



United States v. Westinghouse Electric Corporation

638 F.2d 570 (3d Cir. 1980)

Country: United States

Region: Americas

Year: 1980

Court: 3rd Circuit Court of Appeal

Health Topics: Health information, Occupational health

Human Rights: Right to favorable working conditions, Right to privacy

Facts

The National Institute for Occupational Safety and Health (NIOSH) began a health hazard evaluation of a Westinghouse Electric Corporation plant in Pennsylvania after receiving a request from an authorized union representative from Westinghouse Electric Corporation. Physicians and an industrial hygienist employed by NIOSH did walk-through inspections of the plant. The inspecting physicians suspected that the allergic reactions of workers in the TC-74 area were caused by hexahydrophthalic anhydride (HHPA). As part of the investigation of this suspicion, NIOSH requested employee medical records. Westinghouse denied NIOSH's request. In response NIOSH issued a subpoena duces tecum (subpoena for production of evidence) for the records, which Westinghouse refused to honor.

While this process of request and denials was occurring, a NIOSH physician conducted medical tests and interviews with employees who worked in the TC-74 area. The physician found HHPA antibodies in a portion of the employees and that lung capacity was less than expected for some employees. After gathering this information, the NIOSH physician repeated his request for the medical records. Westinghouse responded by continuing to deny access unless the employees provided written consent and NIOSH would provide written assurance that the records would not be disclosed.

Since NIOSH was unable to gain unconstrained access to the records, it filed action in district court to enforce its previously issued subpoena. The district court found that the information was not protected from disclosure, that the agency had the authority to view the records and that Westinghouse had not met its burden of showing that private medical records would be improperly disclosed. Westinghouse appealed the decision.

Decision and Reasoning

Even though neither party raised the issue, the Court addressed whether Westinghouse had standing to sue on the matter and held that it had. The Court noted that standing only required that an alleged action would cause injury in fact, economic or otherwise. As the subpoena was directed at Westinghouse, its failure to comply would subject it to a contempt sanction. Furthermore, as the employees have no notice of the subpoena, Westinghouse is only one positioned to sue on the matter.

The Court upheld the district court's ruling that NIOSH's subpoena is justified and deserving of judicial enforcement. To qualify for judicial enforcement, (1) the inquiry must be within the authority of the agency, (2) the demand for production must not be too indefinite, and (3) the information sought must be reasonably relevant to the authorized inquiry. According to the court, NIOSH's subpoena met this criteria. Westinghouse did not challenge the second requirement but did contest the authority of NIOSH to access these documents and the relevance of the documents. The Court also upheld the subpoena as within NIOSH's regulations. Furthermore, the Court recognized that

access to employee medical records is necessary to conduct an adequate longitudinal study of the potential effects of HHPA and thus they are reasonably relevant to the authorized inquiry. Limiting the information to only excerpted data could hamper the investigation because it is unknown whether additional factors could become relevant.

The Court did not find that the employee's right of privacy was violated by disclosure of medical records. While the protection of private material is an important right, it can be limited by the presence of a proper governmental interest. In past cases, courts have found that public health or other public concerns may support

access to facts an individual might otherwise choose to withhold.â€• In analysis of whether the public outweigh the private interests, the Court considered a series of factors such as the presence of an articulated public policy, the degree of need for access, and effectiveness of provisions for security of information against unauthorized disclosures. In the passage of the Occupational Safety and Health Act, Congress articulated a serious interest in bettering the health and safety of work environments.Â Since NIOSHâ€™s â€œinterest in occupational safety and health to the employees in the particular plant, employees in other plants, future employees and the public at large is substantial. It ranks with the other public interests which have been found to justify intrusion into records and information normally considered private.â€• The Court also concluded NIOSH had shown a sufficient need of access as already articulated in the subpoena analysis. Lastly, the court found there were effective security provisions in place to protect against unauthorized disclosures.

Even though the Court found against Westinghouse, it did offer some protections for the employees. Before accessing medical records, NIOSH must give each employee notice. However, the Court rejected requiring written consent as a general policy it could cause unwieldy impediments to NIOSHâ€™s ability to carry out its mandate. Instead, notice should be given of the investigation, its purpose, and what documents NIOSH seeks to review. This system allows an employee to raise an individual privacy claim that could be sufficiently compelling to temper NIOSHâ€™s access. With this safeguard in the place, the Court remanded the case to the district court for further proceedings in accordance with the decision.

Decision Excerpts

â€œProliferation in the collection, recording and dissemination of individualized information has made the public, Congress and the judiciary increasingly alert to the threat such activity can pose to one of the most fundamental and cherished rights of American citizenshipâ€• (576)

â€œThere can be no question that an employee's medical records, which may contain intimate facts of a personal nature, are well within the ambit of materials entitled to privacy protection.â€• (577)

â€œIn recognition that the right of an individual to control access to her or his medical history is not absolute, courts and legislatures have determined that public health or other public concerns may support access to facts an individual might otherwise choose to withhold. On this basis, disclosures regarding past medical history, present illness, or the fact of treatment have been required. â€! Generally, the reporting requirements which have been upheld have been those in which the government has advanced a need to acquire the information to develop treatment programs or control threats to public health.â€• (578)

â€œThus, the interest in occupational safety and health to the employees in the particular plant, employees in other plants, future employees and the public at large is substantial. It ranks with the other public interests which have been found to justify intrusion into records and information normally considered private.â€• (579)

â€œAlthough Westinghouse has been permitted to assert the general claim of privacy on behalf of all of the employees, and has done so vigorously on the employees' behalf, each employee is entitled to make an individual judgment as to whether s/he regards the information so sensitive that it outweighs that employee's interest in assisting NIOSH in a health hazard investigation that may benefit the employee.â€• (581)