

**IMTT-Bayonne and Oil, Chemical and Atomic
Workers International Union, Local 8-406.**
Case 22-CA-17286

August 27, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

On April 8, 1991, Administrative Law Judge Eleanor MacDonald issued the attached decision. The General Counsel and Respondent filed exceptions and a supporting brief. The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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 as modified, and conclusions as modified and to adopt the recommended Order as modified.

The judge found that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish to the Union a description of Respondent's new insurance plan, commencing in April 1990 and ending in November 1990. We find merit to the General Counsel's exception to the judge's finding that Respondent's unlawful refusal to furnish the plan description ceased in November 1990.

The judge found, based on Respondent's representations to the Union, that the old and new insurance plans mirror each other in coverage. We conclude that the record evidence, including Respondent's own testimony and documents, shows that the two plans are not identical.¹ Moreover, the undisputed evidence indicates that in November 1990, Respondent received from Travelers a description of the Travelers' portion of the new plan. Respondent has refused to provide this document to the Union and gives no lawful justification for its refusal.

Accordingly, it is clear that Respondent's oral statement to the Union in November 1990 that the old plan booklets could be used to describe the new plan because the coverage under the two plans were the same did not satisfy its duty to provide all the relevant information needed for the Union to compare for itself both the coverage and costs of the plans.² We therefore

¹For example, in his August 28, 1990 letter to the Union, Respondent's director of employee benefits stated that, unlike the old plan, the new plan contained catastrophic coverage for claims exceeding \$25,000. In another document supplied by Respondent to employees, Respondent refers to the new plan as containing "some additional enhancements." Further, Respondent's counsel at the hearing conceded that the Blue Cross/Blue Shield component of the old plan was not identically matched by the Travelers' plan and that "in fact there are differences."

²Although the judge erred in stating that it was not until the filing of its posthearing brief that Respondent suggested the Union was not entitled to cost information, this error does not affect our adoption of the judge's conclusion that Respondent had a duty to furnish the cost information requested by the Union.

conclude that Respondent's unlawful refusal continued after November 1990 and that it is required to furnish a detailed description of the new plan to the Union. See *Ideal Corrugated Box Corp.*, 291 NLRB 247, 248 (1988).

AMENDED CONCLUSIONS OF LAW

Delete the judge's Conclusions of Law 3 and substitute the following:

"3. By failing to provide the Union with exact and detailed information about the coverage of the new medical insurance plan, Respondent violated Section 8(a)(5) and (1) of the Act."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, IMTT-Bayonne, Bayonne, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Furnish the Union, in timely fashion, the information related to the cost and coverage of the medical insurance plan adopted on April 1, 1990."

2. Substitute the attached notice for that of the administrative law judge.

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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

In adopting the finding that the Respondent had a duty to provide the cost information, Member Oviatt notes in particular that the Respondent repeatedly told the Union that the Respondent did not yet have the cost information, but that it would be provided to the Union as soon as possible, or when the Respondent had "satisfactory actuarial experience"; and further, that "if there was a savings, it would be passed on to the employees." It was not until several months later, at the hearing, that the Respondent first asserted that the Union was not entitled to any cost information (based on the contention it would be irrelevant under the Respondent's then interpretation of the contract).

WE WILL NOT refuse to bargain in good faith with the Oil, Chemical and Atomic Workers International Union, Local 8-406, by refusing to furnish the Union with information necessary and relevant to the Union's performance of its collective-bargaining functions.

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 furnish the Union with information relating to the cost and coverage of the medical plan adopted April 1, 1990.

IMTT-BAYONNE

Julie Kaufman, Esq. and *Bert Dice-Goldberg, Esq.*, for the General Counsel.

Francis T. Coleman, Esq. (Keck, Mahin & Cate), of Washington, D.C., for the Respondent.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in Newark, New Jersey, on January 16, 1991. The complaint alleges that Respondent, in violation of Section 8(a)(1) and (5) of the Act, refused to furnish certain information requested by Oil, Chemical and Atomic Workers International Union, Local 8-406. Respondent denied the material allegations of the complaint. In its posthearing brief, Respondent raised for the first time the defenses that the matter should be deferred to arbitration and that the complaint was time barred under Section 10(b). Further, Respondent filed a motion on March 5, 1991, requesting dismissal in accordance with the Board's policy of deferral to arbitration.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent in February 1991, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, with a facility in Bayonne, New Jersey, is engaged in the storage and distribution of oil and gases. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Union represents the following employees of Respondent in an appropriate unit for the purposes of collective bargaining:

Employees in all classifications except administrative, executive, supervisory, professional, clerical, and facility protection employed at the Bayonne, New Jersey terminal.

The Union has represented employees at the Bayonne facility for many years. Respondent assumed ownership of the facility in September 1983, and since then it has been a party to successive collective-bargaining agreements with the Union. The most recent contract has a term from June 21, 1989, to June 20, 1992.

Article X, sections B and C, provide in pertinent part:

The Company agrees to contribute the sum of Two Dollars and Twenty-One Cents (\$2.21) per hour, not to exceed a maximum contribution of Eighty Eight Dollars and Forty Cents (\$88.40) per week for any and all of its regular full time employees, and their dependents, covered by this agreement to the O.C.A.W., Local 8-406 Welfare Fund. However, for any increases beyond the \$2.21 per hour and a maximum of \$88.40 per week, the Company will pay only 75% of the increase, with the remaining 25% to be paid by the covered employee.

The Company shall have the right, within twelve (12) months from the execution of this agreement, to adopt another plan with corresponding benefits limited to employees of this bargaining unit and their dependents.

At the time the collective-bargaining agreement was executed, the unit employees were covered by the Union Welfare Fund and no contributions were required of them toward the cost of their medical insurance. The Union Welfare Fund was composed of two components: one consisted of a Blue Cross/Blue Shield portion and the other was a major medical and dental portion funded and self-insured by the Union Welfare Fund. However, in February 1990, there was a 35-percent increase in rates by Blue Cross/Blue Shield. The unit employees were obliged to pay 25 percent of the cost of the increase; this amounted to \$.16 per hour or \$6.30 per week per employee.

On April 1, 1990, the Company exercised its right under the collective-bargaining agreement to adopt another plan. The new plan consisted of a component supplied by the Travelers Insurance Company supplemented by a component self-funded and self-insured by the Employer. A few weeks before the change in medical plans became effective, Terminal Manager Richard R. Fisette held a meeting with the Union committee to inform it that the change would be taking place. The meeting was attended by the Union's chief steward, John Kryzkowski, and several other committee members. Fisette stated that representatives of the Travelers Insurance Company would come to the facility to answer any questions the employees might have about the plan. Fisette also said that printed manuals describing the new plan would be distributed to the employees as soon as the Company received them from the print shop. Fisette stated that the new plan would provide coverage corresponding to that provided under the old plan.

On April 6, 1990, Kryzkowski wrote to Fisette stating:

As of April 5, 1990, we still have not received full information on the Travelers Health Care Package. . . . It is of great concern that we have full disclosure of what exactly our coverage will cost, and exactly what will be covered.

It is [the Union's intention] to have an expert compare the two coverages and let us know if they are corresponding in all aspects or not.

I request an extension on the grievance filing time, until the both coverages are compared.

By letter of April 6, 1990, Fisette responded that the "formal printed manual for the new Travelers-based health program is still with the printer." The letter referred to a two-page summary document circulated to the employees on April 1, 1990, which purported to describe the new plan. Fisette promised that the detailed health plan description "will be distributed as we receive them from the printer." In response to the Union's request to extend the time for filing a grievance, Fisette wrote:

Since nothing the Company has done concerning these benefits falls within the criteria of Article VIII, the request to extend the grievance filing time is neither justified nor appropriate and therefore need not be addressed."

Charles Horvath, president of the Union, testified that on about April 26, 1990, he met with management and requested information about the new medical plan which the Company had just adopted. The meeting took place in Fisette's office; besides Horvath and Fisette, members of the Union committee were present. Horvath requested a copy of the medical plan so that the Union Welfare Fund could compare it with the former Union Welfare Fund plan and make sure that the new plan was comparable in accordance with the requirements of the collective-bargaining agreement. Horvath also asked management officials for figures showing the cost of the plan; employees were still being asked to contribute \$6.30 per week and he wanted to be certain that the contribution was still necessary under the new plan. Horvath knew the cost of the old medical plan under the Union Welfare Fund; it was \$3.84 per hour. He wanted to know the exact cost of the new plan to see if the employee contribution was justified by the cost of the new plan. Fisette replied that he did not have the information requested but that he would get it to the Union as soon as possible. According to Chief Steward Kryzkowski who was also present at the meeting, Fisette stated that the insurance booklets were still at the printers.

Horvath testified that throughout the summer of 1990 he met personally with Fisette to discuss grievances and other matters and renewed his request for the information. Kryzkowski testified that around July 1 at a grievance meeting, the Union asked for the plan description and the cost figures for the insurance. Fisette stated that "as far as the costs were concerned, . . . they were waiting for quarterly statement from the insurance carrier."

On August 9, 1990, Kryzkowski wrote to Fisette reminding him that the Union had not received "financial disclosure on the Travelers Health Care Coverage regarding the hourly contribution rate of which we are responsible for a copayment of 25% of all increases over \$2.21 per hour."

On August 28, 1990, Robert C. Weaver, vice president and director of risk management for Respondent wrote to Kryzkowski, stating, in part:¹

Detailed costs of our program will be made available to you when satisfactory actuarial experience and related actual costs become identified. If, after all the costs are accounted for, there is a savings, it will be passed on to the men.

On October 3, 1990, the Union filed its unfair labor practice charge herein alleging that the Company had refused to provide the information about the medical plan.

In November 1990, according to Kryzkowski, Dennis Barbarise, benefits coordinator at the Bayonne facility told him that unit members could use their old union health plan booklets as pamphlets for the new plan because "it would be a mirror coverage."

On December 13, 1990, Horvath wrote to Fisette to request some information not relevant to the instant case. His letter reminded Fisette:

Also to date this office has not received any of the information requested on your medical plan.

To avoid any legal recourse which could be costly to both parties I hope you will cooperate and furnish the information requested above.

On January 7, 1991, Fisette responded that since the Union's informational request regarding the medical plan was before the NLRB as a result of the filing of the unfair labor practice charge "we are now dealing with that agency in the resolution of this matter."

Weaver testified that Travelers had agreed to draw up a booklet describing both the Travelers portion of the insurance plan and the self-insured portion, but that it did not do so. Eventually, the Company decided that the employees should simply use the old booklet issued by the Union Welfare Fund as a guide to insurance coverage.

Weaver testified that the cost of the new health insurance plan adopted by the Company on April 1, 1990, was the sum of the amount paid to Travelers and the amount required to make supplemental payments on a self-insured basis. The cost of the self-insured component varies from month to month. According to Weaver, he would regard 3 years' experience for the self-insured component as an adequate actuarial base from which to calculate the monthly cost of the self-insured portion. He stated that the information compiled by the Company so far was not statistically sufficient to assess the average cost of the self-insured component over the life of the contract. However, he acknowledged that from a statistical point of view, "you're better off after one year than you are after six months." Further, Weaver stated, he would be able to make use of whatever information he had for the next contract negotiations with the Union in 1992. Weaver also testified that the Company is billed monthly by Travelers for the cost of the Travelers portion of the health insurance plan.

Dennis Barbarise, manager of administration for the Company, is responsible for the administration of benefits under the new medical insurance plan. Barbarise testified that in November 1990, he and Kryzkowski discussed the fact that the Union did not have a booklet that set forth medical insurance coverage under the new plan. Barbarise stated that he told Kryzkowski that the unit members had the exact coverage that was described in the Union Welfare Fund booklet that had been in use previously. Barbarise does not person-

¹ Weaver works at the Company's home office in New Orleans.

ally handle all the claims for medical insurance, but he is consulted on claims that are questionable. When a question arises whether a claim for medical insurance is covered under the new plan, Barbarise or the company claims administrator call the Union Welfare Fund medical insurance plan administrator and ask if the claim at issue would have been covered under the old Union Welfare Fund plan. If the claim would have been covered under the union plan, then the Company covers the claim through the self-insured portion of the new plan.

There is no evidence that since the institution of the new medical insurance plan any employee claims have been rejected that would have been paid under the old Union welfare fund medical insurance plan.

The record shows that before April 1, 1990, the Company issued a two-page summary description of the new insurance plan. The Company said the new plan would "match" the services and costs provided in the Union Welfare Fund plan. The evidence does not establish that this description was sent to the Union. Further, Weaver conducted several meetings with unit employees to explain the new plan; apparently, union officials were not actually invited to attend these meetings.

B. Positions of the Parties

Counsel for the General Counsel maintains that the Union has a right to information that may be relevant and reasonably necessary to represent employees in the bargaining unit with respect to terms and conditions of employment. Information about group insurance is presumptively relevant. General Counsel argues that the fact that the Union Welfare Fund plan description provides information about the Company plan "does not defeat the Union's right to have . . . a description of the plan." The Union is not obliged to secure its information from an alternative source, that is, the Union Welfare Fund plan booklet. Concerning the cost information, counsel for the General Counsel urges that the information currently available to the Company is relevant even though it may not be complete for all purposes which the Company could cite. Further, the information is readily available to the Company through its own books and records. At the instant hearing, Respondent took the position that the cost information sought by the Union was not available in a statistically significant form. Respondent's brief argues that the collective-bargaining agreement gives it the right to collect employee contributions for medical insurance costs based solely on the cost of the union plan; this is so regardless of the actual costs of the plan which the Company has properly elected to substitute for the union plan. Thus, Respondent concludes, the actual costs of the company plan are irrelevant to the Union's performance of its function as the representative of the unit. In any event, Respondent urges, the interpretation of the contract should be left to an arbitrator. The language of the contract, according to Respondent, is clear and unambiguous and there is no need for the Union to seek information because there cannot be any dispute as to the meaning of the contract. If such a dispute did exist, however, in the view of Respondent it should be submitted to arbitration and the Board should defer to that process; the arbitrator would have the power to order production of the information sought. Further, Respondent asserts, the new medical plan was adopted April 1, 1990: the instant charge

was filed more than 6 months after that date and it is therefore time barred under the Act. Finally, Respondent argues, it does not have any description of the medical plan coverage other than the Union Welfare Fund booklet; this information is already in the possession of the Union. The cost information sought is also not available because "the cost information available to the Employer at this time is not statistically meaningful nor representative of the Employer's 'per hour cost,' its contribution or its total costs involved."

C. Discussion and Conclusions

There are well established tests applicable for determining whether an employer must furnish information to the collective-bargaining representative of its employees. The Supreme Court has held that an employer must "provide information that is needed by the bargaining representative for the proper performance of its duties" and that "the duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement." In deciding whether information must be turned over, it is only necessary to find that it is probably relevant; a "discovery-type standard" is applied. *NLRB v. ACME Industrial Co.*, 385 U.S. 432, 435-437 (1967). Information relating to wages and group insurance is presumptively relevant. *East Dayton Tool Co.*, 239 NLRB 141, 143 (1978). "In this connection it is not necessary that the information be shown to be accurate or even admissible in court, so long as there is some relationship to a subject of collective bargaining." *Stephen Oderwald, Inc.*, 284 NLRB 277, 279 (1987). Further, "[t]he fact that more or other information may be necessary to give meaning to the information sought does not make that information irrelevant." *E. I. Dupont & Co.*, 271 NLRB 1245, 1248 (1984).

Respondent and the Union are signatories to a collective-bargaining agreement which provides for medical insurance coverage under the Union Welfare Fund plan and gives the Company the right "to adopt another plan with corresponding benefits." Manifestly, the Union is entitled to information about the new plan so that it may enforce the rights of employees to "corresponding benefits" under any new plan adopted by the Company. Such information is presumptively relevant to the performance of the Union's duty to enforce and administer the collective-bargaining agreement. Without information about the coverage of the new plan, the Union could not properly represent the employees. Indeed, until the filing of its brief herein, Respondent had never taken the position that the Union was not entitled to the information: before the plan was adopted, Fisetto told Kryzkowski that printed manuals would be available soon, and when Kryzkowski requested disclosure of "exactly what will be covered" on April 6, 1990, Fisetto quickly responded that a detailed health plan description would be distributed as soon as it was received from the printer. When Horvath asked for a copy of the medical plan on April 26, 1990, Fisetto told him that booklets were still at the printers. Various union officials renewed the request for the information throughout the summer of 1990. The testimony of company witnesses shows that far from telling the Union that they would not provide the information, they kept putting the Union off with stories about the "printers." In fact, as the testimony of company witnesses shows, the Company wanted the Travelers to provide the information but it eventually became apparent that Travelers

refused to provide a complete plan description. The result was that from April 6, 1990, until after the Union filed the instant charge on October 3, 1990, the Company did not give the Union the information it had repeatedly requested in order to ascertain exactly what coverage the new medical insurance plan provided.

I note that the Union did not begin its search for information by asking for a plan booklet; the Union asked for "information" about "exactly what will be covered." It was the Company that referred initially to the preparation of a booklet. There was no reason, except the convenience of the Company, for the information to be given to the Union in the form of a booklet. The Company could have given the Union a copy of its contract with Travelers showing that portion of the medical coverage provided by Travelers and it could have supplemented this with a statement of what would be covered by the self-insured portion of the coverage. Or the Company could have done what it did in November, 1990, after the filing of the charge herein; it could have simply told the Union that anything that was covered under the old Welfare Fund plan would be covered by the new plan and that the old plan booklets could be used to describe fully and in every particular the new plan adopted by the Company as of April 1, 1990. The testimony in the record convinces me that until November, 1990, the Company had never told the Union that the new coverage was a "mirror" of the old Welfare Fund coverage; until then Company had limited itself to assurances that the new coverage had "corresponding benefits," a conclusory statement that provided no information to the Union.²

Thus, I find that the Respondent violated Section 8(a)(5) and (1) of the Act when it failed to provide the Union with exact and detailed information about the coverage of the medical insurance plan adopted on April 1, 1990, in response to the Union's written and oral requests, beginning on April 6, 1990, and continuing on April 26, July 1, and through the summer of 1990.

General Counsel argues that requiring the Union to use the old Welfare Fund plan description does not satisfy Respondent's obligation to supply information. General Counsel urges that this amounts to requiring the Union to conduct an independent investigation. I do not agree. The Union has copies of the Welfare Fund plan description already in its possession and it would not be burdensome to be required to refer to those documents. Compare *Borden Chemical*, 261 NLRB 64, 80 (1982). Once the Employer had told the Union, in November 1990, that the old Welfare Plan description was an exact description of the new coverage, the Respondent had satisfied its duty as to that portion of the Union's request that dealt with a description of the new medical insurance plan. Thus, Respondent's violation of the Act occurred from April 6, 1990, until November 1990.

With respect to the Union's request for information regarding the cost of the new medical insurance plan, the analysis undertaken above shows that cost information concerning insurance coverage of the unit employees is presumptively relevant. Indeed, until the filing of its brief herein, Respondent did not suggest that the Union was not entitled to

the information it sought; rather, Respondent maintained that the cost data available had not accumulated over a sufficient length of time to be accurately averaged. Weaver himself wrote in August 1990, that details concerning the cost of the new medical plan would be furnished to the Union when he had "satisfactory actuarial experience." He added that if there was a savings it would be passed on to the employees. This last statement makes it clear that Weaver's interpretation of the contract agreed with that of the Union; that is, that the \$6.30 per week paid by the employees had to be justified by the cost of the new medical insurance plan instituted by Respondent. Although Respondent's brief adopts a new reading of the collective-bargaining agreement and argues that employees must contribute based on the cost of the Union Welfare Fund plan and not based on the cost of the plan in which the employees participate, it is not necessary for me to interpret the collective-bargaining agreement. It is sufficient that the Union is seeking information that is relevant to its own reading of the contract language. That the Union's interpretation of the language is not unreasonable is shown by the fact that until very recently Respondent agreed with the Union's reading of the contract. The Union needs the cost information in order to decide if, in its view, the contract provisions relating to employee contributions are being adhered to. Whether the Union will eventually file a grievance and whether an arbitrator may ultimately agree with the Union's view of the contract is not of concern in determining whether, under the very broad discovery-type standard applicable herein, the Union is entitled to the cost information it has demanded.

Having determined that the cost information sought by the Union is necessary to the performance of its duties and presumptively relevant, I turn to Respondent's argument that the cost information available to it at this time is not statistically meaningful nor representative of the per hour cost. It is clear from the totality of Weaver's testimony that Respondent is in possession of information relating to the cost of the new medical insurance plan. Respondent is billed regularly by Travelers for the cost of providing coverage and Respondent maintains records of the sums it disburses monthly for the self-insured component of the new plan. For information to be properly disclosable to the Union it need not be admissible in court nor need it even be accurate; it must only relate to a subject of collective bargaining. Clearly, Respondent has an obligation to give the Union the cost information it has on hand. The fact that the information is open to interpretation or that, in the view of Respondent, it may not be for a statistically significant length of time is not controlling. The Union has a right to the information so that its own experts may advise it concerning the per hour cost as defined in the collective-bargaining agreement and so that it may decide on an appropriate course of action pursuant to its reading of the agreement. I note that Weaver acknowledged that even the earlier cost figures had some meaning and that the accuracy increased as time went on. It is up to the Union and its expert to decide what meaning the Union will give to the figures in its own analysis.

I find that Respondent violated Section 8(a)(5) and (1) of the Act from April 6, 1990, to the present, by failing to give the Union the cost information it was seeking.

With respect to Respondent's argument that the requests for information should be deferred to arbitration, I note that

²The two-page summary description of the new insurance plan issued to employees before April 1, 1990, is not a complete description of the coverage and would not satisfy the Company's obligation to provide information to the Union.

under the Board's clear precedents, Respondent should have raised this issue earlier than in its posthearing brief submitted on February 19, 1991, or the motion made in March.³ *United Technologies Corp.*, 274 NLRB 504 (1985). However, I need not decide this aspect of the case on a procedural basis only. It is manifest that under established Board law, allegations that an employer has refused to furnish information requested by an exclusive collective-bargaining representative are not deferred to arbitration. *United Technologies*, supra at 505. This conclusion is not affected by the fact that on February 22, 1991, the Union filed a grievance relating to the adoption of the new medical insurance plan.⁴ *United Technologies*, supra at 506. Respondent's posthearing motion must be denied.

Respondent's argument that this proceeding is barred by Section 10(b) of the Act is similarly without merit. As found above in greater detail, the Union's requests for information and the Company's failure to comply began on April 6, 1990, and continued regularly through the summer of that year. It was not clear until Weaver's letter of August 28 that the Company was no longer willing to provide the cost information and even on that date the Company had not told the Union that a description of the coverage would not be forthcoming. Thus, the charge filed on October 3, 1990, was well within the 6-month period specified in the Act. Respondent's argument is premised on the fact that the new health insurance plan was instituted on April 1, 1990. However, in urging that the effective date of the new plan is significant in counting the limitations period, Respondent misreads the instant charge. The Union has not alleged that the adoption of the new plan was an unfair labor practice; rather, the Union is complaining of Respondent's failure to furnish certain information it requested.

CONCLUSIONS OF LAW

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

Employees in all classifications except administrative, executive, supervisory, professional, clerical, and facility protection employed at the Bayonne, New Jersey terminal.

2. At all times material, the Union has been the exclusive representative of all employees within the appropriate unit

³ Respondent's motion cites *Sinclair Refining Co. v. NLRB*, 306 F.2d 569 (5th Cir. 1962), as authority for its position. In 1967, this case was specifically disapproved by the Supreme Court in *Acme*, supra at 437. *P.R. Mallory Co.*, 411 F.2d 948, 956 (7th Cir. 1969).

⁴ The grievance challenges the right of the Company to collect any contributions from the employees unless they are for the Union Welfare Fund and it challenges the right of the Company to include unit members in a company wide plan.

described above for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

3. By failing to provide the Union with exact and detailed information about the coverage of the new medical insurance plan from April 6, 1990, until November 1990, Respondent violated Section 8(a)(5) and (1) of the Act.

4. By failing to provide the Union with the information available to it about the cost of the new medical insurance plan, Respondent violated Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

ORDER

The Respondent, IMTT-Bayonne, Bayonne, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide the Union with information relating to the coverage of the medical insurance plan and with information relating to the cost of the plan.

(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 the Union, in timely fashion, the information concerning the cost of the medical insurance plan adopted on April 1, 1990.

(b) Post at its facility in Bayonne, New Jersey, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 22, 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.

⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁶ 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."