

**E. I. du Pont de Nemours & Company, Inc. and
Martinsville Nylon Employees' Council Corporation.** Case 5-CA-14823

22 February 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

Upon a charge filed by the Union 29 October 1982, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing 30 November 1982 against the Company, the Respondent, alleging that it violated Section 8(a)(5) and (1) of the National Labor Relations Act. On 13 December 1982 the Respondent filed its answer admitting in part and denying in part the allegations in the complaint. On 19 January 1983 the General Counsel issued an amendment to the complaint and notice of hearing. On 20 January 1983 the Respondent filed an answer to the amendment to the complaint admitting in part and denying in part the allegations in the amendment to the complaint.

Thereafter, the parties entered into a stipulation of facts and jointly moved to transfer the proceeding directly to the Board for findings of fact, conclusions of law, and an order. On 28 July 1983 the Board issued its order accepting the stipulation and transferring the proceedings to the Board. Thereafter, the General Counsel filed a memorandum to the Board, and the Respondent filed a brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record stipulated by the parties and their briefs and hereby makes the following

FINDINGS OF FACT

I. JURISDICTION

E. I. du Pont de Nemours & Company, Inc. is a Delaware corporation with an office and place of business in Martinsville, Virginia, and is engaged in the manufacture of continuous filament nylon yarns at its Martinsville, Virginia plant. During the past year, it has purchased and received products in excess of \$50,000 directly from suppliers located outside the Commonwealth of Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

268 NLRB No. 137

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Stipulation Facts

The Respondent has recognized the Union as the exclusive collective-bargaining representative of employees in the following unit at all times relevant to these proceedings:

All employees at Respondent's Martinsville plant, Textile Fibers Department, located at Martinsville, Virginia; excluding confidential clerks and stenographers, graduate trainees, co-op and summer students, engineers and chemists in training, nurses, guards, Limited Service employees, employees designated as relief supervisors, employees classified as exempt under the Fair Labor Standards Act, all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

The Respondent's recognition of the Union regarding this unit is embodied in the current collective-bargaining agreement effective 6 August 1981 to 30 August 1983 and at all times material to these proceedings. On 1 October 1982¹ Union President Harold Dean Goad, acting on behalf of the Union, mailed and hand delivered a letter to the Respondent at its Martinsville facility requesting information on the hourly wages and nonexempt salary paid to employees at the following named plants in the Respondent's textile fibers department: Richmond, Virginia; Chattanooga, Tennessee; Seaford, Delaware; Kinston, North Carolina; Camden, South Carolina; Cooper River (Charleston, South Carolina); Cape Fear (Wilmington, North Carolina); Waynesboro, Virginia; and Old Hickory, Tennessee. The letter informed the Respondent that the request was in preparation for negotiation of wages and that the Union needed the information so it would know what similarly skilled employees were being paid at other Du Pont plants.²

¹ All dates are 1982 unless other indicated.

² Each of the Respondent's above-listed Textile Fibers manufacturing plants is engaged in the production of synthetic fibers having steps of product manufacture similar or identical to Martinsville's. These manufacturing processes require a significant number of production, maintenance, and nonexempt salary employees who perform substantially the same duties as employees represented by the Union at Martinsville. Each of these comparison facilities is engaged in the production of either nylon or dacron products or both. Some of these plants also produce other synthetic fibers or products used in the production of synthetic fibers. In addition, two of the plants produce synthetic fiber products.

The Respondent contends that the information concerning the nine comparison plants is not available at the Martinsville, Virginia plant but concedes that it would not be unduly burdensome to provide such information to the Union if so ordered by the Board.

The parties met 14 October to discuss the Union's 1 October request for information. At that meeting, the Respondent's representatives asserted that the Respondent's wage proposals were based on the wages paid by other companies in the local labor supply area. The Respondent also stated that it was management's policy to maintain wages at Martinsville in the upper bracket of the scale in the plant's labor supply area in order to compete effectively for skilled employees in the local labor market. The Respondent's representatives stated that, since wages paid outside the local employment are not considered by the Respondent in reaching a wage proposal, the Respondent needed further explanation of why the Union needed the requested information. The union representatives stated that they needed the information to formulate the union wage proposal for pending negotiations, explaining that they wanted to know where the wages of employees they represented stood in relation to employees performing similar work at the Respondent's plants in the Textile Fibers Department. The Union asserted that it disagreed with the method the Respondent used to formulate wage proposals and further explained that it would use the information it had requested along with the national Consumer Price Index (CPI) and information it could obtain from other local plants in order to formulate its own wage proposals. At a later meeting the Union asserted that Martinsville employees performed as well as employees at the Respondent's other plants and that they should be paid accordingly. It referred specifically to wages paid at the Richmond, Virginia plant.

On 25 October the Respondent's and the Union's representatives met again to discuss the request for information. The Respondent's representatives informed the Union that had reviewed the request and had decided to deny it on the grounds that they had stated at the previous meeting. Specifically, they stated they did not consider the requested information relevant.

By 10 November letter to the Union, the Respondent requested a 12 November meeting to discuss wages and thereby reopened the parties' wage negotiations. At that meeting the Union informed the Respondent that they would have difficulty analyzing the Respondent's proposals and making counterproposals without the wage information they had requested. The Respondent declined and has not since supplied the requested information.

The Union and the Respondent's officials held further wage negotiation meetings on 17 and 23 November and 3, 6, and 10 December. During these meetings, the Union requested and received information regarding unit employees such as hours

worked and paid overtime, as well as information pertaining to the local comparison companies designated by the Respondent. These comparison companies are all in the local labor supply area for the Martinsville plant and are engaged in a variety of business operations such as food, tobacco, wood, furniture, rubber, glass production, and truck fabrication. Although some textile companies were included, these companies do not engage in the production of synthetic fibers. Nor do any of the local comparison companies perform steps of product manufacture similar to those performed by unit employees at Martinsville.

During the November and December meetings the Union made an additional request: information tending to show where the above-listed Textile Fibers Department plants stood in relation to companies within the respective local labor markets designated by the Respondent. The Union explained that this information was also necessary to ensure that unit employees were treated fairly in relation to employees at other Textile Fibers Department plants. The Respondent denied this information request, explaining that it does not have such information and does not use it in formulating a wage proposal. The Respondent has not since supplied this information.

At the 12 and 23 November meetings the Respondent discussed the relevance of the national Consumer Price Index (CPI). The Respondent presented revised information on the estimated national CPI for 1983, referring to a chart comparing unit employees' group 4 wage rate—the rate used for comparison with companies in the local labor supply area—with the CPI. The Respondent explained that, while it does not use the national CPI in formulating wage proposals, some of the Martinsville area comparison companies used it to compute cost-of-living wage increases.

At the 10 December wage negotiation session, the Union agreed to accept the Respondent's wage offer despite its dissatisfaction with it.

B. Analysis and Conclusions

In defining an employer's obligation to furnish information about nonbargaining unit employees, the Board seeks to establish "the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties." *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). Applying this standard, the Board has required employers to supply bargaining representatives seeking to negotiate wages information pertaining to the pay of nonunit personnel whose work is similar to that of unit employees. See, e.g., *Press Democrat Publishing Co.*,

237 NLRB 1335 (1978), enfd. 629 F.2d 1320 (9th Cir. 1980); *Northwest Publications*, 211 NLRB 464 (1974); *Goodyear Aerospace Corp.*, 157 NLRB 496, 503 (1966), enfd. 388 F.2d 673 (6th Cir. 1968). An employer's subjective belief that its own method of devising a wage proposal renders information sought irrelevant is not adequate grounds for denial. See *Amphlett Publishing Co.*, 237 NLRB 955, 956 (1978).

The parties have stipulated that on 1 October 1982 the Union requested information regarding hourly wages and nonexempt salary paid employees at each of the nine other plants where the Respondent manufactures textile fibers and where manufacturing processes are similar or identical to those at the Martinsville, Virginia plant. The parties have also agreed in the stipulation of facts that the steps of production at these nine facilities "by their very nature require significant numbers of production, maintenance and non-exempt salary employees to perform substantially the same duties as those possessed by employees represented by the Union at the Respondent's Martinsville, Virginia plant and to possess skills and experience which are similar and comparable to those possessed by employees represented by the Union at the Respondent's Martinsville, Virginia plant." The information request regarding wages and nonexempt salary at these plants was made in preparation for a reopening of wage negotiations pursuant to the parties collective-bargaining agreement.

We find this case to be indistinguishable from *E. I. DuPont De Nemours & Co.*, 264 NLRB 235 (1982), where the Board ordered the Respondent to supply data virtually identical to that sought here to a bargaining representative of one of the Respondent's other Textile Fibers Department plants. Accordingly, we find that the information requested by the Union in its 1 October letter is relevant to its bargaining obligation and that the Respondent violated Section 8(a) (5) and (1) of the Act by refusing to furnish it upon request.³

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Martinsville Nylon Employees' Council Corporation is a labor organization within the meaning of Section 2(5) of the Act.

³ The General Counsel argues that the Respondent has also violated Sec. 8(a)(5) and (1) of the Act by refusing to comply with the Union's subsequent information request for comparison data of wages and employers in the local labor markets of the above-listed Dupont Textile Fibers Department plants. We decline to find a violation on this basis since the allegation is not contained in the complaint or the amendment to the complaint.

3. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All employees at the Respondent's Martinsville plant, Textile Fibers Department, located at Martinsville, Virginia; excluding confidential clerks and stenographers, graduate trainees, co-op and summer students, engineers and chemists in training, nurses, guards, Limited Service employees, employees designated as relief supervisors, employees classified as exempt under the Fair Labor Standards Act, all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

4. At all times material to these proceedings, Martinsville Nylon Employees' Council Corporation has been the exclusive representative of employees in the unit described above for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing and refusing to furnish Martinsville Nylon Employees' Council Corporation information pertaining to hourly wages and nonexempt salary paid to similarly skilled employees at the below listed plants in Dupont's Textile Fibers Department, the Respondent has violated Section 8(a)(5) and (1) of the Act:

Richmond, Virginia
 Chattanooga, Tennessee
 Seaford, Delaware
 Kinston, North Carolina
 Camden, South Carolina
 Cooper River (Charleston, South Carolina)
 Cape Fear (Wilmington, North Carolina)
 Waynesboro, Virginia
 Old Hickory, Tennessee

REMEDY

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist therefore and to provide the Union, on request, information necessary for collective bargaining.

ORDER

The National Labor Relations Board orders that the the Respondent, E. I. du Pont de Nemours & Company, Inc., Martinsville, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to provide the Union information necessary for the purposes of collective bargaining.

(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) Provide the Union, upon request, information necessary for the purposes of collective bargaining.

(b) Post at its facility in Martinsville, Virginia, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 5, 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 Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁴ 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."

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 provide Martinsville Nylon Employees' Council Corporation, on request, information necessary for the purposes of collective bargaining.

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

WE WILL, upon request, furnish the Union with the information it requested by letter 1 October 1982, which information is relevant and necessary to the Union's role as the exclusive bargaining representative of the employees in the bargaining unit consisting of:

All employees at Respondent's Martinsville plant, Textile Fibers Department, located at Martinsville, Virginia; excluding confidential clerks and stenographers, graduate trainees, co-op and summer students, engineers and chemists in training, nurses, guards, Limited Service employees, employees designated as relief supervisor, employees classified as exempt under the Fair Labor Standards Act, all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

E. I. DU PONT DE NEMOURS & COMPANY, INC.