

Georgia-Pacific Corporation and United Paperworkers International Union, AFL-CIO. Cases 7-CA-27150 and 7-CA-27199

September 30, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On April 4, 1989, Administrative Law Judge Peter E. Donnelly issued the attached decision. The General Counsel filed exceptions and a supporting brief; the Respondent filed cross-exceptions and a supporting brief; the Charging Party filed exceptions, a supporting brief, and an answering brief to the Respondent's cross-exceptions; and the Respondent filed an answering brief to the General Counsel's and the Charging Party's exceptions.

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,¹ and conclusions² and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹ The judge inadvertently referred to Clare Annen and Ron Nelson, the International union representative and the local union vice president, respectively, as "Claude Annan" and "Roy Nelson."

² We agree with the judge's conclusion that the Respondent had no obligation to provide the Union with the financial information requested. We also agree with the judge that a good-faith bargaining impasse existed when the Respondent implemented its final contract offer on July 22, 1987. In so doing we specifically rely on the parties' deadlock on significant issues involving the Respondent's flexibility and pension plan proposals. We, thus, find it unnecessary to decide whether any other factor contributed to the impasse here.

Linda Rabin, Esq. and *Michael R. Blum, Esq.*, for the General Counsel.

Carl E. Verbeek, Esq. and *David E. Khorey, Esq.*, of Grand Rapids, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge. The charge in Case 7-CA-27150 was filed on July 20, 1987, by United Paperworkers International Union, AFL-CIO (the Charging Party or the Union). The charge in Case 7-CA-27199 was filed by the Union on August 3, 1987. An order consolidating cases, consolidated complaint and notice of hearing was issued on September 30, 1987, alleging that Georgia Pacific Corporation (the Employer, Company, or Respondent) refused to bargain with the Union in violation of

Section 8(1) and (5) of the Act by refusing to provide certain financial records to the Union which were necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees. The complaint further alleges 8(a)(1) and (5) violations in that Respondent unilaterally implemented its contract proposal without impasse having been reached. An answer thereto was timely filed by Respondent. Pursuant to notice, a hearing was held before the administrative law judge on April 25 through 29, 1988. Briefs have been timely filed by Respondent, the General Counsel, and the Charging Party which have been duly considered.

FINDINGS OF FACT

I. THE EMPLOYER'S BUSINESS

The Employer is a Georgia corporation with paper plants and papermills throughout the United States, including the Kalamazoo Paper Division mill in Kalamazoo, Michigan. During the calendar year in 1986, Respondent, in the course of its business operations, received gross revenues in excess of \$500,000. During the same period, Respondent purchased and caused goods valued in excess of \$50,000 to be shipped directly to its Kalamazoo facility from points located outside the State of Michigan. The complaint alleges, the answer admits, and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, the Respondent admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Refusal to Furnish Information

1. Facts¹

Respondent employs about 42,000 people; some 10,000 in the pulp and paper division, which includes the manufacture of paper and corrugated containers. The Union represents about 8000 to 9000 of these employees under contract at about 60 locations.

At the Kalamazoo plant, Local 25 of the Union represents a unit of about 130 production employees. Local 78 of the International Brotherhood of Fireman and Oilers also represents under contract approximately 100 powerhouse and maintenance employees. Since 1968, the International rep-

¹ There is conflicting testimony regarding some allegations of the complaint. In resolving these conflicts, I have taken into consideration the apparent interests of the witnesses. In addition, I have considered the inherent probabilities; the probabilities in light of other events; cooperation or lack of it; and consistencies or inconsistencies within the testimony of each witness and between the testimony of each and that of other witnesses with similar apparent interests. In evaluating the testimony of witnesses, I rely specifically on their demeanor and have made my findings accordingly. Although apart from consideration of demeanor, I have taken into account the above-noted credibility considerations, my failure to detail each of these is not to be deemed a failure on my part to have fully considered it. *Bishop & Malco, Inc.*, 159 NLRB 1159, 1161.

representative serving the Kalamazoo location has been Claude Annan. The most recent contract between the Union and Respondent was a 3-year contract from May 1, 1984, to May 1, 1987.

In March 1987,² prior to the initial negotiating session on April 20, Resident Plant Manager David Norman³ met with Smothers and another employee at a local tavern where he told them that the plant's financial condition was profitable but that management could show a paper loss by assigning corporate charges and losses to the Kalamazoo plant.

On or about April 15, the union negotiating committee was called together at the plant to meet a man named Milliken, who was introduced to them by Sullivan as vice president in charge of northeast operations. Milliken told them that the upcoming negotiations would be difficult; that the Kalamazoo plant was not healthy financially; not doing as well as it should be; and that unless they found other orders, it did not look good. He also mentioned that tough negotiations were coming up and that considerable concessions had been made in other negotiations, identifying Respondent's plant in Port Hudson, Louisiana, where he said they had turned the plant around.

The first negotiating session took place on April 20. Altogether, 11 meetings took place from April 20 until July 22 when the Respondent implemented its final proposal to the Union.⁴

At the first negotiating session on April 20, the Union and Respondent exchanged and briefly reviewed one another's "agendas," basically a general listing of the topics or issues to be negotiated. Annan was the spokesman for the Union's negotiating committee and James T. Wright, director of industrial relations, was the Respondent's spokesman. Among Respondent's proposals was a change in the pension plan. On the pension matter, the Union's agenda incorporated a letter seeking a 5-year extension of the PIUMPF plan with annual increases in pension benefits. Other proposals on the Company's agenda included the concept of "flexibility" in job assignment of unit employees, and premium pay, including weekend overtime.

At this first session according to Annan, Local 25 President Adrian Smothers and Recording Secretary Michael Chamberlain, Wright described the economic condition of the Kalamazoo plant as not "too rosy" and that the "plan in Kalamazoo is short." Wright testified that although he did not recall using those words, he did tell the Union's negotiating committee that Kalamazoo was "a troubled facility"; that there were factors that could affect the economic well being of Kalamazoo. He identified those as competition from both foreign producers and from other Georgia Pacific plants where the products being made at Kalamazoo could be produced cheaper and more efficiently; for example, at Port Huron new machinery had been installed which substantially increased that plant's capacity to produce the same paper being made at Kalamazoo. Wright explained that the Com-

pany intended to move products from less efficient to more efficient plants to reduce production costs.

At the second meeting on April 24, in an exchange concerning the financial condition of the Kalamazoo plant, Annan asked Wright if the plant was losing money. Wright said that it was but, on inquiry from Annan, said that he was unwilling to prove it. When asked why the plant was not being sold, Wright said they did not sell a good performing operation.

In June 12, at the seventh negotiating session, David Reynolds, Respondent's vice president of human resources, substituting for Wright as the Respondent's spokesman, told the Union's negotiating committee that Georgia Pacific was a very wealthy company, probably the wealthiest in the industry. Reynolds further stated, according to Chamberlain, "We are not an impoverished Company. We are not pleading poverty in this location, but, Mr. Annan, when you tell these people that the Company has all the tools, you're playing with their jobs." When asked why Respondent was looking for concessions if the Company was doing so well, Reynolds replied that they just wanted more.

At the next bargaining session on June 18, Wright accused the Union of stalling the negotiations by not submitting any counterproposals and complained about this delay while the Kalamazoo operation was losing money by the "bucketsful."

At the ninth session on July 1, Wright complained about discussing certain plant safety items raised by the Union, calling them "chicken shit" items, and accused the Union of stalling while the Kalamazoo operation was losing money. However, Wright also made the statement that they were not pleading poverty at the Kalamazoo plant. Sullivan also represented to the Union that the Kalamazoo plant had suffered substantial losses in the last 2 years. It was also at this July 1 meeting that the Respondent submitted a complete proposal which, by its terms, was to become a final proposal unless an acceptable proposal was received from the Union at the next meeting scheduled for July 10. The cover page of the Company's proposal reads in relevant part,

Because the productivity improvements and savings contained herein are very important to the mill, unless an acceptable proposal is received from the Union in the meeting for July 10, 1987, this offer shall become the Company's final offer.

By letter dated July 8 to Sullivan, Annan states that because of "conflicting views" presented by management concerning the financial status of the Kalamazoo operation, it was requesting that "financial data" on the Kalamazoo operation be made available at the July 10 meeting in order to "properly represent" the membership.

Near the close of the July 10 bargaining session,⁵ Wright handed the Union a letter dated July 10. The letter was addressed to Annan from Wright and reads as follows:

This letter is intended to clarify the Company's position and to respond to your July 8, 1987 letter. It is unfortunate [sic] that you are confused about the Company's statements but I can assure you that any confu-

² All dates refer to 1987 unless otherwise indicated.

³ Thomas Sullivan replaced Norman as acting resident plant manager on April 10 and took over as resident plant manager on August 1.

⁴ The 1984 contract was ratified approximately a month from the time negotiations began, and within a day or two of its expiration on May 1, 1984.

⁵ By prior agreement, the July 10 meeting was devoted primarily to a review of pension issues by pension experts Richard Spitznass, for the Company, and Paul Gross, for the Union.

sion you may have was not caused intentionally by the Company. We are responding to your letter as follows:

I. We are not pleading poverty and have not plead [sic] poverty or inability to pay. We are only claiming that we are unwilling to pay wages and fringe benefits which we believe will make competition more difficult.

II. Georgia-Pacific is a publicly held corporation and its full operating results have been disclosed to the public and to our stockholders. We believe that you and your International have the information regarding the Company's operating results.

III. Although we are not admitting any legal obligation to do so, since you are particularly interested in the operating results, including financial data, for the Kalamazoo Division, we are willing to make an informal disclosure of the Kalamazoo Division's operating results for the past 2 years by showing copies of the monthly profit and loss statements to two employee members of the Union's Bargaining Committee provided:

1. The two individuals and the Union will agree to keep the information confidential, i.e., it will not be disclosed outside the bargaining unit, and

2. The process of disclosing these records will not further delay the bargaining process.

We are concerned that this late request not impede the overall bargaining process. We have been meeting with you, in numerous meetings, since April 20 and have repeatedly indicated that we would supply you with the information you need in order to keep the bargaining process moving in a timely manner, and that necessary to comply with the legal requirements. Further, your request for financial data is so broad that it is impossible to know what you claim you need.

Our objective is to reach an agreement as promptly as possible.

Wright described the letter as a "stab" at providing whatever information the Union wanted since the request was so general in its terms, requesting only "financial data," and was sent in an effort to expedite bargaining. Smothers complained that the conditions for receiving the information appeared to exclude review by Annan. Wright confirmed that the information was being made available only to two employee members of the bargaining committee as the letter indicated. Wright testified that this information was not being made available to Annan out of a concern for the confidentiality of the information inasmuch as Annan dealt with competitors of the Respondent in his capacity as an International representative. At this meeting, Wright agreed to meet again on July 15, not to negotiate, but to clarify the terms of "its final offer."

By letter dated July 10, written after the meeting on July 10, Wright confirmed the July 15 meeting in the following terms:

Confirming our conversation at the conclusion of the meeting Friday, July 10, 1987, we are willing to meet on Wednesday, July 15, 1987 to answer questions or clarify the terms of our final offer that became effective on July 10, 1987.

On July 15, about 8 a.m., prior to the meeting set for that date, Annan, Smothers and Roy Nelson, vice president of the Union, went to Sullivan's office where they met Wright, Sullivan, and Sam Seldors, director of industrial relations for Kalamazoo. Sullivan asked Annan to describe exactly what Company records they wanted to look at. Annan testified that he responded:

A. I told him that I wanted to see the computer printouts of records which would show how the company was paying its bills. I wanted to see records insofar as their operations, operating, their—whether they were—what they were spending for operating, what they were—what kind of profit they were making, whether they were paying inter-company payables, whether they were paying bills for any other Georgia Pacific plant within the company.

I told them I wanted to see, in effect, proof which showed their short term financial situation and I think I used the short term—over the next couple of months and I said I'd like to see the financial records which showed your long term, and I said like over the next year or two years, what your—if you've got debts and this type of thing.

Q. Anything else that you recall specifically asking for on the morning of July 15th?

A. I—I believe I asked specifically for, you know, the assets and their liabilities and that type of information and I said I was doing [sic] in on the matter that I wanted to see it on a very short term basis. And I believe I mentioned the May 1, 1987 period. That's—

Q. In connection with what?

A. So that I—I wanted to see the records up until for a quarter to quarter—there's a quarterly operating document and there is a year-to-date quarter operating date. And I indicated to them that I knew that they kept track of this information on their computer and that they had computer sheets on this.

Q. Did you, at any time, ask to see their actual financial books?

A. No. I—in fact, I specifically told them "I don't want to see any books. I want to see computer printouts."

Following this exposition, Sullivan told Annan that he would not be allowed to look at the Respondent's figures, presumably because Annan was excluded from such access under the terms of the Respondent's prior offer to provide profit-and-loss information. Rather than accede to this restriction, the union representatives left, contending that, without Annan, the information would be of no value to Smothers and Nelson.

At the meeting later in the day on July 15, Annan took the position that this was a negotiating session despite Wright's prior declarations that the meeting was only to clarify the Respondent's final offer of July 1 as finalized on July 10. On this note of discord, the meeting ended. However, Respondent did agree to hold open until July 20, its July 10 final offer to allow two employees of the Union's bargaining committee to review certain profit-and-loss information.

By letter dated July 16, Sullivan advised Annan, *inter alia*:

We believe the negotiations are deadlocked. Because the Union did not make an acceptable proposal to the Company in either the meeting of July 10th or July 15th, we are definitely at an impasse. Therefore, we will terminate the existing labor agreement at 7:00 a.m. on Wednesday, July 22, 1987, and will implement the terms of the July 1st proposal, as modified on July 10th, at that time.

On July 22, Respondent implemented many of the provisions of its final offer.

After the charges in the instant case were filed, sometime in September, an NLRB agent named Kassel spoke to Annan in an effort to discover what information Annan wanted from Respondent. The record discloses this relevant exchange with Annan:

THE WITNESS: Okay. Okay. Mr. Kassel asked me what we wanted from Georgia Pacific. And I told him we wanted the Company's operating costs, the—we wanted their assets and their liabilities. We wanted to know what their profits were before taxes.

I indicated we wanted the information on what called inter-Company receivables or payments. In other words, what I think I told him what I wanted to know if Georgia Pacific was—Kalamazoo would be in charge for any other location.

I told him I wanted information on a short term basis and a long term basis so that I—on a cash flow. And I indicated that I would like these on a quarterly basis and on a year-to-date basis. And I specifically mentioned to him that a period of time that I wanted to—the information up to was May 1 of 1987.

JUDGE DONNELLY: What did you say? You say you indicated this period.

THE WITNESS: Yes, that's—

JUDGE DONNELLY: What was—what did you say to him? What period of time did you ask him for?

THE WITNESS: Well, I asked him for quarterly figures and year-to-date figures. And I told him I wanted the ending of those, I wanted them as of May 1 of 1987. Which—

JUDGE DONNELLY: How far back?

THE WITNESS: For quarterly—quarterly figure and a year-to-date figure.

JUDGE DONNELLY: Yes, but going back how far?

THE WITNESS: Well, a year-to-date figure would be one year. It would be the one year figure on—for year to date ending May 1, and would be a—a three months figure ending on May 1.

JUDGE DONNELLY: Did you ask him for any—any information beyond that back before that?

THE WITNESS: Well, I indicated to him that I wanted to know a—what I called their long term cash flow or debt.

JUDGE DONNELLY: Uh-huh.

THE WITNESS: Which I would—

JUDGE DONNELLY: Now what did you ask for in that respect?

THE WITNESS: Pardon?

JUDGE DONNELLY: What did you ask him for in that respect?

THE WITNESS: That's all I asked—

JUDGE DONNELLY: What did you say to him?

THE WITNESS: I said I just wanted to know what their long term debt was.

BY MS. RABIN:

Q. Did you ask for the long term debt with regard to any particular unit of time?

A. I believe I just said a long term debt over the last couple of years.

Q. What if anything did you say to Mr. Kassel during the telephone conversation about the Kalamazoo division's losses?

A. I wanted to know whether, you know—I wanted to know basically what their profits for. You know, be able to see their—whether they had made a profit in Kalamazoo.

JUDGE DONNELLY: For what period of time?

THE WITNESS: Same period of time.

JUDGE DONNELLY: What was that?

THE WITNESS: The figure that would have been a cumulative for a year period of time and for a quarterly period of time, three month period.

JUDGE DONNELLY: And is that what you told the Board agent?

THE WITNESS: That's what I told Mr. Kassel.

BY MS. RABIN:

Q. Were you—did you indicate to Mr. Kassel that you wanted—how many quarterly reports for the year May 1, '86, to May 1, '87, did you indicate to Mr. Kassel that you wanted it?

A. I gather I was asking him for our—for the quarterly report—broken down quarterly—year-to-date broken down in a quarterly basis.

Q. You say you "gathered." Do—

A. Yes. I mean that's what I was saying to—

Q. Is that what you said or not?

A. That's what I—I gave him a lot of—lot of requests for information and I'm not a hundred percent sure if I said specifically that word to him.

Q. Which word?

A. You know, the—I think I said a cumulative quarterly report.

I'm not sure if I said that specifically to him.

Thereafter, a Board agent spoke to Wright and apparently relayed to him his view of the information being sought by Annan, although there is no specific testimony in that regard. On September 10, a packet of information was submitted to Annan. According to Annan, the information was deficient in that it did not comport with the information sought through the Board agent.

By letter dated September 11 from Annan to Sullivan, Annan requested additional and detailed financial information concerning the Kalamazoo operation. The letter read, in relevant part:

I would formally request that you furnish me with spreadsheets reports dealing with the following:

A Kalamazoo Paper YTD Operating Statement for a 12 month period ending the last of April 1987.

A Kalamazoo Paper Operating Statement for the quarter, or applicable period, prior to May 1, 1987. This document should include Gross Sales, Net Sales, Cost

of Sales, Gross Operating Profit, Interest Expense and an Income Before Taxes calculation.

A Kalamazoo Paper Balance Sheet for the period prior to the same May 1, 1987. This document should include your Current Assets [sic], Accounts Receivable, Inventories, Prepaid Expenses.

This Balance Sheet should also show a Total Current Assets figure. Further, the Balance Sheet should show any Intercompany transfer receivables. Finally a Total Assets figure.

This Balance Sheet should also show that the Current Liabilities are as well as any Long Term Debt and any Intercompany payables.

The parties next met on September 15. Wright was under the impression that the meeting had been called for the purpose of discussing an offer from the Union. Annan proceeded, however, to go into the data provided by the Company on September 10, commenting that from his analysis the Company did not appear to be in financial difficulty because it was paying its bills on time. Wright declined to discuss the financial data.

By letter dated September 16, Wright responded to Annan's letter of September 11, to advise Annan that although the Respondent had reservations about providing information, because it was not pleading any ability to pay, it would make that information available. However, because the information requested was confidential, complex, and technical, it would be made available only to an accountant of the Union's choosing who would be bound to respect the confidentiality of the information obtained. To date, this has not been done.

On October 11, Annan wrote to Sullivan saying that because an unfair labor practice complaint had issued against Respondent, he was coming to Sullivan's office on October 12 to receive the financial information requested. Sullivan refused, adhering to the terms of the September 16 letter.

2. Discussion and analysis

An employer has an obligation, during contract negotiations, to provide a union with information in its possession which is relevant to the bargaining process. In *Truitt*,⁶ the Supreme Court held that information concerning the economic condition of an employer is not relevant unless the employer is asserting an inability to pay in which case, because good-faith bargaining requires that the claim be honest, the employer is required to provide proof to support that claim.

In the instant case, the General Counsel contends that the evidence shows that Respondent was, in essence, pleading poverty and that Respondent need not use the talismanic words in order to trigger this obligation to accede to the Union's request for economic data.⁷ The General Counsel points to statements made by various representatives during

the course of the negotiations, set out more fully above, which it contends amount to an implied plea of poverty.⁸

These statements include references to financial losses at Kalamazoo, the deleterious effect of competition on the Kalamazoo operation and in general, painting an economic picture of the Kalamazoo operation which was not rosy. However, more is necessary to establish a plea of poverty than gloomy observations about Kalamazoo's difficult financial prospects. It is necessary not only for the "poverty" to exist but for the Respondent to plead that poverty in support of its economic demands. In other words, even if Kalamazoo was losing money, unless Respondent took the position that the concessions it sought were linked to those losses, it cannot be said to have advanced a plea of inability to pay so as to trigger an obligation to provide information concerning its financial condition.

In the instant case, Respondent made it quite clear during the course of negotiations that it disavowed any plea of poverty. For example, at the June 18 meeting, even before the initial request for "economic data" on July 8 was ever made, Reynolds made it clear that Respondent was a very wealthy corporation, was not pleading poverty, and wanted concessions simply because "we just want more." Although some may fault this attitude, it certainly does not support the General Counsel's contention that Respondent was pleading poverty.

It is also significant to note that nearly all the remarks which the General Counsel contends amount to an implied plea of poverty were made, not in response to any Union request for information, but at earlier sessions, prior to the Union's first request for information on July 8.

Nor was the Union itself satisfied that the Respondent was pleading poverty to justify the concessions it sought. In its July 8 letter, it alluded only to the "conflicting views" presented by management representatives about the financial status of the Kalamazoo Paper Division. Annan recites this "conflict" in support of the demand for the "financial data" sought in the July 8 letter. In response, by letter of July 10, Wright attempts to resolve the conflict by making it clear that Respondent is not pleading poverty or an inability to retain the contractual "status quo," simply an unwillingness to continue to pay fringe benefits or wages that would make competition more difficult. In these circumstances, despite the fact that representatives of the Respondent may have painted a gloomy economic forecast for the Kalamazoo operation, and made certain extraneous or gratuitous comments about its poor financial condition, I cannot conclude that a fair evaluation of the entire record supports the conclusion that Respondent was pleading poverty in support of the concessions it was seeking. *Atlanta Hilton*, 271 NLRB 1600 (1984); *Advertisers Mfg. Co.*, 275 NLRB 100 (1985).

Essentially, Respondent wanted to reduce its contractual labor costs so as to maximize its profits. Is Respondent obligated to validate that position to the Union? How would it be done? As the court asks in *Nielsen*, "But how do you substantiate a want? If a company says it wants to make higher profits by reducing its labor costs, what data would falsify its statement?" *Nielsen Lithographing Co. v. NLRB*,

⁶*NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

⁷For this proposition, the General Counsel correctly cites, inter alia, *Nielsen Lithographing Co.*, 279 NLRB 877 (1986), remanded 854 F.2d 1063 (7th Cir. 1988), and *Coast Engraving Co.*, 282 NLRB 1236 (1987). Accord: *United Stockyards Corp.*, 293 NLRB 1 (1980).

⁸The statements of former plant manager Norman are not germane, because they were not made during negotiations, and thus cannot be viewed as having been delivered in support of the concessions Respondent sought.

supra at 1065. See also *Clemson Bros.*, 290 NLRB 944 fn. 3 (1988), and *Harvstone Mfg. Corp.*, 272 NLRB 939 (1984), reversed 785 F.2d 57 (7th Cir. 1986).

This being the case, Respondent had no obligation to provide the Union's bargaining committee with information concerning its financial condition. Because it had no obligation to provide such information, any information that it did provide was beyond any legal obligation to do so, and whatever limitation Respondent chose to put on the disclosure of that information, either as to content or those who would be entitled to view it, were valid. Thus, Respondent was privileged to limit the availability of such financial information so as to exclude review by Annan.⁹

B. Impasse

1. Facts

Prior to the outset of bargaining in 1987, the Union had become aware that Respondent was making an effort at other plants to withdraw bargaining unit employees from the jointly administered Paper Industry Union Management Pension Fund (PIUMPF) plan and to cover them under its own Georgia Pacific pension program. This already had been accomplished at the Reading, Pennsylvania facility pursuant to a contract negotiated in the summer of 1986.

Having become aware of this development, the Union sought to reopen the 1984-1987 contract at Kalamazoo to discuss the matter of pensions. In an exchange of correspondence, the Company took the position that it was willing to discuss all aspects of the pension plan. In a letter from Annan to then plant manager Norman, Annan sought an extension of contract coverage under the PIUMPF plan for 5 additional years. At this point, the matter stalled until it resurfaced as a Company contract proposal in the negotiations which began on April 20.

In March 1987, in anticipation of difficult "concession" bargaining on upcoming contracts, the "Georgia Pacific Council," a collection of local unions representing Georgia Pacific employees at various locations met in Nashville, Tennessee. At this convention, some local unions agreed, on a voluntary basis, to participate in a contract ratification voting procedure described as "pool" voting. Because the Respondent was seeking important contract concessions, including the above-noted removal to the Georgia Pacific pension plan, the elimination of weekend overtime, and flexibility in the assignment of employees, these local Unions with upcoming contract expirations agreed to pool the vote counts at the various locations for contract ratification purposes. These locations were Gilman, Vermont; Woodland, Maine; Taylorville, Illinois; and Plattsburgh, New York. Annan testified that this was a procedure under the International constitution whereby the ratification vote ballots at each location would be sent to the International where they would be tallied. International ratification would depend on ratification of the contract by a majority vote at all five locations. Some of the contracts at these locations did not expire until the fall of 1987, for

instance, Plattsburgh's expiration date was September 1, 1987, and, at the time of the hearing, contracts were still being negotiated at some locations. Smothers testified that even if the pool majority voted against their respective contracts, Local 25 could still sign a contract with the Kalamazoo facility, but the contract would not have International approval. However, the record does not deal with the legal ramifications of a contract not approved by the International. The Kalamazoo location voted in September 1987 on the implemented contract. However, the record does not disclose either the results at Kalamazoo or the pool voting procedure.

At the first session on April 20, as noted above, Respondent submitted its agenda to the Union, setting out in general terms, the topics it wanted to discuss in the negotiations. The agenda described the proposed changes as "necessary to provide a modern competitive contract." Among the more significant topics were the flexibility concept; overtime pay for weekends and scheduled days off; and pensions. The Union also submitted an agenda of proposals including, because it was aware of the Respondent's desire to remove unit employees from the PIUMPF plan into its own Georgia Pacific plan, the same proposal it had made in late 1986 to extend coverage of the unit employees under the PIUMPF plan for 5 years with annual increases in the benefit levels. Annan asked the Respondent to provide more specific information about the pension fund transfer, and Wright agreed to provide it. After a summary review of the respective proposals, the parties agreed to review each other's agendas and meet again on April 24.

At the April 24 meeting, Wright gave a more detailed account of its proposal to transfer the unit employees to the Georgia Pacific pension plan. Respondent also provided the Union with information it had requested concerning the Georgia Pacific pension plan. This information included a proposed summary plan description; a proposed pension plan text; a summary of pension plan provisions; and a comparison of the proposed plan with the current plan. Much of the discussion centered on a comparison of pension benefits under the two plans and the proposed level of benefits under the new plan which, as proposed by Respondent, provided retirement benefits of \$26 per month per year of service for current employees. Same discussion was also devoted to the Union's proposal to change from the current health benefit insurance coverage to Blue Cross-Blue Shield and Delta Dental, who were previous insurers.

At the April 30 meeting, the details of Respondent's flexibility proposal were revealed. Respondent's concept of work flexibility provided for unit employees to interchange work not only among themselves, but with employees from another unit represented by Local 78. Annan took the position that the Union had no obligation to bargain over any proposal for employees of other bargaining units to perform work being done by its members because the contract defined the work performed by union members. Annan refused to discuss or negotiate this matter with the Respondent.¹⁰ Be-

⁹ Respondent raised other defenses to the allegations of refusal to furnish information, including contentions that the requests were vague and that sufficient information was provided to the Union. Because I have concluded that poverty was not being pleaded, I have not considered any of the other defenses raised by Respondent.

¹⁰ The Union maintained this position throughout negotiations, and filed an unfair labor practice charge against the Respondent for insisting that the Union negotiate this matter. That charge was later dismissed. Respondent also filed an unfair labor practice charge against the Union for refusing to bargain over the matter. Complaint issued on this charge, and that matter was settled on March 1, 1988.

cause the contract was about to expire, agreement was reached to extend the contract indefinitely.

At the May 21 bargaining session,¹¹ the Respondent submitted to the Union a comprehensive written contract proposal. This proposal included all the relevant language changes being proposed, specific economic proposals, and health plan summaries. Specifically included were Respondent's proposal for conversion to the Georgia Pacific pension fund, interunion flexibility with Local 78 in the utilization of employees, and the elimination of premium pay except for time worked in excess of 8 hours per day or 40 hours per week.¹² Certain bonuses were provided but no wage increases.

The next bargaining session took place on June 12. Wright was unable to attend, but, as noted above, his superior, David Reynolds, attended in his place. At the Respondent's request, Federal Mediator Bob Jackson also attended this session. At this meeting, the Union submitted to Respondent a written list of essentially noneconomic proposals, and one which read "Non-members of the bargaining unit shall not be permitted to do any work of members of Local 25 United Paperworkers International Union." The parties again discussed bringing together their pension plan experts, Spitznass and Gross, to review Respondent's pension proposal. The Union notified Respondent that Gross could not be available until July 6 or 10.

At the June 18 meeting, Wright returned as company spokesman. This meeting was also attended by Jackson. Wright provided written responses to various safety demands and concerns previously voiced by the Union, agreeing to correct some problems and to study some others. Wright also expressed his dissatisfaction with the delayed pace of negotiations, which he attributed to the Union, and urged the Union to make an economic proposal, which it had not yet done. Annan protested that the Union was unable to make an economic proposal because it did not have enough information on which to base an economic proposal.¹³

Following this meeting, by letter of June 26, Wright suggested that Gross and Spitznass meet on July 10 and suggested that questions be posed to them prior thereto so as to expedite the meeting. The letter also suggests that the Union submit an economic proposal in advance of the next negotiating meeting, and that if the Union needed more cost information, it should request it from either Sullivan or himself.

At the July 1 meeting, again attended by Jackson, the Union began with a discussion of the safety items which it had proposed. Wright protested that the negotiations were being delayed with discussions about what he described as

"chicken shit" items, while major issues went unattended. He demanded that the Union make a proposal covering economic issues. Although not making such a proposal, the Union did agree to reduce its demands on vacation pay and funeral leave and agreed to accept the Respondent's life insurance proposal for retirees. Once again, the Union protested that it could not make an economic proposal because it lacked the information on which to base such a proposal. It was at this meeting that the Respondent made what it described as its "final" proposal.¹⁴ This was a complete contract proposal, and included removal of unit employees to the Georgia Pacific pension plan; an interunion flexibility proposal; the elimination of premium pay for weekends and work on scheduled days off not in excess of 8 hours daily or 40 hours weekly; and a wage increase of 2 percent. Premium pay had already been eliminated at some Georgia Pacific mills in the south. The Union asked for a list of those mills, which was provided in a letter dated July 2 from Wright to Annan. Wright made it clear at this meeting that the offer of July 1 was to be final and that any modification was possible only if the Union made proposals acceptable to the Respondent at the meeting set for July 10, where the pension fund experts were to meet and discuss the pension fund issue.

The meeting on July 10 was devoted primarily to a discussion of removing unit employees to the Georgia Pacific pension plan. Spitznass, Gross, and other representatives participated in a discussion about the ramifications that such a transfer would have on the level of benefits and other related matters. Federal Mediator Jackson was once again in attendance. Respondent agreed to certain modifications and clarifications to the Georgia Pacific pension plan coverage which are set out in a confirming letter dated July 10 from Wright to Annan. Respondent agreed to some changes in its pension proposal, but it does not appear that the Union made any proposal acceptable to the Respondent. Wright advised the Union that by its terms, the July 1 proposal became final that day, July 10, and that because no meaningful proposals had been made by the Union, the contract offer became final when the negotiating session of July 10 ended. Wright agreed to meet with the Union again on July 15, but only for the purpose of clarifying his final offer and not for the purpose of negotiation.

The July 15 meeting was short, preceded by the confrontation set out above at Sullivan's office wherein Annan was denied access to certain Respondent financial information. Annan, as he had done before, expressed a willingness to consider, if proposed by Respondent, an intraunit flexibility proposal limited in scope to job flexibility within the unit. The Union adhered to its rejection of Respondent's proposal to leave PIUMPF for the Georgia Pacific plan, but was prepared to reduce its PIUMPF plan extension proposal from 5 to 3 years so as to make it coextensive with the contract term. The Union made certain other noneconomic proposals. However, Wright rejected Annan's efforts to discuss these matters, maintaining the position he had expressed at the July

¹¹ Negotiating sessions were held on May 1 and 7, but these sessions did not include any substantial discussion of the major substantive issues, except for some discussion about the desirability of a meeting to bring together Richard Spitznass, Respondent's director of employee benefits, and Paul Gross, the union pension specialist, to discuss the Respondent's pension proposal.

¹² It appears that under the contract, premium pay was paid for work on Saturday and Sunday, as well as on scheduled days off, regardless of the hours worked previously.

¹³ Although the Union complained at various bargaining sessions about the Respondent's failure to provide it with the information necessary to formulate an economic proposal, no unfair labor practices are alleged except as to the requests made by letter on July 8 and orally on July 15, which refusals I have concluded do not violate the Act.

¹⁴ The caption of the proposal reads in part, "Because the productivity improvements and savings contained herein are very important to the mill, unless an acceptable proposal is received from the Union in the meeting scheduled for July 10, 1987, this offer shall become the Company's final offer."

10 session, that the July 15 meeting was to explain and clarify, but not to negotiate.

By letter dated July 16, Sullivan wrote to Annan:

We began negotiations on April 20, 1987 and have had eleven meetings, some with the assistance of the Federal Mediation Conciliation Service. Our initial economic offer was made on May 21, 1987. We repeatedly asked you to respond to it but since you did not we followed it with another offer on July 1st. We modified that offer on July 10th, and the combination became our Final Offer on July 10, 1987. As we explained at the meeting on the 10th, the meeting which was scheduled for the 15th was intended to clarify and explain that offer, not to continue bargaining. Unfortunately, you treated the meeting on the 15th as if it were just another bargaining session by introducing different proposals on contract language matters, etc.

We believe the negotiations are deadlocked. Because the Union did not make an acceptable proposal to the company in either the meeting of July 10th or July 15th, we are definitely at an impasse. Therefore, we will terminate the existing labor agreement at 7:00 a.m. on Wednesday, July 22, 1987, and will implement the terms of the July 1st proposal, as modified on July 10th, at that time. We will not agree to arbitrate grievances on matters arising after the date of implementation, since we presume you are taking the position that the mill will be operating without the benefit of the no-strike and no-lock out clauses.

It is unfortunate that we have been unable to convince you and the Union of the seriousness of the situation. We have explained that the Kalamazoo Division has been having difficulty competing. Although the Company remains profitable overall, the financial results at Kalamazoo are unacceptable. Consequently, the savings and productivity improvements contained in our offer are important to the future of the Division. Offering to verify the Kalamazoo Division's monthly profit and loss records by having two employees examine the actual monthly statements, as a response to you [sic] request for data, should indicate the seriousness that the Company has given to this matter. From your long experience you know that only those employers with serious competitive problems have been willing to provide this type of information to their unions. Although we have not and are not pleading the inability to pay, we did offer to verify what we said, i.e. that we had operating losses for the past two years. We proposed a reasonable method of proving that, even though we are not positive that we were legally bound to do so. It is unfortunate that the method we offered for the disclosure was unacceptable since you refused to commit to the confidentiality required and insisted that you personally participate in the process. We continue to believe that our method was a reasonable verification method.

We have attempted to provide relevant information to you. All that this has accomplished so far, however, is to generate additional requests for data at a stage of negotiations where we were expecting the process to end, not to move into an endless debate on accounting methods and answer questions about whether or not we

have paid our bills on time. We have never claimed that the Company or the Division is close to bankruptcy. Although we have not pled inability to pay, we did offer to verify what we had said. It appears to us that the union's requests for information are designed to provoke a legal confrontation or delay bargaining or both.

Rather than concentrate on the negotiations and management of the Division, we have been forced to spend significant management time and effort responding to your numerous unfair labor practice charges. While the merits of your charges were being considered by the N.L.R.B., you have been unwilling to discuss important concepts like the Flexibility Concept. The Company filed its charge against the union only after our legal analysis of the union charges made it clear that the union was illegally refusing to bargain about the Flexibility Concept.

Another indication of the Union's apparent lack of concern about reaching agreement at Kalamazoo is the fact that the Union had not made a complete economic proposal since the agenda exchange on April 20, 1987, which is nearly three months ago. I recognize that the Union made a few economic proposals on July 1st, but you have not given us a complete proposal on economics since April. The effect of the Union's current proposal would be to increase our costs substantially, which would only make it that much more difficult for us to compete effectively. We are unwilling to add new costs to our operation which will make competition even more difficult.

In a *Negotiation Update* posted by the Union on June 22nd, there was a statement that "there are no negotiations on the Company's part, only demands for things they don't realize the impact of." We deny that that is an accurate statement. The Company realizes the impact of its proposals and, for the matter, has negotiated in good faith. The seriousness of our proposals is only a result of the need to make the Kalamazoo Division more competitive.

Although we are willing to meet at reasonable times and dates to answer questions about our offer, we are standing on our offer. Your proposal was completely unacceptable and we have no changes to propose in our offer. We regret that we were unable to reach agreement.

As set out in this letter, the Respondent implemented its final offer on July 22. No further discussions were held until, at the urging of Federal Mediator Jackson, a meeting took place on September 15. Annan advised Jackson that the Union was preparing to make a proposal. However, at the meeting, the Union had no written proposal to offer but, after a long caucus, made an oral proposal including both economic and noneconomic items, except that no specific wage increase was proposed, only that it be "substantial" over the 3 years of the contract. The Union in its April 20 agenda had proposed a "very substantial wage increase" for all employees and concedes that there is no way the Company can ascertain the amount of the Union's wage demand. Thus, the proposal was not substantially different from the Union's April 20 agenda. It did, however, propose to spread cost items, such

as shift differentials, vacation pay and life insurance over the 3 years of the contract rather than in the first year of the contract. Neither did the Union's proposals nor any discussion on September 15 suggest that the Union was departing from its original position of rejecting those Company proposals concerning intraunion flexibility; the removal of unit employees from the PIUMPF plan; or the elimination of overtime pay for weekends and scheduled days off which did not exceed 8 hours per day or 40 hours per week.

2. Discussion and analysis

It is well established that after an impasse in negotiations has been reached, an employer may lawfully implement its final proposal.¹⁵ The issue to be resolved in the instant case is whether or not impasse had been reached so as to justify Respondent's implementation of its final proposal on July 22.¹⁶

In determining whether impasse has been reached, several factors are normally reviewed. In the *Taft* case, the Board set out some of these considerations as follows:

Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

Prior to the outset of the 1987 negotiations, the Union was aware that very important concessions were being sought by the Respondent.¹⁷ The Georgia Pacific Council met to discuss the common problems posed by the concessions being sought by the Respondent in negotiations. Not the least of these was a removal of unit employees to the Georgia Pacific pension plan, which had already been accomplished at the Reading mill. Early on, the Union attempted to circumvent negotiations on that matter by proposing a 5-year extension of the PIUMPF pension agreement, but without success. It is obvious that pensions are important contract issues, because by definition they involved the future financial security of employees after their working lives have ended.

A second very important issue was the matter of intraunion flexibility in the work assignment of unit employees between Local 78 and Local 25. This involved the basic question of work jurisdiction. Stripped of its externals, it would have meant that Local 78 could thereafter do jobs previously performed exclusively by Local 25 and vice versa and the General Counsel's contention that interunit flexibility was not a significant item defies common sense.

¹⁵ *Taft Broadcasting Co.*, 163 NLRB 475 (1967), aff'd. 395 F.2d 622 (D.C. Cir. 1968).

¹⁶ Because I have concluded that Respondent did not unlawfully refuse to bargain with the Union by refusing to provide information as alleged in the complaint, any argument that a lawful impasse could be tainted by such refusals to provide information is misplaced.

¹⁷ It has not been alleged, and I have not considered, whether the content of the Respondent's proposals were so onerous as to conclude that Respondent's adherence to them thereby constitutes bad-faith bargaining.

A third significant issue was the matter of eliminating overtime for work performed on weekends and on scheduled days off. This would have meant a substantial reduction in wages. No great labor relations expertise is needed to realize that these areas of retirement security (pensions), job security (flexibility concept), and wages (elimination of overtime) are top priority items in the negotiation of any labor agreement. No less is true in the instant case.

Turning to the flexibility concept, the Union took the position at the outset of negotiations that it was not obligated to discuss or negotiate the issue of interunion flexibility in the utilization of employees. Not only did the Union refuse to negotiate on that subject, but it filed an unfair labor practice charge against Respondent for attempting to force bargaining on what it regarded as a permissive bargaining subject. However, that charge was dismissed by the Board on July 22 and, as noted above, that matter was resolved in favor of the Respondent when its charge was sustained, complaint issued, and the case was settled. Clearly, impasse was reached early on as to flexibility, because the Union had refused from the start, to countenance even a discussion of the matter.

Turning to the proposal to transfer the unit employees into the Georgia Pacific pension plan, the Union had attempted to forestall any discussion of it by proposing a 5-year extension of the PIUMPF plan even before bargaining on the new contract had begun. Once in negotiations, the Union made various demands for information to compare the level of benefits under the respective pension plans. Starting with the second session on April 24, information was provided to the Union on this proposal, including a summary plan description, Federal tax documents, funding information, financing information, and the like. However, it cannot be disputed that at no time did the Union ever move from its original rejection of that proposal or its own position that the PIUMPF plan should be retained. The Union's only concession was to offer a 3-year rather than the 5-year extension of the PIUMPF plan so as to make it coextensive with the term of the contract.

Likewise, the elimination of certain overtime was presented as a part of Respondent's agenda at the first meeting on April 20. The Union opposed it from the start and asked for information about its application at other mills. This information was provided to the extent that it was available, and although discussions were extensive throughout bargaining, they produced no agreement. The Union's position at the time of implementation on July 22 was the same as its position at the time negotiations began. Apart from overtime, the Union never made any specific wage proposal at all, and made an incomplete economic proposal only on September 15, at the urging of the Federal mediator and Respondent. Even then, it made no wage proposal except for "substantial" percentage increases over the 3 years of the contract. The Union's position was always that it never had enough information to make intelligent proposals on economic items. I have concluded that the Union was provided with all the information to which it was legally entitled; it may not forestall discussions on basic economic issues by seeking more. It had enough to make an economic proposal. To hold otherwise contemplates an endless quest. Meaningful bargaining on basic economic issues could be delayed in this fashion by either party and could effectively preclude ever reaching agreement on a contract. Thus, I conclude that any failure to

more fully explore the basic matter of wages was due to the unwillingness of the Union ever to make a specific wage proposal and thus the Union has, by its own action, precluded agreement on this very basic contract matter.

A review of the case law reveals that impasse is reached when it is clear that further bargaining on significant issues would be futile. It is not necessary to be deadlocked on every bargaining issue, but unresolved issues must be significant. *Taft Broadcasting*, supra; *Western Newspaper Publishing Co.*, 269 NLRB 355 (1984); *E. I. du Pont & Co.*, 268 NLRB 1075 (1984). Here, the Union was being asked to make major economic contract concessions. These were significant issues, understandably resisted, however no progress was made on any of these major items throughout any of the nine bargaining sessions. In my opinion, further negotiations would not have produced agreement on any of the significant, indeed crucial contract matters treated above, and the parties were aware of their stalemate on these issues since they persisted from start to finish to date.

Another factor which promoted the impasse here was the existence of pool voting. Under these voting procedures, until the votes of the other Georgia Pacific locations were tallied, it was not possible to ascertain whether the contract would be ratified by the International Union. Because the Plattsburgh, New York, contract did not expire until Sep-

tember 1, no contract with International approval could be executed until at least then, because the votes from all locations were to be pooled and tallied. This delay was inherent, despite representations by the Union that Local 25 could have signed a contract without International approval.

In summary, I conclude that impasse had been reached by the end of the July 10 bargaining session and that, thereafter, Respondent was privileged to implement its final contract offer on July 22.

CONCLUSION OF LAW

Respondent has not engaged in any conduct violative of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁸

ORDER

The complaint is dismissed in its entirety.

¹⁸If 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.