter the impression created by the testimony of these supervisors that they regarded the buttons as an insult to supervision generally or to the particular supervisor involved and were not personally offended by the buttons, and that their requests to several employees who were wearing such buttons to remove them were in the form of polite requests with no element of coercion. Almost all the employees who were requested to remove the buttons did so quickly. In some instances, they replaced the buttons with other buttons indicating prounion sentiment, which they were not asked to remove.

It was stipulated by counsel that at the times material to these proceedings no specific rules or regulations were in effect at Respondent's East Hartford facility with respect to the wearing of buttons and/or other insignia on company premises

Raymond Henry, a welder who has worked for Respondent since 1957, worked in department 1423 under Carrier. He wore a number of different buttons over the course of time. He produced two buttons which bore the legend, "Suspend harassment, not Lucille" Lucille St. Marie was his shop steward. Henry testified that everybody made their own buttons. Henry testified that Carrier came to him and told him to take the button off and, when asked the reason, said that it bothered him and would not help St. Marie. At the very time this was happening, Henry was wearing what he referred to as "the real button" which he always wore, but he was not asked to take that one off.

Though on direct examination Henry stated that Carrier told him that his wearing the button bothered him, on cross-examination he testified that Carrier said it did not bother him but would not help St. Marie He conceded he was not threatened; he was just told to take it off and he did. James Sheehan, another welder, who has worked at Pratt and Whitney since 1952, was present during the conversation between Carrier and Henry. He was wearing a button with the legend, "suspend harassing Lucille." Carrier approached him while he was talking to Henry and he quotes Carrier as saying, "I'd appreciate it if you'd take off the button, it's not helping Lucille; there is something in the works." Sheehan then took off the button

Feliciano Laboy testified that he was wearing a button and Shirley Bisson approached him. He quotes her as saying, "Would you remove them please." When he asked on what grounds, she said, "I consider that harassment to the supervision." At that point she was called away for a telephone call. Laboy switched to buttons which contained slogans such as "Dollars for jobs, not bombs" and "United States out of El Salvador" When he saw her again half an hour later she saw those buttons but did not ask him to remove them He also testified that he regularly wears union buttons in the plant and is not asked to remove them.

The tone of the requests to remove the buttons is nowhere better illustrated than in the testimony of James Tackett, an all-round machinist who worked at Pratt and Whitney from March 1978 to October 1982 and was a shop steward at the time in question. He testified that when Fracchia saw the button, "he said something to the effect that you know, Jim, that's not—that doesn't even speak to the issue, it's just going to raise things to a higher emotional level in the department; it's a bad idea, something like that" Though Tackett countered that the action against St. Marie was unfair and was part of supervision harassment of her in her job as shop steward, Fracchia persisted his request. When Tackett asked him the reasons, Fracchia "said again that this doesn't really speak to what happened and it will make things hard around here and take the button off." Tackett asked Fracchia if disciplinary action would result if he refused to take the button off and Fracchia replied that he did not know Tackett stated that he felt that he was entitled to know whether disciplinary action would be taken because it would have a direct bearing on whether or not he kept the button on. He asked Fracchia if compliance was a condition of employment According to Tackett, Fracchia responded by saying that if it meant that he would be walked out the door, no, if it meant that he might get an employee memorandum, he did not know. (An employee memorandum is a written disciplinary warning) Tackett testified that he removed the button later in the day and when he passed Fracchia, Fracchia "thanked me for taking the button off."

The long and short of Tackett's testimony is that Fracchia politely asked him to remove the button, he was not disciplined for his initial refusal to do so, and Fracchia thanked him when he subsequently stopped wearing it.

Asking employees to remove prounion insignia violates Section 7 of the Act, but that is not what was proved in this case. The buttons involved were not union buttons in any guise They neither proclaimed adherence to union principles in general nor identified the wearers as members of the Union. While they were an expression

of a protest, no evidence was adduced which established that the wearing of the buttons was designed to or expected to result in the revocation of St. Marie's suspension, that the fact that more than one employee wore buttons showed anything other than copying, or that the wearing of the buttons was protected concerted activity in any form or intent It was purely gratuitous on the part of the employees who did it. The testimony clearly established that everybody made their own buttons. No one was asked to remove union buttons. No one was asked to remove buttons containing slogans relating to matters of current public interest

Not even compulsion to remove the buttons is shown to have been exercised The employees were politely requested to remove the buttons and their reactions clearly indicated a lack of actual duress. In the one solitary case of an employee's actual refusal to remove the button for several hours no disciplinary action was taken.

The circumstances do not reveal any violation of Section 8(a)(1) of the Act.

C. *Harassment of Ruby Graham*

The General Counsel alleges that a series of circumstances in the relationship between Ruby Graham and management personnel add up to harassment of her when they are weighed together and when viewed against the background of prior instances involving other shop stewards in which Respondent has been found guilty of violating the Act

The General Counsel calls attention to two litigated cases. In one, Hattie Gahagen and another shop steward were discharged for union solicitation on company time An administrative law judge found that they had not in fact been soliciting on company time and ordered them reinstated. *United Aircraft Corp.*, 179 NLRB 935, 970–971 (1969). Gahagen was reinstated and was ultimately succeeded as shop steward by Harriet Harris After Harris was terminated, an arbitrator found her to have been the victim of harassment and ordered her reinstated.

I do not view the *Gahagen* case as similar in any way to the circumstances proven to have existed in this case. There was no proof whatsoever that either Gahagen or the other shop steward had committed the offense charged by the Company, so that the action of management was clearly shown to have been taken without cause and for the purpose of harassing the two shop stewards That leaves the Harris case as the only prior instance of violation of the Act by Respondent in this fashion One such instance does not suffice to establish the existence of a pattern of conduct by Respondent which should be considered in weighing the current charges.

While administrative notice may be taken of prior cases involving an employer which indicate a disposition on its part to engage in a particular type of unlawful conduct,[10] I do not attach much significance to violations in two cases 17 years apart, especially when only one of the cases is similar to the instant case.

The key factor in Graham's situation was that she represented an unusually large number of employees and consequently filed and processed an unusually large number of grievances. She represented 900 employees in 1979, when she first became a shop steward. By 1981, the number had increased to 2000 employees in several different departments. As a result, she filed about 200 grievances in the calendar year 1981 alone She ended up filing additional grievances on her own behalf in which she alleged that she was being harassed because of her activities on behalf of the Union.

1. Misscheduling of grievance meetings

As previously noted, the collective-bargaining agreement provides that in the event that a difference cannot be resolved at the oral step it must be reduced to writing on a form obtainable from the foreman within 5 working days of the foreman's disposition and taken up in a step-1 proceeding as soon as practicable by the shop steward within whose area the grievance arose with the grieving employee's foreman and general foreman.

Ruby Graham asserted that notwithstanding these time requirements the scheduling of processings in which she was involved as a shop steward encountered substantial delays, sometimes for periods as long as several months The fact that her proceedings were handled at a slower rate than those of other shop stewards is uncontroverted She complained about it in May. Then she was suddenly deluged with so many first- and second-step grievance meetings that she had to handle several first-step meetings and as many as 15 second-step grievances in a single session. She charges that this placed her under severe stress, imposed serious time pressure on her with respect to the processing of the grievances and with respect to the performance of her regular job in the plant, and created difficulties in her relations with the employees whom she represented.

The General Counsel contends that the multiple scheduling was a deliberate attempt by Respondent to make Graham's life miserable, an interpretation claimed to be supported by Respondent's purported history of discrimination against union stewards. As I have indicated, I do not find the argument based on Respondent's history to be persuasive. Patently, Graham's difficulties had their inception in the peculiar circumstance that she represented an extraordinarily large number of employees and inevitably was required to file and process an extraordinarily large number of grievances for one shop steward The evidence shows that difficulties are routinely encountered in the scheduling of grievances by reason of absences of management or supervisory personnel whose attendance is required or by reason of the employee's or Graham's own unavailability, and the normal difficulties incident to scheduling meetings were obviously aggravated and magnified by the large constituency with which she was burdened.

There is no showing in the record that any specific grievance or group of grievances were delayed or adjourned or scheduled in such fashion as to permit an in-

[10] *United Technologies Corp*, 260 NLRB 1430 (1982), wherein Respondent was charged with violation of Sec 8(a)(3) and (1) of the Act for discharging union stewards at Pratt & Whitney because of their union activities The finding of the administrative law judge, that the discharges of the two union shop stewards was not discriminatory because they had clearly violated company rules, was upheld by the Board

ference that such scheduling was part of an attempt to harass Ruby Graham. An accusation of this nature should be supported by examples of otherwise unexplainable delays in specific grievance cases. Not a single such instance was brought to light, and there was no rebuttal of explanations offered by supervisory personnel for the general problems which existed in scheduling Respondent's witnesses testified in a credible fashion to a number of ways in which delays could reasonably be expected to arise in Ruby Graham's cases. Mark Rietsma, a personnel advisor, testified that when he tried to schedule first-step grievances he had great difficulty getting all the necessary parties together at one time, especially in May and June, when the grievance calendar was overloaded by a large number of grievances filed by a small group of employees whom Graham represented. He found that, when the employees and the foreman were available, Graham was out servicing a request for a steward; on other occasions, the general foreman was not available because he was taking inventory, there were situations in which Rietsma was advised by Graham's foreman that Graham had told him earlier in the day that she did not want to handle any union business that day, there were occasions when personnel who were required to be present at the grievance step were on vacation or absent from the plant for other reasons.

Rietsma testified that they usually provided 24 hours' notification before having a second-step meeting. Asked specifically about Graham's accusation that he had scheduled 15 grievances for her to hear in one afternoon, he denies ever scheduling 15 grievances in one afternoon He conceded only that at a time when they had a backlog, rather than have her traveling back and forth through the plant to hear one grievance at a time, it was decided to set aside an afternoon and process as many grievances as possible consecutively during the course of the afternoon, and hear the balance at a later meeting.

He conceded that "there might have been a couple" of instances in which a large number of hearings were scheduled for one afternoon with Graham. There was one situation in which a group of employees had filed identically worded grievances Since the issues were identical and all the grievances involved the same steward, foreman, and general foreman, it made sense to handle them consecutively. While Rietsma could not recall the largest number of hearings he ever scheduled for one afternoon, he was quite positive that he never scheduled as many as 15 or even 14.

Rietsma insisted that grievances handled by Graham were not handled any differently from those of any other shop steward and the record as a whole appears to bear out this contention. While he conceded that it generally took longer to schedule Graham's first-step meetings than those of other shop stewards, requiring periods ranging from within the 5-day period to 2 weeks, that concession does not warrant speculation, unsupported by any other evidence, that the delays constituted deliberate harassment Graham was an extraordinarily busy shop steward who represented a disproportionately large percentage of the work force. There is not a hint of any suggestion, other than the General Counsel's citations of the history of Respondent, which I have found unpersuasive, that harassment of union stewards was a general practice. On the contrary, the General Counsel seeks to support the contention that Graham was being harassed by comparison with the shorter processing time of cases handled by the other shop stewards Even the suggestion that she was being harassed because of the large number of grievances which she filed is not persuasive, for it speaks only in terms of the gross number of grievances filed. There has been no attempt to compare the number which she filed with the number filed by other stewards, past or present For all we know, percentage-wise, Graham may have been filing only as many or fewer grievances per working population than any of the other stewards. The record is silent on this point.

It has not been established by a preponderance of the evidence that Ruby Graham was subjected to misscheduling of her grievance proceedings as part of an attempt to harass her.

2. Signing for photocopies

On January 1, 1981, a Connecticut statute providing for employees' access to their own personnel records twice a year became effective. It required employers to permit employees to inspect their personnel files during regular business hours, to keep the files for at least 1 year after the termination of employment, and to provide copies of papers contained in the files for a cost-related fee.

Over a period of time, Respondent adopted several different procedures for compliance with the statutory requirement. Its procedures varied in different sections of the plant and within the sections, at different times. In Graham's own department at one particular period in 1981, an employee who requested a copy of a paper was required to initial the original to indicate receipt of the copy; the paper was then photocopied and a copy given to the employee without charge

Ruby Graham availed herself of the right to inspect her file on March 31 and November 17, 1981 In March, in conformity with the procedure then in effect, she signed a request form and was then given the file for examination; after she was finished, she signed the bottom of the same form to acknowledge that she had seen her file When she returned in November, an altogether different procedure was in effect Her foreman, Stanley Robbins, required her to sign each individual record within the file in order to get a photocopy of it Graham testified she was not familiar with any situation in which any other employee had ever been required to sign for records in that burdensome fashion; that the procedure was frustrating; and that its burdensome nature, combined with remarks which Robbins made to her while she was examining the records about how long it was taking, placed her under great stress She testified,

> I became so frustrated because there are so many pages within the files, and I became so frustrated because I had been told just prior to this that I was spending too much time away from my working station that did not, really, pertain to the job So, I was so frustrated because this would have taken

quite an additional amount of time So, I didn't bother to sign them

According to Graham, "I did sign a few. There was so many that I became frustrated " However, she appears to have actually signed all but three of the documents. Robbins testified that he was in the process of giving her copies of the file and there remained only three pieces for which she had not signed. He asked her to sign for them and she refused, so he did not give out copies of those papers. She got copies of everything else Robbins thought he recalled that she called the steward who asked her to sign for the remaining three and she refused saying she did not want them It was also Robbins' recollection that it took her 5 hours to go through the file and that they had to come back a second time in order for her to complete her review Robbins testified that he followed the procedure then in use in the department, every foreman was instructed to follow it, and there were people who inspected files and signed for each paper just the way Graham had been asked to do. Graham, however, named three persons who had been given photo copies without signing for the documents independently She named them and their department, but could not, however, testify as to when they made their request and what procedures governed inspection of documents in those departments at the time. Thus, there is uncontroverted evidence that some employees who requested copies of papers in their files were not required to comply with the procedure to which Graham was subjected; at the same time, that procedure appears to have governed the issuance of copies in Graham's department. Respondent concedes that the policy of requiring that each paper be initialed was abandoned after a few months

The General Counsel's contention that the imposition of such an onerous requirement on Graham was another instance of Respondent's program of harassment of Graham because of her activities as a union steward is undermined by the undisputed fact that the records which she requested were produced for her inspection and she was permitted to sit and read the items over a period of many hours. The papers she wanted copied took a long time to initial because, according to Robbins' undisputed testimony, she insisted on reading each one thoroughly before putting her name on it That she imposed that burden on herself does not make it an act of harassment by Respondent. She pinpointed the imposition of the requirement that she initial the pages she wanted copied as the act of harassment. Her testimony makes it clear that it was not the initialing, but the self-imposed necessity of reading every such page, that made the process burdensome.

Even if the initialing were to be considered burdensome, there is no evidence to contradict Respondent's witnesses' testimony that the procedure was applicable to everybody in the department at that time and that other persons requesting copies complied with the requirement. Of course, Graham was required to do much more initialing because her file was unusually thick, a circumstance which by itself is claimed to have constituted part of the harassment. Nevertheless, the initialing requirement per se has not been shown to have been imposed for the purpose of harassing Graham.

In any event, the proof falls far short of establishing the allegation of paragraph 14 of the complaint, as amended, which set forth that she was required to sign for each separate document "when, in her capacity as Union steward, she requested employee personnel files." The evidence was limited to a showing that the requirement was imposed and frustrated her only in connection with an examination of her own personnel file for purely personal reasons Her duties as shop steward were not in any way involved or impeded thereby.

Accordingly, I do not find that the requirement that Graham initial papers in her file which she wanted photocopied constituted harassment by Respondent as alleged in the complaint, as amended

3 Notes in Graham's personnel file

The size of Graham's personnel file was remarkable because it contained an extraordinary number of notes addressed to Superintendent Purnell by Stanley Robbins, who was Graham's foreman in Department 36 (cutter-grinder). Robbins referred to these during the course of his testimony as "memory joggers" and explained that memoranda of that type were placed in the employees' files in order to enable supervision to review their performance at appraisal time. According to Robbins, they were part of an appraisal system designed to achieve a fairer evaluation of employees' performance than could be obained by depending exclusively on the foremen's knowledge of their work. Under this system, the entire group of employees was audited by supervision on a periodic basis (approximately weekly)

The technical supervisor or foreman would issue the work and observe how it was handled qualitatively and quantitatively for that particular day. He would then write up a brief general evaluation of the employee's performance for that day. The system dated from the collective-bargaining agreement of 1978. John Joseph Waters, a master mechanic, testified that the new appraisal system instituted at that time was on an annual rather than an semiannual basis, utilized somewhat different rating factors, and involved more verbalized appraisal dealing with different factors of the employee's performance The older system which it displaced had been criticized by the employees on the ground that appraisals under it covered too long a period of time and were not backed up by specific records; the appraisals which it produced could not be justified objectively The new system sampled an employee's work on a regular basis and preserved "snap shots" of his performance in the form of the memoranda made on the day he was audited

The basis for the General Counsel's complaint is not the system itself, but Graham's observation that her file contained substantially more memoranda than she had seen in other employees' files and presented a distorted picture of her work activity. She never saw more than 10 or 15 memoranda in any other files, far short of the number in her own file. As a shop steward, she had access to the files of other employees and was in a posi-

tion to make a comparison She took the matter up with Robbins, and quotes his explanation as follows:

> Well, he was seated with me at the time that I was reviewing the records. And, upon seeing all these notes, the contents of the notes, I began to question him. I asked him why they were placed there, and what did they, you know, express. And, he said to me that it was a day account of my routine, and that so much of my time was being spent out of the department area.

Graham pointed out that since her union time was not being itemized, the notes did not really present a true picture of her activity on the particular day the audit memorandum was written.

There is no question that the audit memoranda contained references to the fact that Graham was away from her work station on union business. Graham testified, however, that when she initially observed the reports in her file she also objected to Robbins that the memoranda did not truly state the kind of performance she had rendered on the particular day because they did not show specifically the activities being performed and the way they were being performed She cited as an illustration the fact that part numbers needed for detailed knowledge of the work done were omitted. He did not give her an answer which addressed these objections. According to Graham, "Well, he explained to me, as I said, so much time was spent out of the department. . . He did say to me that I spend so much time away from my department and this does jeopardize the floor production to keep moving, but, I could join them " She did not know what he meant by that remark, but because she was upset and was asking him many other questions, she never got an explanation of the remark which she quoted. This discussion took place in March, on the first occasion on which she reviewed her file. She testified that at the time she was shocked at the enormous quantity of memoranda in the file.

Respondent contends (in its posthearing brief) that there is no evidence that Graham was treated differently from "similarly situated employees." Such an argument is specious, for there were no similarly situated employees. Graham was an extremely busy union steward with an abnormally large caseload. Respondent also seeks to evade reality by its observation that the only connection between the "mind joggers" and union activities is an "occasional notation" on the memoranda that a certain amount of time was spent on union business. The need for such an entry is unclear in view of the fact that Graham signed out when she went on union business and the Repondent had a full, independent record of time so spent by her. The additional entries on the memoranda serve to reinforce Graham's testimony that she was pressured by Robbins about the amount of time she took to review her own personnel file.

Respondent argues (in its posthearing brief) that the use of "mind joggers" was not alleged in the amended complaint as an element of the alleged harassment of Ruby Graham, and that since the General Counsel did not move to amend the amended complaint to include this allegation and the matter was not "fully litigated" by the parties at the hearing, the "mind joggers" should be excluded from consideration on the question of harassment. At the same time, Respondent inconsistently argues that the issue of whether the memoranda constituted harassment should not be resolved in this proceeding merely because a great deal of evidence was introduced at the hearing on the question. Respondent thus admits that it was litigated and I find that it was fully litigated. I also find that the fact that the "mind joggers" were made by supervisory personnel is a matter properly to be considered in an assessment of Respondent's conduct with respect to Graham under the allegation of paragraph 16 of the amended complaint alleging a course of conduct constituting harassment since on or about June 1, including but not limited to the acts and conduct expressly described in paragraphs 11 through 15 of the amended complaint Respondent cannot now contend that the facts adduced and litigated should be ignored.

The existence of these memoranda establishes that Graham received special attention from Respondent's supervisory personnel, but they furnished no adequate explanation for the extraordinarily large number of memoranda or for her foreman's remark about her spending too much time on union business. I note that Robbins displayed great personal irritation with Graham because he had been compelled to sit with her for 5 hours while she pored over the papers in her file. These circumstances enhance the significance of Robbins' testimony that there was no procedure to ensure that the work of all of the employees would be seen in the course of the review and that the employees who were to be audited were selected at random.

In light of the evidence in the record, considered with the absence of any satisfactory explanation for the extraordinarily extensive documentation of Graham's performance, I infer that a close watch was being kept on her for reasons not connected with the needs of the employee evaluation system. At the hearing, the counsel for the General Counsel intimated that he considered the extensive monitoring of her activities, as reflected in the memoranda, to be a form of surveillance, but he did not move to amend the complaint to allege surveillance and no issue pertaining to surveillance was litigated The extensiveness of the documentation of Graham's performance was established in the context of the charge of harassment. It is therefore extremely important that Graham admitted to being surprised at the unusually large number of memoranda she discovered upon examination of her file. It is obvious that until then she was unaware that so many "mind joggers" were being written and filed regarding her performance. Since she was unaware of their existence, she cannot contend that Respondent sought by that means to intimidate or harass her, or that its actions were having that effect The making or filing of these memoranda, without their being in any way called to her attention, cannot be considered harassment of her by Respondent. If the extensiveness of the documentation has significance at all, it would have to be to the extent that it sheds light on the motivation underlying the other activities which are alleged to constitute

harassment I have considered this point in connection with my analysis of whether all of the acts complained of, taken together, can be deemed to add up to a course of harassment of Graham by Respondent

4. Adverse evaluations

The complaint alleges that adverse evaluations of Graham's performance were issued on March 20, 1980, and March 24, 1981, as part of Respondent's campaign of harassment of her. The pertinent "Hourly Employee Performance Rating" forms filled out with respect to her are in evidence On January 25, 1978, she was rated as having rendered performance "unquestionably better than the standard of competency by a marked degree and for the full rating period," with respect to accuracy, output, and application of job knowledge. She was credited with superior performance exceeding the standard of competency "by a high degree of excellence" with respect to her use of working time and cooperation. On July 17, 1978, Robbins appraised her performance in substantially similar manner On March 16, 1979, Robbins rated her performance on a new form as "fully satisfactory" with respect to productivity, dependability, and adaptability The form permitted entry of higher ratings of performance under the following headings: "Exceeds Expectations" and "Sustained Excellence" and less satisfactory ratings under the headings, "Acceptable" and "Not Acceptable." Under "suggested areas for improvement" appears the notation, "Should develop consistency in quantity and quality of work." Under "Comments" appears the remark, "Has accepted some of the more complicated work and progresing reasonably well." On May 11, 1979, he rated her "fully satisfactory" with respect to "Productivity" and "Dependability" and "exceeds expectations" with respect to "Adaptability." Under "Suggested Areas for Improvement" he again noted "Should develop consistency in quantity of work." Under "Comments" he repeated his earlier comment of March 16, 1979.

On February 20, 1980, Robbins rated her as "Fully Satisfactory" in "Productivity" and "Dependability" and "Exceeds Expectations" with respect to "Adaptability." Under "Suggested Areas for Improvement" he suggested he "Should make an effort to use her full abilities in a consistent manner." Under "Comments" appeared the remark, "Has been very helpful in helping move rush jobs. On some job assignments her Job Performance has exceeded my expectations."

On July 17, 1980, a report was filed by Robbins to the effect that in "Productivity" and "Dependability" she "Exceeded Expectations" and her "Adaptability" was rated as "Sustained Excellence." It was again noted that she should make an effort to use her abilities in a consistent manner; that she had been helpful in moving rush jobs; and that on some job assignments her performance exceeded expectations.

On March 6, 1981, she was rated as "Fully Satisfactory" in "Productivity" and "Dependability" and "Exceeds Expectations" in "Adaptability." A "Suggested Area for Improvement" was that "Ruby should be consistent in using her full capabilities and in showing her willingness to demonstrate these capabilities when asked." Under "Comments" it was noted, "Ruby takes pride in her workmanship, and she has shown a willingness to help newer employees." Graham was given this appraisal March 24, 1981. She objects to this appraisal and to the one dated February 20, 1980, which she received on March 26, 1980, because of the "Fully Satisfactory" ratings in "Productivity" and "Dependability." According to Graham, a "Fully Satisfactory" employee who is rated as such "is not a very good employee" and is merely an employee who is deemed to have reached a point of proficiency at which he can function in the job without the continued help of the supervisor and the foreman. Graham's characterization of the meaning of this rating was not controverted by Respondent. Thus, rating an employee with Graham's experience as "fully satisfactory" is not a compliment, but a put-down which could prevent her from qualifying for promotions and cash performance awards Graham is an employee of 17 years' standing who has not been late for work more than seven times in that period though she commutes to work from Springfield, Massachusetts The other comments on the appraisal forms which I have quoted clearly indicate that she is a highly qualified employee and was so regarded. These two appraisals, however, did not clearly state the quality of her job performance and her working routine for the whole year.

Graham testified that when she saw that the 1981 appraisal was the same as the 1980 appraisal she met with Robbins and went through "a list of itemized events that had transpired . . . I explained to him all that I had done. . . . He would never allow me to reach the stage where I would be acceptable for receiving an award . . . Instead of my knowledge depreciating, it should have increased. Each year, I would find that I would go backwards instead of forward." In these terms, Graham explained to Robbins what she had done and why she believed that his appraisal would preclude her from ever receiving a performance award, notwithstanding that she would have learned more with increased experience over the course of time. The net effect of the appraisals was to indicate deterioration in her performance instead of either stability or improvement. The validity of her complaint is apparent from the fact that when Robbins refused to modify the appraisal and Graham called in a shop steward and filed a grievance, the appraisal was upgraded

However, establishing that an appraisal should be upgraded is a far cry from a showing that an unfair labor appraisal was recorded initially because of union activity of the employee being evaluated. A critique of the intentions of a supervisor in writing an appraisal of an employee ought to be based on some evidence specifically indicating his intentions, especially if the appraisal itself does not make obvious any intention to ignore or distort the actual facts. An appraisal is an inherently subjective undertaking. Its very essence is the expression of the evaluator's opinion.

The only evidence which was offered to indicate that Robbins' appraisal of Graham might have been colored by the fact that she was a union steward spending a great deal of time on union business is the fact that he

expressed his opinion that her time so spent was excessive. That, by itself, is insufficient The holding of such an opinion is consonant with an intention to evaluate her work performance in a fair manner

5 Erroneous attribution to Graham of unacceptable work

Under Respondent's control procedures, an employee who has worked on a part is required to note his or her clock number on a green card attached to it Graham testified that as she was leaving her department one day, she noticed some dull, rough tools on the outgoing truck. The obviously unsatisfactory nature of the work was such that it piqued her curiosity as to who was sending out that kind of work. She looked at the green card and was shocked to discover her own clock number on it. She then "became hysterical" Robbins was unable to give her an explanation and promised to investigate He subsequently informed her that Laurent T Major, the supervisor, had told him that he had done it, having "made a slight mistake." Major had "overlooked that the tools were dull and not sharp"

Graham testified that in her hysteria she insisted that there had to be a better explanation than that Major simply overlooked dull and unsharpened tools Major was a supervisor with 25 years of experience. She demanded to see a shop steward, but, according to Graham, by the time he arrived the paperwork "was destroyed, and there was no evidence" Robbins had torn up the paperwork

The grievance was resolved by Major's acknowledgement that a "slight error" had been made and would not be repeated

Major testified and explained this incident, but not satisfactorily. He started by conceding that similar incidents had occurred on several prior occasions because occasionally, when a clock number is missing from a piece of work, he fills in the card and initials it. This does not even begin to explain why he put Graham's clock number on the card instead of his own initials. He had absolutely no basis for attributing the work to her inasmuch as he had not assigned it to her and it was patently beneath the standard of her normal work performance. Major claimed to have no actual specific recollection of this particular incident, leaving Graham's testimony undisputed and unexplained. I find it impossible to divorce this incident from the fact that it occurred only a short period of time after Graham had been given an employee memorandum for using abusive language to Major

Circumstances of this nature, wholly unexplained, raise an inference that Graham's clock number was placed on grossly deficient work by Major with some malicious intent

6. Written warning

On July 6, 1981, an employee memorandum signed by Stanley Robbins was issued to Graham because of language she had used to Major. The employee memorandum states,

> You are being warned for your abusive language toward your Supervision. This conduct will not be tolerated and it must not happen again
>
> Any recurrence will be just cause for more severe disciplinary action.

The employee memorandum arose out of an incident which had its inception in an attempt by Robbins to find out why Graham had clocked out certain time for a particular type of work, that is, he wanted an explanation of why she had used the clock. He instructed Major, who was then her supervisor, to get the facts from her. Each work order is accompanied by a green card which lists various operations by number. Each of the 67 numbers represents a particular operation; the worker who performs it signs his clock number next to the number on the card The records showed that Graham had clocked a certain amount of time under a specific numbered operation The following is Graham's own testimony as to what happened when Major, in her words, "confronted" her about it.

> So, at that time when my supervisor asked for an explanation, I was quite upset with him because I, too, was in need of an explanation from him I thought that that was the right time for each of us to clear ourselves with each other. . . .
>
> I said to him, if you would like to have an explanation for what I did yesterday, I, too, would like to have an explanation from you for overlooking me for 10 working days. He said that that wasn't important. What he wanted was his question answered. So, I told him that I felt mine was equally as important. And, since it had existed for a longer period of time, I felt that he should answer mine first, and then I would gladly answer his.

They then argued "backwards and forward as to who was the most important and to who should be answered first We had a lot of words" Graham concedes that Major insisted that she answer him because he wanted to know just what she had been doing for the period of time indicated and that she refused to do so. She testified that she had a good reason for spending the amount of time on the work which she did. It was work of a demanding nature which required that she perform several distinct operations. What upset her was that for the preceding 10 working days he had been bypassing her without getting her daily work count as he was doing for all the other employees in her group. She had been waiting for an opportune moment to ask him why he was omitting her count. She felt that her right to an explanation from him was at least as strong as his right to an explanation from her for her production of the preceding period. It was at this point that she insulted him.

The recollection of Major and Robbins as to what Graham said to Major is somewhat different from her own recollection. According to Major, when he first went to her and asked her why she used a certain operation she refused to give him any answer at all. He reported to Robbins that he could not get an answer and Robbins told him to go back and try again, which he

did While they were still sitting and talking, she had jumped between them and called him "a prejudiced bastard " Robbins testified that Graham first called Major "a prejudiced bastard" and shortly thereafter called him "a prejudiced old man." After Major returned to his desk, she reappeared and started to complain to Robbins about Major's having questioned her and Robbins told her that he had sent Major to her to get certain information

Robbins testified that Major had complained to him on previous occasions that he had taken verbal abuse from Graham, but Robbins had not witnessed the prior occurrences.

I find Graham's explanation for her conduct extremely weak in view of her concession that Major asked her what she had been doing. That was her opportunity to explain it to him His failure to take a daily count was irrelevant if she were given that opportunity. Instead, according to her own testimony, "I called him a stupid old prejudiced man." She made the statement within earshot of the entire department, including Robbins.

Under the circumstances, the issuance of the employee memorandum would appear to have been a normal exercise of supervisory discipline and not an act of harassment.

7. Conclusions as to harassment

The evidence is sufficient to raise suspicions regarding the alleged conduct of Respondent's personnel in only two of the six situations claimed to have constituted harassment These are the attribution by Major of faulty work to Graham and the filing of a large number of audit memoranda in Graham's personnel file (which was not alleged separately as harassment but is considered, and rejected, in this connection).

Questionable as Major's conduct is, there is no evidence linking it to any campaign on Respondent's part to harass Graham because of her union activity. At best, it shows he had personal reason to be hostile to her. I also fail to see that the audit memoranda indicate an illegal motivation underlying the other circumstances alleged to constitute harassment, which I have found not to be such The burden is upon the General Counsel to establish the nexus, and that burden is not met by an invitation to speculate on the unexplainable circumstances. The mere discrepancy in number between the memoranda in Graham's file and those in the files of other employees raises suspicions, but those may not be graduated to the level of inference except from proven facts None were adduced. Suspicion is not an acceptable substitute for proof that Graham was harassed or that she was harassed in furtherance of illegal purposes of Respondent Employer [11]

D *Refusal to Furnish Information in Connection with Grievances*

1. Ruby Graham's grievance

A grievance concerning the employee memorandum issued to Graham on July 6, 1981, was filed on her behalf by the Union itself, as a third-step grievance This was done on December 10, 1981. The grievance alleged, "Due to circumstances of D-36 supervision and me, the Employee Memorandum received on July 6, 1981 is unjust and false." The remedy requested was "To have the Employee Memorandum removed from all company records "

Long before that grievance was filed, however, Graham had, on July 7, 1981, filed four grievances on her own behalf. None of them contained any reference to the employee memorandum The allegations of these grievances were as follows

(a) "Stanley Robbins is interfering with me and another member of my supervision. He prevented us from arguing and disagreeing with one another on matters where both Larry and me were wrong." The remedy requested was "That Robbins stay out of matters that does not concern him in future."

(b) "Foreman Robbins refused to tell the truth or bargain in good faith." The remedy requested was "There is something he has against me since this type of treatment has never before interfered with my job performances "

(c) "I grieve the notes placed by my supervisor, Larry Major will be removed as he said it was unfair. It stated a 'poor' day June 30, 1981. There was four hours used for completing two different operations on sixteen cutters (8) sets." The remedy requested was that "Foreman Robbins will without prejudice let the supervisor remove as stated 'not fair ' Also, verbal warning superintendent promised he too would. 1980. Two minutes before lunch away from machine."

(d) "I am subjected to discrimination, constant harassment, unfair working conditions with the foreman Robbins personal feelings interfering on day-to-day basis. (V.S.) The 'note' he placed in my file on 10/4/80, then consideration shown to other employees on the same job today " The remedy requested was that "Foreman Robbins be investigated and have the notes rescinded that do not constitute my abilities and job knowledge. And all discrimination factors are stopped immediately."

The oral step and first step of each of these four grievances were handled in a combined session on July 16, 1981, with Richard Heacox, a shop steward, acting on Graham's behalf. Porter Purnell and Stanley Robbins represented management In the course of the session, Heacox requested a copy of a letter that Graham told him Major had written to Porter Purnell. Heacox testified that Graham had stated to him that she and Major had had a 2-hour talk about their working relationship which had resulted in the development of a good working relationship between them, that Major had told her that in his anger at the way she had spoken to him he had sent a letter to Purnell which he had regretted sending and had tried to retract Heacox was aware that the Union was preparing to file a grievance related to the

[11] *International Computaprint Corp*, 261 NLRB 1106 (1982)

employee memorandum and he requested a copy of Major's letter because he felt it would have a bearing on that grievance. Purnell took the position that the letter had been addressed to him personally and therefore was not part of Graham's personnel records and refused to furnish a copy of it or divulge its contents.

Insofar as the grievance arising from the employee memorandum is concerned, it is contended that Purnell properly refused to produce the letter It may be noted, preliminarily, that the document in question is, in form, not a letter, but a memorandum dated July 1, 1981, from Major, in his official capacity, addressed to Purnell, in his official capacity.

The grievance had not been filed as of that date and in fact was not filed until 5 months later Seemingly, there was no way, at that point in time, that the fact that an employee memorandum may have been issued in the face of Major's retraction could have come into play This argument is untenable. The Union was patently entitled to the document in advance of filing the grievance respecting the employee memorandum in order to process and weigh the merits of the grievance for the purpose of making its own decision as to whether to press it or drop it and, if it were going to proceed on it, for the purpose of preparing its case.[12]

Of course, it was probable, if Graham's own testimony respecting her conversation with Major is to be credited, that no contradiction would be found to exist between the contents of Major's memorandum and the position taken by Respondent's supervisory personnel, since Graham testified that Major had told her he had made uncomplimentary statements about her which he then regretted having made Nevertheless, the Union was entitled to see the memorandum, both for the purposes noted herein and because it is entitled to make its own evaluation of the contents.

There existed other reasons, however, the document should have been produced. According to the memorandum, Major was not only not retracting his complaints about Graham, but was incensed at her conduct and wanted something done about it The memorandum was therefore plainly relevant to the grievances being processed at that time, both when considered together with each other and when considered in light of express charges of discrimination and harassment Inasmuch as Major and Graham contradicted each other on the specific issue of what she had said to him and Graham was alleging that a great deal of what was happening in the course of her workday resulted from a campaign of studied harassment against her, it became very important to know what Major told his superiors about her and what his own general attitude was toward her The memorandum went to Purnell before the employee memorandum was issued and the employee memorandum was issued on instructions from supervisory personnel above Major in the hierarchy. Questions could validly be asked as to whether or not they had made more of the situation than Major had given them warrant for or whether his reports made unfounded allegations and were designed to foment trouble for her The contents of the memorandum and the reaction of management to it had a bearing on the existence or nonexistence of a course of harassment against Graham

Thus, the Respondent's contention that the memorandum is irrelevant to the grievances as filed at the time it was requested ignores the Union's right to it in connection with the preparation of the grievance yet to be filed; ignores the express allegations of the filed grievances, and smacks of a transparent effort to capitalize on what may have been Heacox's lack of sophistication in basing his request solely on the grievance then in preparation, the facts of which were not even mentioned in the four grievances already filed Respondent's contention also overlooks the fact that the Union had the right to probe whether the filing of the grievances on July 7 had any relationship to the issuance of the employee memorandum the very next day

The memorandum was therefore relevant to all of the grievances, both the group filed on July 7 and the fifth grievance then under consideration by the Union.

However inartistically Graham and Heacox may have phrased the request for Major's memorandum to Purnell, Purnell and Robbins knew what Graham was complaining about and should therefore have produced it. It was part and parcel of the entire incident under investigation and was relevant as to the probity of Major, his attitude and the attitude of other management personnel toward Graham, the issue of whether she was being harassed, and the issue of what she actually said to Major. The failure to produce it violated Section 8(a)(5) of the Act.

2 The Cotnoir grievance

Pursuant to an "Employee Suggestion Plan," Joseph Cotnoir submitted a suggestion which resulted in saving time on a particular operation, for which he was awarded the sum of $25 in March 1981 In April, Cotnoir filed a grievance in connection with the award which resulted in a decision that the industrial engineering department would "reinvestigate the standard " Respondent Employer claims that management understood this to mean it would determine the percentile saving of time which resulted from his suggestion The shop steward thought it meant that the job would be retimed In May, Cotnoir filed a grievance asserting that Respondent Employer had failed to retime the job as promised Reports of time-studies were requested which would have shown the time of the operation for the periods before and after Cotnoir's suggestion had been adopted and implemented. The information was not supplied, but Respondent agreed to retime the job.

In September, Cotnoir filed another grievance, which was prompted by his discovery that another employee had been awarded $7500 for a suggestion on the same job. Prior to the second-step meeting on this grievance, which was scheduled for November, Cotnoir asked for the records showing the current and past times for the operation in question. At that point, for the first time, Respondent's representatives questioned whether Cotnoir was in the proper forum, suggesting that proper recourse was to the suggestions committee established under the employee suggestion plan. On the basis that a grievance

[12] *NLRB v Acme Industrial Co*, 385 U S 432 (1967)

was not properly brought on a question relating to an award for a suggestion, they refused to make the records available

I find no provisions in the rules governing the procedures of the suggestion committee which limit an employee's appeal on a question relating to an award solely to the committee itself. On the contrary, the language used is permissive and consequently strongly implies that the recourse therein provided is not exclusive Therefore, if the subject matter is such as would be embraced within the scope of the normal grievance procedure, that would be another avenue of recourse available to a dissatisfied employee, a waiver of which will not be presumed in the absence of clear evidence of intent to waive it.[13]

The scope of the suggestion procedure is broad enough to embrace all aspects of the work of Respondent's employees: It covers the work product itself, the condition of the physical plant in which they work, and the working conditions in general under which the product is produced. The emoluments are directly related to the amount of production time saved by the suggestions submitted and adopted The direction of the suggestion committee in fixing the amount of the awards is not absolute; the published suggestion procedure requires that the amount awarded bear a relation to the amount of time saved insofar as that is capable of being measured, as it is in Cotnoir's situation. Plainly, the award is not a gift or even an expression of appreciation as much as it is recompense for a suggestion of value which enhances the profitability of the Company by reducing its costs of production and operation. It is an incentive for ambitious and thoughtful employees to contribute to the Company's progress It is therefore an important working condition and the Company's failure to keep faith with an employee with respect to it is a grievable breach.

The production records which Cotnoir requested are relevant in a grievance proceeding involving such a subject matter and they were improperly withheld.

3. The Belesano grievance

Deborah Belesano wanted a promotion to a job which she believed had been declined by another employee named Robert Jones. Her seniority position would not have entitled her to the job had other employees been interested, but she took the position that, if an opening existed, she had the right to know about it and apply for the job

Management advised her that there was no job opening. In fact, the supposed vacancy was not filled. Belesano filed a grievance alleging that Respondent's promotional and transfer policy favored a few chosen employees She filed an additional grievance alleging that information relevant to the first grievance had been misrepresented by management.

Belesano sought examination of the "Employee's Remarks" section of Jones' personnel records on the theory that if he had, in fact, been offered the promotion, which Respondent denied, the record would document the fact that the offer had been made. This would provide an evidentiary basis for her contention that the withdrawal of the offer was discriminatory. It is the type of information which the Union plainly needed in order to determine if the grievance was meritorious and should be pressed or whether it should be withdrawn.

The Respondent Employer's failure to supply the record therefore violated the Act

4 Michael Lovely's grievance

It was Michael Lovely's job to inspect aircraft engine parts by means of X-ray techniques. He approved certain parts without actually inspecting them, for which he was fired. The Union filed a grievance, the burden of which was that Respondent, not Lovely, was at fault because Respondent had been neglectful in its supervision of Lovely; had he been properly chastised when he first developed the habit of passing parts without even looking at them, he would never have become so neglectful that they would have had to fire him.

The merits of the Union's contention in the grievance proceeding are not in issue in this proceeding The issue in this proceeding is whether Respondent Employer violated the Act by refusing to furnish, in compliance with the Union's request, certain reports and documents The parties disagree as to the very existence of this material, the Union presuming its existence and Respondent denying it I would imagine that in the absence of proof of their existence, I would have to take Respondent's word that such documents do not exist

However, the real question is whether Respondent Employer has not split hairs too finely by refusing to make available information to which the Union is entitled because the Union, not being privy to the contents of Respondent's files, has erroneously specified or described the documents containing the information which it seeks. The documents which the Union requested were designated by it as the report of a committee of experts which was believed to have reviewed the X-ray films which Lovely had been obligated to inspect (and had not), all department procedures on audit, past and present; reports of Respondent's internal security and investigation department (ISID Reports); and an Air Force investigation report. The Company has asserted that no such documents as those described in the Union's request actually exist, and that what the Company got from ISID consisted of witnesses' statements If that is what they were, they did not have to be produced.[14]

Though Respondent did not produce documents set forth in the Union's request, it made available to the Union at the grievance step the films of the parts that Lovely improperly passed through There does not seem to be any real question that Lovely passed engine casings which were defective without even opening the packets of X-ray films to see what they showed. The Union does not assert his innocence, instead, it has devoted itself to arguing that the film produced at the grievance did not have conclusive identification showing that it was the film Lovely passed, and that it had reason to believe that

[13] *General Motors Corp*, 232 NLRB 335 (1977)

[14] *Anheuser-Busch, Inc*, 237 NLRB 982 (1978)

the documents requested actually did exist The reason for such belief was never disclosed.

The Union is demanding production of materials relevant to the issue of Lovely's guilt, which was not in issue because the Union was making Respondent's improper supervision of Lovely the issue. Its argument was that adequate supervision at an earlier stage would have precluded the subsequent misfeasances and the need for disciplinary action of the gravity finally imposed None of the material demanded by the Union would have been relevant to that argument.

Since there was no issue as to Lovely's misconduct, none of the material was relevant and, regardless of the form in which the information respecting his guilt existed, its production was not required. Respondent did not violate the Act by its failure to comply with the Union's demand.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices committed by Respondent have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3 Respondent violated Section 8(a)(1) and (3) of the Act by suspending its employee Lucille St Marie on May 4, 1981, for the 5-day period from May 5 to May 11, 1981.

4. Respondent violated Section 8(a)(1) and (5) of the Act by refusing to furnish to the Union a copy of a memorandum from Lauren T. Major to Porter Purnell dated July 1, 1981, requested in connection with grievances filed or to be filed by or on behalf of Ruby Graham; records showing current and past times for an operation in connection with which Joseph Cotnoir had submitted a suggestion, requested in connection with a grievance filed by Joseph Cotnoir in September 1981; and access to the "Employee's Remarks" section of the personnel records of an employee named Robert Jones, in connection with grievances filed by Deborah Blesano alleging discrimination in Respondent's promotional and transfer policy and misrepresentation of information relevant to that grievance

5. Respondent did not commit unfair labor practices other than those found herein

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act

THE REMEDY

Having found that Respondent engaged in unfair labor practices, I recommend that Respondent be directed to cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act

I accordingly recommend that Respondent be required to make Lucille St. Marie whole for wages and any other benefits which she may have lost by reason of the 5-day suspension imposed on her on May 4, 1981, to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corp*, 231 NLRB 651 (1977), and *Isis Plumbing Co.*, 138 NLRB 716 (1962). In determining the appropriateness of this remedy, I have taken into account the influence which this wrongful suspension undoubtedly had on the penalty imposed by Respondent on November 30, 1981, which was assessed as punishment for a second offense of the same nature. There is no evidence in the record as to the extent of the influence of the first disciplinary action in fixing the penalty in the second. We do know, however, that Respondent sent her to a 6-month training program in 1980, as a result of which she was promoted to a higher paying position. Under all the circumstances, therefore, it would appear that restoration of the pay and any benefits which St. Marie lost during the first suspension will constitute an adequate remedy

With respect to the information withheld from the Union, I will recommend that Respondent be directed forthwith to turn over to the Union the information requested in connection with the grievances filed by Ruby Graham, Joseph Cotnoir, and Deborah Belesano.

[Recommended Order omitted from publication]