

I.T.T. Rayonier, Inc. and United Paperworkers International Union and its Local Nos. 395 and 766. Case 12-CA-13182

October 16, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On July 23, 1990, Administrative Law Judge J. Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed cross-exceptions and a supporting brief. The General Counsel and the Charging Party each filed briefs in response to the Respondent'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, cross-exceptions, and briefs and has decided to affirm the judge's rulings,¹ findings,² and conclusions³ and to adopt the recommended Order as modified.

The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish in a timely manner information requested by the Union, by bargaining in bad faith, and by implementing its

final collective-bargaining proposal without reaching impasse. The Respondent excepts to the judge's findings and recommendations. Specifically, the Respondent contends that it adequately responded to the Union's information requests, that it merely engaged in lawful hard bargaining, and that it was privileged to declare impasse when it could not reach agreement with the Union on specific mandatory subjects of bargaining⁴ For the reasons which follow, we agree with the judge.

This case arose in the context of negotiations for a successor collective-bargaining agreement. The parties had a 50-year bargaining relationship when, in May 1988, the Respondent opened the negotiations with a proposal to jettison the traditional bargaining agreement and replace it with a team-based "quality management system" and an incentive pay plan. The parties met and bargained 24 more times over the ensuing 6 months but failed to reach agreement. On December 2, 1988, the Respondent implemented its final proposal.

1. The judge found, and we agree essentially for the reasons given by the judge, that the Respondent violated Section 8(a)(5) and (1) of the Act when it failed to supply the Union with the Fernandina Quality Management (FQM) manual and the separate team manuals contemplated by its collective-bargaining proposals and, further, failed to timely provide health insurance census data. These items are presumptively relevant, and the Respondent must provide them.

The Union also requested from the Respondent detailed incentive pay plans for each proposed team, financial data showing the existing wage rates and benefits, and a "cost savings breakdown on the concession demands." With respect to the latter two items, it is plain that the Union's requests were aimed at putting a dollar value on the Respondent's wage and incentive pay proposals—in other words, at determining what wages its members might actually expect to earn under the proposed incentive pay plan. The Respondent never provided sufficient information to enable the Union to do so.

There is evidence that the Respondent provided the Union with some current payroll information which it characterized as "raw data." The Respondent contends that this information was sufficient to enable the Union

¹The Respondent excepts to the judge's admission of testimony by Union Representative Don Wilkes that on October 11, 1989, the Respondent's general manager, Roy Nott, admitted that the Respondent's collective-bargaining strategy had been to force the Union to strike and hire replacements at a lower wage scale. The Respondent contends that Nott made the alleged statement during settlement discussions. Thus, according to the Respondent, the testimony was inadmissible under the Federal Rules of Evidence, Rule 408, and the Board's policy of excluding from evidence conduct or statements made in compromise negotiations. We need not decide whether the testimony was properly admitted and do not rely on it. The Board does not require direct evidence of an employer's unlawful motive to find it has bargained in bad faith. *NLRB v. A-1 King Size Sandwiches*, 732 F.2d 872 (11th Cir. 1984), cert. denied 469 U.S. 1035 (1984). Here the other evidence on which the judge relied amply warrants finding the violation.

²The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³The General Counsel excepts to the judge's failure to include in his recommended Order provisions requiring the Respondent to make employees whole for their monetary losses resulting from the Respondent's unlawful conduct and to preserve and make available to agents of the Board all records necessary for compliance with this Decision and Order. We agree and have modified the recommended Order accordingly. Backpay for any losses of earnings and other benefits shall be calculated in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970). Interest on backpay shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

305 NLRB No. 41

⁴In its exceptions the Respondent also contends that the Union "preempted" bargaining on November 16 and 17, 1988, by stating it would not bargain until the Board decided these unfair labor practice charges. If by this the Respondent means that the Union refused to negotiate further, there is no support in the record for such a contention. The Respondent mailed its final proposal to the Union on November 23, and the Union presented a counterproposal on December 1. The parties met and held substantive collective-bargaining discussions on November 29 and December 1. Further, the Respondent contradicts its assertion that the December 1 meeting was merely a postimpasse discussion elsewhere in its brief by characterizing that meeting as the parties' final negotiating session.

to calculate potential wage reductions contemplated by its proposals. Thus, the Respondent contends it fully satisfied its obligation. We reject the Respondent's contention. The Respondent did not simply propose to change the base pay rates. It also proposed an incentive pay system under which base earnings could periodically increase or decrease based on group productivity and performance. Further, the Respondent did not propose to the Union a fully formulated incentive pay plan or formula for each of its proposed operating teams, as contemplated by its bargaining proposals. It is clear that the Union could not extrapolate from the current payroll information the impact on employee earnings of the proposed incentive pay system.

With respect to the Union's request for detailed incentive pay plans, the judge found that Respondent violated the Act by refusing to furnish information regarding the particulars of the incentive pay plan. As indicated above, Respondent never proposed a fully formulated plan. In these circumstances, there was no particularized information to furnish. However, we affirm the judge's conclusion, albeit on different grounds. Respondent's persistent refusal to make a concrete proposal concerning incentive pay was an aspect of its refusal to bargain in good faith.⁵ In sum, except as indicated above, we affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish information or failing to do so within a reasonable period of time. We shall order Respondent to furnish the Union with requested information that is necessary to the performance of its function as the exclusive representative of employees in the bargaining unit. To the extent that the information already supplied by the Respondent is relevant and responsive to the Union's request, we do not require the Respondent to duplicate information already provided.

2. We also agree with the judge, essentially for the reasons given by the judge, that the Respondent did not bargain in good faith and implemented its final offer without reaching impasse.

The judge found, and we agree, that the Respondent's bad faith was manifest throughout the negotiations. In addition to its unlawful failure to supply requested relevant information, the Respondent proposed to eliminate the International Union as a party to the bargaining agreement, even though the International was a corepresentative of the employees. The Respondent's insistence on dealing directly with unit employees under an ill-defined "team concept" impeded negotiations. The Respondent also advanced pay and other proposals which it either had not fully formulated or which its agents did not understand. It refused to consider proposals advanced by the Union and refused

⁵ See *infra* for a discussion of other aspects of this refusal to bargain in good faith.

to bargain about mandatory subjects. The Respondent's agents failed to answer relevant questions going to the nature of many of its bargaining proposals, including the FQM and team manuals and the incentive pay plan.⁶ Finally, it insisted on a broad management-rights clause, a no-strike clause, and a zipper clause at the same time it refused to agree on an effective grievance arbitration procedure.

We also agree with the judge's conclusion that the parties had not reached impasse when the Respondent implemented its final proposal on December 2, 1988. It is clear that agents of both parties were still expressing their willingness to bargain further toward agreement as late as December 1. Further, even if there was an impasse, that impasse was not a legally cognizable one in light of the Respondent's antecedent 8(a)(5) conduct discussed above and in the judge's decision.

In sum, the Respondent's conduct left the Union in a position where it could neither bargain effectively on any subject nor agree to a firm contract prior to the Respondent's implementing its final proposal, even if it capitulated to the Respondent's every demand. Moreover, the Respondent's changing positions at the end of negotiations, e.g., adopting a new base period for incentive pay calculations, left the negotiations on economic issues in an even more amorphous position by basing pay on future performance rather than documented past performance.

We do not find that it is a *per se* unfair labor practice for an employer to propose a joint union-employer program to develop pay, incentive, and operating plans. In cases such as this one, however, where the proposal is used to impede rather than to facilitate negotiations and is coupled with other proposals that cut to the core of fundamental Section 7 rights and Section 9 responsibilities, we must find the antithesis of good-faith bargaining. Thus, we find that the Respondent violated the Act by failing to bargain in good faith and by implementing its final offer without reaching impasse.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, I.T.T. Rayonier, Inc., Fernandina Beach, Florida, its officers,

⁶ We note that there is nothing improper in an employer's commencing negotiations with a broad outline of proposals that are non-specific and attempting to obtain through negotiations the Union's cooperation in developing contract language to resolve a specific concern. However, if the Union is unwilling to participate in that form of negotiation, and the company nonetheless wishes to achieve its aims, the company must, to fulfill its bargaining obligations, put "meat on the bone." It must submit proposals that are specific so that the Union can analyze the impact of the company's proposals and take a position on them. Here, the Company failed to take the extra step—it failed to put "meat on the bone."

agents, successors, and assigns, shall take the action set forth in the Order as modified.

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

“(b) On request of the United Paperworkers International Union and its Local Nos. 395 and 766, rescind the unlawful unilateral changes and reinstate retroactively to December 2, 1988, the rates of pay, wages, hours, and other terms and conditions of employment in effect immediately prior to the Respondent’s unlawful conduct, and make whole with interest all unit employees who suffered losses in wages and fringe benefits, as set forth in this decision.”

2. Insert the following as paragraph 2(d) and reletter the subsequent paragraphs.

“(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.”

3. 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.

WE WILL NOT refuse to bargain collectively with the United Paperworkers International Union and its Local Nos. 395 and 766, as the exclusive bargaining representative of the employees in the appropriate unit by unilaterally changing the wages, hours, and other terms and conditions of employment by:

failing timely to furnish the Union with information which is relevant and necessary for it to perform its function as the collective-bargaining representative of the employees in the appropriate unit;

unilaterally implementing our final contract offer without first bargaining in good faith until we reach agreement on a new contract or reach impasse.

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

WE WILL recognize and bargain with the Union as the duly designated representative of its employees in the appropriate unit by:

not unilaterally implementing our final contract proposal without first bargaining in good faith until we reach agreement on a new collective-bargaining agreement or reach impasse.

Rescinding, on request by the Union, the unilateral changes in the wages, hours and other terms and conditions and reinstating retroactively the rates of pay, wages, hours, and other terms and conditions of employment in effect immediately prior to our unlawful conduct.

Furnishing the Union with requested information which is necessary for it to perform its function as the collective-bargaining representative of the employees in the appropriate unit.

WE WILL make whole with interest employees who suffered losses in wages and fringe benefits as a result of our conduct.

I.T.T. RAYONIER, INC.

Johnny L. Mahan, Esq. and *Margaret Diaz, Esq.*, for the General Counsel.

Ira Bernstein, Esq. and *Mark Salm, Esq.*, of Atlanta, Georgia, for the Respondent.

Lynn Ivanick, Esq. and *Michael Hamilton, Esq.*, of Nashville, Tennessee, for the Charging Party.

DECISION

STATEMENT OF THE CASE

J. PARGEN ROBERTSON, Administrative Law Judge. This case was heard in Jacksonville, Florida, on November 13 and 14, 1989, and in Atlanta, Georgia, on June 19, 1990.

Briefs were filed by the General Counsel, the Charging Party, and Respondent. Subsequently, after the hearing reopened on June 19, the parties filed memoranda.

Respondent admitted that at material times it was an employer engaged in the business of producing chemical cellulose, and that it was engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (the Act). Respondent admitted that the Charging Party (UPIU/Union) is a labor organization within the meaning of Section 2(5) of the Act.

Respondent admitted that the UPIU is, and has been since about 1940, the designated exclusive collective-bargaining representative for the employees in the following appropriate unit:

Included: All production and maintenance employees at the Employer’s Fernandina Beach, Florida facility.

Excluded: Employees represented by other labor organizations, all other employees, guards and supervisors as defined in the Act.

Respondent and the UPIU have been parties to successive collective-bargaining agreements, the most recent of which was effective by its terms from July 1, 1983, through July 1, 1988.

UPIU has traditionally represented Respondent's production and maintenance employees. IBEW has traditionally represented Respondent's electricians. Both those Unions were involved in the collective bargaining relevant to these proceedings.

It is alleged that Respondent unlawfully refused to furnish the UPIU requested information in a timely fashion; that Respondent implemented its final offer without having reached a good-faith impasse; and that Respondent unlawfully engaged in bad-faith bargaining as shown by the totality of the circumstances surrounding the bargaining.

The parties met to bargain collectively on May 24, June 21, 22, and 30, July 6, 15, and 28, August 19 and 29, September 15, 16, and 22, October 3, 5, 6, 7, 24, 25, and 31, November 2, 4, 11, 15, 16, 17, and 29, and December 1, 1988.

A. May 24, 1988

Director of Labor Relations Robert L. Alman was the most frequent spokesman for Respondent during the 1988 negotiations. The principal spokesman for UPIU was Eddie Barnes. There were several other representatives present for all parties including four representing IBEW.

Roy Nott, general manager, explained among other things, that the pulp mill involved in these proceedings, was in poor condition from a financial and a quality standpoint and that Respondent was in danger of losing its best customer.

Robert Alman asked for a show of hands as to how many negotiators for the Unions have been involved in negotiations before. Then Alman commented,

If there is one guarantee I can make to you, it will be that in a very short while, possibly before this day is out, you will come to the conclusion that this will be a different type of bargaining than you are used to.

Later Alman continued,

. . . customarily, you are used to the company sitting and saying, for example, delete one holiday, and the union saying add one holiday . . . going that way in these negotiations would be the court of last resort. Listen carefully to that statement, because I will tell you that if we're forced into that style, our perception on this side will be that we have failed.

I say that because we believe that with a team management driven organization—and make no mistake about it, gentlemen, the key words are team management—that we can sit and come up with a contract that we all not only can live with but are relatively happy with it.

Respondent distributed to the Unions a document entitled:

FERNANDINA QUALITY MANAGEMENT
ITT RAYONIER INC., FERNANDINA DIVISION
AND
UPIU LOCALS 395 & 766
AND
IBEW LOCAL 1924

That document (FQM), included a recognition clause indicating the signatory union was the sole bargaining agent of

the 10 employees, a preface, sections entitled critical success factors, quality management philosophy, Fernandina Division mission statement, principles regarding quality, people, integrity, and profitability, general topics including legal responsibility, recognition (see above), payroll deduction (i.e., union dues and fees), and bulletin boards, and definitions including base compensation, contractor equivalence, customers, day, employee, FQM manual, helper, incentives, maintenance leader, mechanic, operating board, operating board chairman, operating teams, operator, performance management, probationary employee, quality management, recall list, service teams, shift leader, statistical process control, suppliers, team, team facilitator, team manager, team manual, team members, team rules, technician, and week.

Under the definitions section of the FQM, noted above, the term FQM MANUAL is defined:

The Fernandina Quality Management Manual is a "living" document which explains the Division's management plan. All mill-wide issues are addressed in the manual. This manual can be modified by the Operating Board with the Chairman's approval. Nothing in this manual can supercede or be in contravention of this collective bargaining agreement.

Alman mentioned on more than one occasion, that the FQM was not a contract proposal.

Alman proposed a procedure of having teams including employees, consider rules to live by over the next few years, then bring those proposals back to the bargaining table:

We'll take a team, and I would like to see two or three or whatever number hourly employees that would be involved in that department or team, have someone here from the negotiating committee who is from that area involved in the team, have the designated team leader sit there, and then everyone together try and draw up some of the rules and regulations they would like to live by for the next several years, and this is with the understanding that clearly all of it what we develop has to be brought back here to the table for everyone's approval.

Now, initially, it would be the intent for Roy [Nott, the General Manager] and I, as I would assume Eddie [Barnes, UPIU] and Levy [Crosby, UPIU], to also sit in the room and watch what is going on and where needed, be helpful.

George Dorsey, IBEW local union president, objected to the above "team" proposal stating that in his view, it would circumvent normal negotiations by requiring the teams to replace the Unions in the bargaining process. Dorsey went on to say that he felt that procedure would violate the National Labor Relations Act.

Robert Alman replied to Dorsey,

You're partially correct in what you've said, at least about the law, but first of all, you used the work [sic] "circumvent." That's a strong word. Some of you are aware of it, but let me just give you some of my background, because maybe if you understand me a little bit better, you'll understand where I'm coming from.

At the end of the meeting the Unions said they would like time to consider the comments by Respondent and that they would respond at the next session.

B. June 21, 1988

UPIU representative Eddie Barnes made some comments at the beginning of the June 21 session including the following regarding the FQM Respondent had distributed to the Unions at the last session:

. . . we are not telling you that we are just hands down on your "pass out" but at the face value of it, we don't—we are not interested in the concept as we see it at this time, but we are, you know, prepared to talk and we are here to negotiate.

Regarding a claim from the Unions that the FQM was vague, Alman responded,

And the specificity that you are looking for right now, I can't give you because I don't know truthfully what the thoughts are of what the best way to operate the bleached team is or the unbleached team or the finishing area or the maintenance team. I don't know.

Alman commented,

I have a suggestion. I recognize your need to ask me questions and I also recognize the fact that my answers to you are not going to be satisfactory, not because of any willingness on my part to deliberately make it so, but more again because I don't know the answers.

Alman suggested that the Union hold off further questions until after the first "team" meetings were held. He suggested holding a team meeting for the bleached area on the following day.

Barnes objected saying that the negotiating committee had been elected to represent the employees.

The Unions asked if Respondent intended to hold team meetings regardless of the unions' objections. Alman responded,

No. I don't like to put things in black and white on the second day I'm meeting with you. I may put them like that on the fiftieth day or fortieth day in black and white after we have reached a point where the conversation is futile . . .

Later the unions asked if the FQM was Respondent's contract proposal. Alman responded,

No. Really, I haven't looked in Webster's Dictionary for what the term "proposal"—what the term proposal specifically means; it was the framework upon which I intended to build these negotiations.

Barnes presented Respondent with the first written proposal from the UPIU,

We have a proposal here that we have yet to present to you. It is going to serve as our proposal. We are not closing the door about talking about your proposal [the FQM]. We think it would be appropriate, at this time

maybe, if we could present this proposal and let you, if you would like to review it. It is pretty self-explanatory. It is more traditional, as I said before, than what you have presented to us.

The Union then went over its proposal which was in a traditional format.

After breaking to examine the union contract proposal, Alman replied,

Looking over what you have given us and leaving aside the economics, because like anything else, that will be the last thing, of course, that we end up discussing, I believe that almost all of the noneconomic issues that you have raised can be addressed when we sit down and get into this team concept business, the FQM plan.

Respondent's requested holding team meetings the following day. The Unions objected. Instead the Union proposed,

maybe if we had some time in the morning so that the committee could do a little bit of research and stuff, maybe we would be prepared to say when we will be ready to have a team type meeting.

. . . .

. . . we do and have already agreed that we will have the team type meeting, . . .

C. June 22, 1988

At the beginning of the session Barnes spoke for the Unions,

We feel like we can agree to the [team] meetings but we are certainly going to do the bargaining at this table, this committee here. I think we have made that clear. We are certainly going to afford every employee in that plant an opportunity to attend these meetings if he or she wishes.

The parties continued the session by discussing, for most of the session, the arrangements for the team meetings.

D. July 15, 1988

Eddie Barnes complained to Respondent that the Union had been misled regarding the team meetings and that 90 percent of the meetings held the preceding 2 days, were taken up by General Manager Roy Nott,

Due to Mr. Nott's presentation in these meetings the last two days it's going to be extremely difficult for us to trust Mr. Nott or agree to have team meetings as he has set forth in these meetings. He's made so many threats if we don't have these meetings we're not going to get a very good proposal.

. . . .

He has circumvented this bargaining committee here. He has made threats and tried to intimidate the people to use as leverage in this bargaining session, and that's not right.

The Unions indicated that they were interested in learning of Respondent's intentions regarding negotiations. Alman responded,

And you'd like to understand what they [Respondent's intentions] are.

. . . .
Which means get to the point.

MR. BARNES: Sure.

E. July 28, 1988

Don Wilkes replaced Eddie Barnes as chief spokesman for the UPIU. Wilkes pointed out that the Union would be unavailable for negotiations for the next 2 weeks due to the Union's international convention. Wilkes complained that the team meetings came close to circumventing the entire collective-bargaining process. Wilkes commented regarding the time he would be at the international convention:

. . . while we're gone we don't want any meetings going on with our members. If you need somebody up in the office to talk to them about something, then obviously you are management, you have that right. But group meetings, those things that can be deemed or taken to be negotiations, certainly we do not agree to that. And we would take a dim view of it.

F. August 19, 1988

UPIU Representative Don Wilkes stated near the beginning of the August 19 session,

What we have not seen, number one, and there is several things. We have not seen any attention to the Union's [contract] proposal by management, so that we could have some sort of a feel for what you're talking about with regard to our proposal.

We have not yet been able to determine exactly what portions of the present labor agreement or contract you wish to change to achieve more flexibility than what you presently have. We need to know that.

We have talked about the possibility of a team meeting. And we're not inclined to do that, but we told you that it looked like that we're going to have to have some discussion like that in an effort, or in order to address your proposal intelligently and more responsibly.

But I've got to tell you, Robert, we're not all sitting here chomping at the bits to have these team meetings. We do not intent [sic] to circumvent the Collective Bargaining process, no matter whether we have a meeting or whether we don't.

. . . .
One other thing I did not say. You guys got some sort of a manual, operating manual, blue book, whatever it is. It's referenced in this document that you gave us.

. . . .
The manual, the blue book, whatever it is. Okay. We want copies of it. We cannot, you know, we cannot begin to know what in the world you're talking about if we don't have all the documentation that's available to us to scrutinize.

. . . .

And you know, we've got group concept, team concept, in this mill already. The structure, you know, we do not understand the Company's desire to just totally tear down the present structure, the basic structure of the work force, the departments, or the lines of progression.

. . . .
But just not tear down the basic structure of the contract, throw it all out and say we want to start over with as vague of terms as we possibly can. And that's what we see now. So we're prepared to move ahead and bargain in good faith. But we've looked at your agenda, we've made some response to it, and we'd like you to do the same things with ours.

Robert Alman replied to Wilkes,

We said at the outset that for this bargaining to be successful there was a vast amount of money that we had to have in savings, and we felt truthfully that we could get that more through the efficiencies of the operation, such as working with a participative management style, team concept, etc.

The other way of getting savings is truly not a win, win situation for both parties. The other way starts going towards, for lack of a better term, the conventional bargaining posture that we've all been used to over the years, and that will not really be of benefit to both of us here.

. . . .
If that's what you're saying to me, that we're not having team meetings next week Because we have wasted seven, eight meetings over here.

After nine meetings we have not really done anything that could be considered substantial.

. . . .
Our intent is to have team meetings to discuss all aspects of the work that the people will be doing exclusive, of course, of wages, etc.

Johnny Snead, UPIU Local 766 president, replied that the negotiating team was a team and,

And we asked you the same questions you want these people [teams] to ask, and you couldn't answer our damn questions. How are they going How are you going to answer their questions when they ask you the same thing?

Don Wilkes told Alman that the Union would not be maneuvered into a position of having union members making proposals to the union negotiating committee. Wilkes asked Alman for,

. . . a general idea of what you would need to do to change the present terms of the labor agreement to accomplish what you set out to accomplish.

Alman replied,

Concepts. We do not have anything specific. We have concepts.

Wilkes,

And you're complaining about having four or five sessions and not have made any progress.

.....

You have come to this table with an ill defined concept?

Alman's comments included the following,

I cannot give you definitive answers to questions, because by doing that I would be telling you that I can read a crystal ball.

I don't know what questions will evolve at a meeting tomorrow or the next day. All I know is, that when I sit and talk with people, I, management, talk with our employees about problems we have, and how do they view it and what do they think of the solutions to the problems, then that is the way it can evolve into what we believe will be an efficiently run organization, and get us the savings that we have to get without going the hard way.

If you want the hard way we can go the hard way. That choice is yours.

.....

I'm not threatening. But I'm saying to you this. The mill is not going to run under the present conditions. We're going to make some changes. We're going to either make the changes with your cooperation or we're going to make changes that you may not like.

Wilkes told Alman that the Union was not opposed to worker involvement and, in fact, had worked for more worker involvement for years but that the Union was obligated on behalf on its members to bargain with the Employer and explained that the Union was unwilling to allow the Employer to have the team meetings in a loose, casual conversational type manner from which Respondent would develop its proposals and come back to the bargaining table and inform the Union that the proposal was what the employees wanted.

Near the end of the meeting the Union asked Alman for a clearly defined collective-bargaining proposal. Alman agreed to submit,

a clearly defined Company proposal put forth by Company people with no input—

.....

It will have in there what I want in my contract that we will then sit and negotiate about.

Later Wilkes said to Alman,

We are prepared to go forward with basically this same Labor Agreement for the next three years, and I'd like you to tell them that. We're not looking for a fight, but we're damn sure willing to fight over some of this stuff, you'd better be aware of that.

G. August 29, 1988

Respondent presented the Unions with its first contract proposal. The proposal included a wage incentive plan, which, as explained to the Unions by General Manager Roy

Nott, could involve negative, as well as positive, incentive. Wilkes asked Nott how much negative roll was possible under the incentive plan.

Nott replied, "That's something we're still working on."

Don Wilkes asked Respondent for a copy of its Fernandina Quality Management Manual as he read through Respondent's contract proposal and the following exchange occurred:

MR. WILKES: Let me read what you've said here. "Fernandina Quality Management Manual is a living document which explains the division's management plan."

MR. ALMAN: Right.

MR. WILKES: Now, again you're telling us you don't have the management plan.

MR. ALMAN: No.

MR. WILKES: Let me read on. "All mill-wide issues are addressed in the manual. This manual can be modified with the division general manager's approval."

MR. ALMAN: The manual will evolve in its final form at the conclusion of the negotiations. Specifically, when you sit here and you say all mill-wide issues are addressed in the manual, I don't really know until I'm done with these negotiations what will be mill-wide issues. I mean we have—if I tell you one, I would say to you there may be 15 drafts of manuals.

.....

I do not have a finished manual to hand across the table to you.

.....

I will show you a manual and give you a manual before the negotiations are over, but right now I am not contemplating that manual being a negotiable item.

Alman also made the following comment regarding UPIU's request for the FQM referenced in Respondent's contract proposal:

... let me say to you that the gestation period for this document is longer than expected, and when we are done with the contract we will also have an FQM Manual, and that's what we are referring to. I do not have a complete manual now to give you, I really do not.

Alman continued through Respondent's contract proposal by mentioning differences proposed from the past agreement. As discussed by the parties in this session, those proposed changes included giving Respondent exclusive authority to change shift starting times; management rights changes; lengthy changes in disciplinary procedure; overtime changes to allowing overtime only after 40 hours per week; and seniority to be recognized only after management determines an employee's qualification to perform the work.

When the Unions objected to the seniority proposal Alman replied, "Just remember, gentlemen, you're the ones that didn't want to sit and have team meetings."

The parties continued to discuss changes proposed by Respondent and Don Wilkes commented,

there isn't anything in [this proposed agreement] that you haven't changed from our present Agreement, not

one article have you presented to us that is not changed from our present Agreement.

MR. ALMAN: Well, we told you at the outset this was going to be something new.

Don Wilkes made the following proposal:

that we extend the terms of this Labor Agreement, the present Labor Agreement, for the next three years with no increase in wages, no increase in benefits, no increases in any area for the next three years.

Alman replied, that the "Company is taking the position that that offer is not acceptable."

Alman complained because there had been no progress in negotiations,

It is now September 1st, whether it be your burden or my burden—I will use the word burden instead of fault—this contract expired on July 1. I have used two months up and in reality nothing has been accomplished.

Wilkes' reply included the following,

We said, "Hey, give us your proposal." Now, you finally did today. But we've not sit here with the proposal in our hands for two months. What we've been sitting here for two months doing is trying to get a proposal out of you, which you did not have drawn.

The following exchange occurred:

MR. ALMAN: . . . Just remember this: I will get where I am going to go with your help or without your help. If you're smart—

MR. WILKES: What the hell happened to collective bargaining?

MR. ALMAN: That's what we're gonna do. Because if it wasn't collective bargaining I would walk in and tell you tomorrow, gentlemen, here's what you're working under.

. . . . There are things that I have proposed in here that in all probability you will force me to change or to modify. But listen carefully when I tell you there are things in there that ultimately you will not like and will be there after we get done with all of the negotiations. That's in any contract, not in this one specially, that is in any contract.

H. September 15, 1988

Robert Alman,

Let me begin with a statement that has been said often, and very possibly can lead to a very fruitful conclusion to these negotiations. And that statement has been that about 90% of what we are after, so to speak, we already have.

What I would like to do, with your help, and your guidance, is take what the company is after in its proposal here to you, and try and understand where the

points of disagreement are from what we are proposing and what presently exists in the labor agreements.

Alman and Wilkes had an exchange where Alman indicated Respondent would not operate unless it was making a profit. Wilkes pointed out that Respondent was not operating any facility that was not showing a profit. Alman responded,

We may make a dollar today. What I'm concerned about is not today. My interests are what am I going to be like a year, three, five, possibly ten.

Respondent and the Unions discussed Respondent's proposal to consider seniority only after Respondent determined the relevant employees qualifications, and Wilkes responded that a provision like that would result in numerous grievances. Alman replied that he did not intend to arbitrate those grievances.

Wilkes commented,

We cannot represent the people that we are legally bound to represent under the terms of this contract. We have a duty of fair representation, and that has become quite vivid to all of us in the last few years, management and the union. That duty of fair representation has become very vivid to the unions over the last few years with regard to grievance handling, arbitration matters, this, that and the other.

We do not see at all, let along clearly, how we could fulfill our duty of fair representation under the terms of this contract [proposed by Respondent].

Wilkes complained that Respondent had even removed the term "just cause" from the disciplinary action provisions of their contract proposal.

I. September 16, 1988

Robert Alman,

This proposal is going to be the contract that we end up with, with whatever modifications, deletions, et cetera, we've negotiated.

But I am not going to have the orange book [i.e., existing contract] any more. You best get it out of your minds. Now there are certain parts of this proposal I know you're going to find damn difficult and probably will not accept out of hand.

It's like anything else, there is good and there is bad in the way it's viewed. I don't expect you to jump for joy on all parts of this proposal. But I expect to have this proposal as my contract, with whatever changes we negotiate.

The parties continued to discuss the Respondent's contract proposal of August 29, 1988.

Respondent proposed removing Sunday premium pay. Alman said he accepted that proposal as a given. The Unions objected that they had not agreed to that.

MR. ALMAN: It may not be a settled issue in the sense as I said to you that you're going to sit here and say, "Fine, we accept it." I expect you're going to fight, kick and yell about it.

MR. EVERETT: But you're going to drag us along.
MR. ALMAN: Oh, yeah.

J. September 22, 1988

Robert Alman,

Gentlemen, in reviewing my tape of negotiation session number 12, and today is negotiations number 13, it is apparent to me that from the last meeting that we do not have in our present contract 90% of what both of us thought the company had the right to do.

Specifically, if you remember from the last couple of minutes of our last session, it became readily apparent when we spoke to you about the team concept that you were still talking about lines of progression and seniority.

As a result of this, we are going to have to change the present contract to achieve our goal of being a team based organization, with performance based compensation, where there is an incentive system, where employees are first selected by skill and ability and then by seniority.

All of the things that are part and parcel of the proposal that I gave you, unless someone contradicts me, I now find that I must negotiate with you, because you state it is not presently in the contract.

Later, Alman said,

You can agree to my proposal; you can modify my proposal; or you can keep saying no to my proposal. If you keep saying no, we're at impasse.

. . . .
I recognize that on the incentive based compensation that we have not fully explained that to you. And that is not on any reluctance on our part to share it with you. The truth of the matter is that we have not truly honed it down yet where Roy can give you a definitive presentation, and say this is his proposal on it.

K. October 3, 1988

Again, the parties went over the provisions of Respondent's contract proposal:

MR. ALMAN: . . . Page 18, Contracting. The words may seem harsh at first, but in reality this is really what exists.

MR. WILKES: That's not true, Robert. That's not true. What this language says is you can contract any or all of the work in or around that mill, and that could go right on down to the damn paper machine, that could go to the bleach plant.

You do not have that right. You have a contract with us to perform that work. And you do not have a right presently to contract that work out. And we sure as hell are not going to agree that you can at will contract our work out to anybody at any time you so choose.

So it says quite a bit different than what it presently says.

MR. ALMAN: Like the other sections that we've covered, if you have language that you feel would be more acceptable to you, and yet still maintain the intent of

what I am after, I would be most welcome to look at it.

Alman pointed out that Respondent's proposal called for the elimination of backpay as a remedy in resolution of problems unless the employee actually worked. Errors by management which deprived employees of work would be remedied by management agreeing that there had been an error. Wilkes responded,

I tell you what, based on what I see right here, if this is Roy's proposals, or his thoughts, his ideas, I don't buy that worth a damn. I want both of you to know that. If this stuff is coming from Roy Nott, I damn sure don't trust him no more than I do you.

Y'all hadn't come in here with any sort of a decent contract proposal at all. You've come in here with a bunch of damn stuff, off-the-wall stuff that's not found anywhere else in our industry, that's not found in any contract that we are a party to anywhere, and you're coming in here with the intent apparently of jamming this stuff down our throats.

Alman admitted that under Respondent's proposal to change the funeral leave policy, the team leader (supervisor) would have the discretion of denying funeral leave.

Respondent's new proposal called for the elimination of all pending grievances.

Wilkes complained that Respondent's proposal at section 22 effectively removed the Unions' rights and responsibilities under the NLRA. Team Leaders would have authority through team meetings, to change working conditions. Alman argued that team meetings could result in changed working conditions for that team if there was agreement within the team, provided the changes did not detract from the collective-bargaining contract.

The Union asked for a copy of the FQM. Alman responded to that request, "When we get a manual developed you'll have one."

Wilkes complained that Respondent's proposal would permit supervisors to do bargaining unit work and Alman agreed, that a supervisor could perform a limited amount of unit work under the provisions of their proposal.

At the end of the session Wilkes promised to do what he could to present a contract proposal at the next session.

L. October 5, 1988

Wilkes presented a counter proposal contract at the beginning of the session. Alman began to go over the proposal in the session, item by item.

Although the contract traditionally provided for cooperation between Respondent and the Unions in matters involving safety, health and welfare, economy of operation, quality and quantity of out-put, cleanliness of plant and protection of property, Respondent disagreed with the Union's proposal to continue to incorporate that language in the collective-bargaining agreement. Instead, Respondent proposed including language in that area in the FQM. Wilkes disagreed,

We think it's fully covered in our contract, and we see no need to put it in a manual. We're not going to agree to a manual that become in effect a separate contract, where you negotiate with small groups of people

independent of the union on a day to day basis. We're not going to agree to that sort of system. We don't have to agree to it. I think we're within our legal rights not to agree to it, and we're not going to.

Again, the parties discussed the issue of supervisors doing bargaining unit work. Respondent advanced the argument that supervisors could perform short-term unit work in order to fill temporary vacancies.

The Unions questioned Respondent's intent to trim its work force. Respondent agreed that the cut in jobs could exceed 25 employees plantwide but indicated that they could not forecast the actual number.

Regarding the status of negotiations, the parties stated,

MR. WILKES: You know what, you can't give us a proposal right now, because you don't know what the hell to propose. Y'all ain't got the compensation package together. That's been made clear. We've asked Nott three or four times. He can't explain it. You don't really know If we agreed to this you'd have the biggest damn mess in that mill you've ever seen in your life, because you don't know what you've proposed, you don't know how to administer it. And that's what we're trying to do, is write something here the people can understand and will know.

. . . .
Ain't nobody trying to negotiate a contract here with us. We're trying to negotiate a contract. You guys are trying to negotiate a damn union busting document, where you can do anything you want to do and not ever be challenged.

MR. ALMAN: The severity of the problem that management believes it has at the mill requires a drastic innovative change in the way we operate. They said that to you a long time ago, when he first came on board Nott evidently said that to you people.

In discussions on seniority, Alman said Respondent was not out to strip seniority but insisted that Respondent must have the right to determine qualifications over seniority.

Wilkes pointed out that the mill was making money. Alman responded that other problems existed which required a different approach. Wilkes complained that they could have understood Respondent coming forward with concrete proposals. Alman argued that General Manager Nott's approach was the nice approach and that in upper management, there were others that recommended approaches that would not be so nice.

M. October 6, 1988

Robert Alman opened the session with a statement which included the following:

you refer to Section 8, dealing with starting and stopping work. . . . and in fact much of this is not necessary in the team based environment, because the individual teams will deal with problems and the rules and regulations as they arise.

I know your position on it is one that you wanted it in the proposal as it is in the old contract. Has that position changed?

MR. WILKES: That is our position.

Wilkes and Alman discussed the state of negotiations. Alman commented,

You do not fundamentally believe, or have exhibited, up until this point, any recognition of a need for a change. In your mind you honestly believe that somehow this status quo can be maintained with some little deviation.

And I have told you before, I say to you now, and I'll say to you before it's over, you are wrong. There will be the changes that are necessary for us to operate this mill efficiently. You have taken no part in it. We have good conversations at the table. We have a good relationship in the room. But that is all meaningless if there is not to be anything fruitful from it.

And I can list and say to you, just the way you presented your proposal, your counter, was an insult.

MR. WILKES: So did we consider yours to be an insult.

MR. ALMAN: I have not even looked at the IBEW one, and I'm not going to sit and say anything positive or negative. But at least, from a professional stance of negotiations, and I can honestly say that I just opened it up and thumbed through it without reading one or two words at most, that it was done in response to mine.

What you did, is you went in a room, you sat for a couple of hours and you said, "Here, let's go through the orange book [current collective bargaining agreement] again."

That's fine. I have no problem with it. I'm going to sit here with you. I'm going to negotiate with you. I'm going to try and convince you until I am absolutely exhausted, one way or another. And at a certain point, when you keep on sitting and saying, "no, no, no," then you know what's going to happen. And then you can sit and say, "Why did it happen?"

. . . .
The major difference is our concept of a team based environment is about 180 degrees from what you're thinking. You still are fundamentally thinking of teams And teaming and crewings and multicraft and all that. And I have avoided. . . . You have never heard me use those words since negotiations began. Because we're not thinking like that any more.

. . . .
What I am sitting and saying is, you keep handing me this stuff, as is, as is, according to the orange book, that I can't even match up. Fine. That's fine. I'm doing my work.

. . . .
You guys don't want to allow the team meetings. You didn't want to allow it, to have the people sit, and for us to get feedback. You kept saying, "We're the negotiators, we're the ones chosen, you must deal with us. We'll take it to the membership."

Now, fine, you take it to the membership. Whatever you're going to end up with, you're going to take it to the membership, Mister.

Alman said they would not have an "orange book" when the negotiations were over. Alman explained what he felt about the collective-bargaining agreement:

If something is applicable to everyone in the plant, then it belongs in a contract that is applicable to everyone in the plant.

But if there are individual items that are just germane to a particular team area, that's where we're talking about the guys in the team, or the guys on the team, I should say, sitting and working out what their team manuals and everything will be.

John Everett, UPIU Local 395, accused Alman of trying to put the entire collective-bargaining contract in a team manual. Alman made several comments including the following:

But you keep fixating on what you need, and then you say it's in the present contract and that's where I want it to stay.

And what I want is the men to be seated in their teams and talking with the team leader without you and I interfering, as I said all along. And discussing those things that they need, so as to make themselves feel like they are a responsible part of the team.

But letting a team have a meeting for us to see the value, the pluses, the minuses, the wants, and everything, and then come back to the table, then you're in a much better position to make a value judgment.

Alman explained what he expected of the team meetings,

I am not sure exactly what will occur at the team meetings. It may be a complete bomb. It may very well be that people will just sit and look at their navels.

That may say something also. But until you get up there and see what happens, we don't really know. We think that there can be fruitful discussion.

MR. WILKES: We're not refusing to have the sessions. But what we are refusing to do is turn the damn collective bargaining process over to Roy Nott and the team leaders.

Wilkes and Alman continued later:

MR. WILKES: What are we going to do when we get in there [the team meetings]? Are we going to discuss the process that they're involved in and how we can better improve it?

MR. ALMAN: I would think that's along the lines. I will guarantee you one thing.

MR. WILKES: We don't need that in the contract, we can do that now.

MR. WILKES: So you're going to talk productivity, quality and quantity of output. You can do that under the present contract. You call it all it [sic] time, shift meetings.

MR. ALMAN: Let them have the meeting to see what comes of it.

N. October 7, 1988

The parties discussed both unions proposals and proposals of Respondent at this session. The Unions agreed to permit a team meeting of finishing department employees.

O. October 24, 1988

Don Wilkes complained that the team meeting held in the finishing department was unsuccessful. Wilkes complained that General Manager Roy Nott came into the meeting and was overheard to say: "I've got better things to do than this, and I hope to hell we can get out of here so I can get on with what I've got to do."

Early in this session Don Wilkes referenced section 1, paragraph A, of Respondent's proposed contract:

MR. WILKES: . . . You make reference in here to the team manuals. You cannot expect the union committees to sign on to language when it's not even written yet.

MR. ALMAN: Cross off team manuals. Team manuals will not be part of the negotiations.

MR. WILKES: There will be no team manuals?

MR. ALMAN: There will be team manuals that we will present to you, but they will not be a negotiated item. So let's cross it off.

Wilkes asked Alman when would Respondent give the team manuals to the unions. Alman responded that it would be before ratification vote but Alman indicated he was unsure when. Alman said he did not know what the team manuals would include because he had not seen a finished copy.

Alman continued, saying that the team manuals would be included in the collective-bargaining agreement but that they were a management book and not subject to collective bargaining. Wilkes said that he needed to be provided with copies of the manuals.

Wilkes asked Alman why the introductory language in the current agreement section 1, was deleted in Respondent's proposal since it said Respondent would provide to the fullest extent possible, the safety, health and welfare of the employees, economy of operation, and quality and quantity of output.

Alman responded that Respondent intended to adhere to all those things but that Respondent was unwilling to include that language in the new contract.

The parties discussed the issue of contract language dealing with supervisors performing bargaining unit work. After extensive discussions Alman was asked if it was his position that Respondent intended to avoid using supervisors in unit work for "any length of time," but that Respondent would not put that in writing in the contract. Alman responded, in part:

The intent . . . is something that you have difficulty with, because I am not drawing it in black and white. And you remember what Roy said, many, many sessions ago, and that was, that if you're asking for someone to stand over you and for someone to tell you what has to be done, and all of the other old ways, then we'll never make it.

I know this will make you laugh, or at least smile when I say this. What I'm asking you to do is to trust the mill management.

P. October 25, 1988

Robert Alman opened the October 25 session:

I have been up since about 3:30 this morning, down here in my caucus room, reading and listening to tapes. And to say that I am annoyed would be to put it mildly. We came here to bargain, and we recognized that it was going to be a difficult bargain. It is my total belief that by what I have read and what I have heard on my tapes of our meetings, that you are putting this whole bargain almost at an impasse. And that I find very difficult.

. . . .
If you think it is a fucking joke, gentlemen, I'll tell you something, you are making a error in judgment.

We will go through your proposals and my proposals, and if we have to we will bring lunch in here, and I don't care how long it takes, but we're going to sit here and we're going to have positions on the proposals.

If the positions are no, I can accept it. But we are not going to have any vagueness, any outside talk, any side talk. We're going to get done with this fucking thing today, so that when Nate Kazin, the mediator, comes in Monday, Mr. Wilkes and I can sit and at least, with Mr. Kazin understand where we're at.

. . . .
When I start to say something and all I'm going to get from these people here is some heckling, and some bullshit, the outburst may not be specifically called for, and Deloris, in the privacy I will explain to her, and I do owe her an apology, but that business about sitting here and snide remarks and heckling, I can do without.

[W]hen you talk to Hydie [Hydie Peterson, UPIU Local 766 President] at least you know exactly where you're at. He doesn't sit and he doesn't bullshit. He says, "Hell, no, the answer is no." Do I make myself clear? The answer is no. And I understand that. Not that I agree with him, but I understand at least from Peterson what he believes.

Wilkes responded (in part):

But now with regard to the amount of time that has been put into negotiations, I've got to be very honest with you. I've negotiated a few contracts over the last sixteen or seventeen years with some major companies in the paper industry, and some small companies and some middle sized companies. About every size and type company, and a great many of the major producers in the paper industry over the last few years. I have never, ever, sat down to such far-reaching proposals as those presented to the UPIU and the IBEW by ITT Rayonier in 1988 bargaining. Never, ever.

These are totally out of line for the paper industry. They are foreign to anything we've ever done or known. They are very different conditions under which you're asking us to work.

This contract would in effect allow the mill manager on a daily basis to make any decision he so chooses, and unless it involved disciplinary action it would not be subject to the grievance and arbitration procedure.

I told you yesterday, I did not consider that a contract. I still do not consider that type document a labor union contract, labor/management contract.

. . . .
I don't see [a ratifiable contract proposal] coming across the table. I'm looking over there this morning, and every other session that we've had, we'd have officials of the mill here, so that when we asked questions we could get some input or some feedback from those people who are going to be administering the contract, not the Corporate Industrial Relations Manager.

Now we don't have a committee here to talk to. We don't have anybody here from the mill to question about what do you anticipate here, what are the problems here. We're going to ask you the same questions that we've been asking. And we're going to get this thing explained to us so that we know clearly what it means.

If you tell us in a word it means just what I said, "Yes, Don, it does mean that the mill manager can do what he wants to on a daily basis, and it cannot be challenged through the grievance and arbitration procedure, unless there is discipline involved," if you tell us that's what it means, then we can put an end to the questions and answers.

. . . .
But until you say to us, "I can bargain, I do have some flexibility to change, and I can answer your questions knowledgeably, and management will honor the position that I take here," then we have some concerns, and we're going to continue to address this proposal, whatever amount of time it takes.

There is no effort here by the union to delay

Alman replied that he did have the authority to answer the unions questions and he argued that other ITT facilities had the team concept included in their contracts. Alman went on,

When I say that we intend to have it [the team concept in our contract], I don't expect to have it as it is written in my proposal, unless you categorically reject everything. Because if you categorically reject everything and there is impasse, and if I end up implementing, then I'll end up implementing what is written. What I am looking for are the modifications that are necessary for the acceptance by you and your membership at a ratification meeting.

The parties began discussing seniority as proposed by Respondent. Alman commented,

You're going to have to accept the position I take [on seniority], not accept it that you agree to it, but you're going to have to accept that I am probably not going to move off my position. So as a result, in that area we are probably at an impasse because you are not changing either.

The Union again asked for team manuals.

Alman replied that team manuals should be left out of negotiations until Respondent provided copies to the unions. Wilkes responded,

But that would put us in a position of not being able to respond to your 24 (in Respondent's contract proposal) until we get them in hand and take a look at them.

MR. ALMAN: Fine. 24, I will accept the fact that we'll aside until you have the team manual for you to either accept, reject or question.

MR. WILKES: The same thing with 25.

MR. ALMAN: Go ahead.

Alman stated that the Company may have made a "typographical error" in section 22 of the Company's August 29 proposal and that the Company might propose that team manuals *could* supersede the collective-bargaining agreement. Alman said that although he had stated in earlier sessions that the team manuals were not a matter to be negotiated, now he was not sure. Alman told the unions,

I said I will get back to you when I present the team manual to you. And I told you that you will have the team manual in sufficient time to look, examine, question. If it is a negotiable item we will then negotiate it. If it is not a negotiable item we will not negotiate it.

Wilkes argued that Alman's position on the team manuals "makes a mockery out of this whole damn bargaining process."

Don Wilkes argued that if Alman was correct that the team manuals superseded the contract and if the final authority for team manuals rested in the division general manager, then the mill manager would be given unlimited power, and the contract would be "moot."

Q. October 31, 1988

Robert Alman started the session, which was the first session attended by a Federal mediator, by distributing copies of Respondent's 10-day notice to terminate the existing collective-bargaining agreement effective November 11, 1988.

Don Wilkes protested Alman's action, contending that the parties were not at impasse and that Respondent had never given the union a final offer on which the employees could vote.

Don Wilkes commented,

I heard you make some comments this morning, with regard to the company's proposal, that you're flexible on this, that you're willing to negotiate and change some of this. We've not heard that before. We sat here and talked about them, and in every instance you have not moved one inch off of anything. And your comments have been to us, "This is what we need to run the mill." And that's your justification for throwing out the whole contract and making the whole world change.

We continue to have a great deal of concern with regard to the working conditions and the wages and benefits. And I'd like to point out, we have not even heard from you concerning a wage/benefit package. And yet you still have served us with a ten day notice.

We do not have anything to guide us with regard to where you're trying to get and what you're willing to provide the employees in return for it.

Later during the session, Robert Alman stated that the termination of the contract on November 11 meant that four things could happen, (1) the employees could strike, (2) the Company could lock out the employees, (3) the parties could just continue negotiating, or (4) that "I can shortly thereafter inform you that I'm going to implement" the "terms and the conditions of my offer that I believe I've reached impasse on."

Alman added, the "Company is seriously considering any and all of these."

The Union objected that Respondent had not gone over its contract proposal:

MR. WILKES: We afforded you an opportunity to go through your proposal. You have no [sic] afforded us that same opportunity.

MR. ALMAN: To go through what?

MR. WILKES: To go through our proposal. You said you had gone through ours. But you've not afforded us an opportunity to go through our proposal.

MR. ALMAN: I told you.

MR. WILKES: We sat here Monday and Tuesday of last week and allowed you to go through your proposal.

MR. ALMAN: I told you that I had reviewed your proposal and it doesn't address our needs. You have ignored what I have been saying to you. If you have a different proposal that you want to put together, then that's what I would suggest you use the remaining time for.

MR. WILKES: You've reviewed it without benefit of any discussion or dialogue whatsoever?

MR. ALMAN: Yes, because when I see the words "as is" I'm intelligent enough to understand what as is means.

R. November 4, 1988

The unions presented Respondent with a contract proposal at the beginning of the session.

Robert Alman asked IBEW if it was their intent to negotiate separately from UPIU:

MR. WILKES: Maybe I'm lost, Robert, but we spent all day yesterday jointly drawing up this general proposal for you. There are some local issues which we did not attempt to get involved in.

MR. ALMAN: I just asked the question. We have taken a look at your proposal. I appreciate the effort that you have put into it. However, I would sit and say that it fundamentally does not address where we still feel we have to go to have an efficient operation.

Wilkes told Alman the unions were available to meet on the afternoon of November 4 and on all the following days of Saturday, Sunday, Monday, Tuesday, Wednesday, and Thursday (i.e., November 5 through 10, 1988).

Alman responded that the negotiations should be able to conclude by meeting on November 9, 10, and 11.

At the end of the meeting Wilkes asked Alman to separately and individually point out provisions of the unions

contract proposal which Respondent finds objectionable. Wilkes continued,

We're just like you, we're not going to counter our counter. We've given you a proposal. And when you left out of the room [earlier today] you said you would look at it and you wanted us to look at it. And I thought you said make some changes in it.

We're prone to changes, obviously. We wouldn't have given you the proposal if we hadn't of been. But it's your nickle now, so to speak.

MR. ALMAN: I accept that burden.

S. November 11, 1988

At the beginning of the meeting IBEW Representative Maurice Conway asked Robert Alman when did Alman determine that he was going to cancel the November 9 meeting. Alman replied that he decided to cancel the meeting on the night before, on November 8. Conway pointed out that Alman had not notified him of the cancellation.

Later,

MR. WILKES: That [termination] notice [you issued], . . . expired at midnight last night.

since you have in effect terminated the contract, what provisions, conditions and wage rates are our members and your employees working under for the time being?

MR. ALMAN: The position that management has taken, and until I notify you differently, is that as long as progress is being made at the table towards the satisfactory conclusion of these negotiations, the terms and conditions of the old contract will stay in effect.

MR. WILKES: The second question I have is, in our request for information I believe we were pretty specific in that we asked that you provide us not only economic data of the present wage rate, benefits, that sort of thing, but also an actual breakdown in your proposal or whatever that proposal was going to be, with regard to wage rates, benefits, contract provisions, that sort of thing.

[T]o give you an example, your proposal, and I don't know what you got over there, but your proposal so far does not have any call time, report pay . . . (a) radical change in holidays and vacations.

(our attorneys) said we "are entitled to economic data, both that presently is in effect and that which is proposed."

MR. ALMAN: Let me look at that, and I will get back to you one way or another.

As pointed out by the General Counsel, Wilkes asked Alman for additional financial data concerning the concessions the Company was asking the Union to make, and noted that giving up Sunday premium pay resulted in a 7-1/2 percent reduction in pay for shift workers. Alman agreed with Wilkes that 7-1/2 percent was a pretty radical reduction, and said that he would check into it and get back with Wilkes.

Later in the session Alman presented the unions copies of incentive pay plan proposals, with separate copies for each union (UPIU and IBEW), and a "representative team manual." Wilkes asked Alman,

Is the key word there representative team manual?

MR. ALMAN: Yes. Because as late as last night it was a manual specifically for a team, and I recognized I did not have the time to have all of the other team manuals reviewed. That is not a negotiable item. That is an item I will sit and again discuss and explain with you.

Wilkes and Alman discussed whether team manuals could supercede the collective-bargaining contract:

MR. WILKES: Is your answer "Yes, that it will not supercede the [collective bargaining] contract unless the union and the company mutually agree."?

MR. ALMAN: No, my answer is not yes to that, because you're taking the position that the team itself, as representative of the union, cannot reach any agreement.

MR. WILKES: The teams are not representatives of the unions. The people that you're looking at across this table are the representatives of the unions.

MR. ALMAN: It cannot supercede what is said in the contract if it has an effect upon the body as a whole. But if the team itself chooses to change some of the terms and conditions, then the position will be that they do have that right.

Wilkes stated that he thought Respondent was taking an illegal position.

The parties discussed Respondent's proposed incentive plan. Wilkes complained that the language in the proposal was not clear. Roy Nott admitted that the incentive plan provided the potential for a negative incentive.

Wilkes asked for a meeting involving attorneys for all parties in lieu of him going to the NLRB and filing a "bunch of charges." Alman responded,

I'll consider it. But at this point, as I said to you, my clock is running with the intent of progress being made. We may view progress being made from a different perspective.

T. November 15, 1988

Again the parties discussed Respondent's proposed incentive pay plan. Roy Nott stated that he suspected that the team would come in and want to set a "less ambitious goal for the incentive."

Then the following exchange occurred:

MR. WILKES: When we get into the negotiation part of it as you suggest, I assume you're talking about labor and management, not team and managers; right? Obviously that drives wages.

MR. ALMAN: We're not going to negotiate the incentive.

MR. WILKES: That's just exactly what Roy just said, that we were.

MR. ALMAN: We're going to discuss things with you on the incentive plan.

Subsequently Roy Nott admitted that the figures in Respondent's incentive plan proposal did not add up and that he did not understand the reason for that discrepancy.

The unions pointed out that Respondent had not included language detailing how the service teams would be treated under the incentive plan:

MR. WILKES: We would like you to do a written proposal on how you intend to have your service teams compensated under the incentive program.

MR. ALMAN: No problem. Where the problem is, I'll go back in my room and draw up the same incentive language that has confused you, make it applicable to the service teams, and then you're going to sit and say you don't understand it.

Just think logically over lunch what I've offered you. What I've said to you is, sit down and help us draw it up. You view it with suspicion. Am I sitting and saying Roy Nott is going to get five guys in a room, and through his ability verbally he's going to persuade them, and as a result we're locked into something?

MR. WILKES: I ain't worried too damn much about that, because I'll be one of the five.

After a midday recess, Robert Alman made the following statement:

The plan that we gave you on the incentive plan was meant basically to be a generic one. And what I intend to do is to rewrite one and give it to you in a couple of days.

What I would like to do now is go on with the contract language, and proceed with the bargaining. Because we are working somewhat against the clock, as I have stated to you on numerous occasions.

Wilkes asked that Respondent consider the unions last proposal. Alman replied that Respondent had considered that,

MR. WILKES: Robert, when we gave you this proposal we sat here and went through it, and you left the room, and I looked at my watch. You were gone less than three minutes. Less than three minutes from the time you left the room with it until you came back and said "we reject this."

The discussion continued,

MR. GREEN: I want to say something for the record before you leave. You said we had been stalling and refusing to bargain. If you'll look at our original proposal and look at the last one we gave you, I think you'll see a hell of a change. We addressed your proposal. We got off of our original and changed a lot of things. And if you look at your original there ain't a whole hell of a

MR. ALMAN: Let me explain something to you. What you vote upon is ultimately what the company submits across the table to you. You don't vote upon

what you submit to me. Otherwise we wouldn't have any negotiations.

MR. WILKES: What we vote upon ultimately is what the hell we mutually agree on.

MR. ALMAN: That's exactly right.

Later that day,

MR. ALMAN: Your suggestion on the incentive plan shows some thought. Before I talk to you about the incentive plan, though, I don't want you to take the positive mood that the table is in right now and mislead yourself into thinking that if I can get passed the incentive plan that other proposals will fall in line.

Seriously, what I would like to do is hold off for a minute on the incentive and continue with where we're at.

And let me make clear on the incentive plan. My explanation this morning, Roy's explanation, to be specific, this morning, on performance indexing, might have been laborious, might have been statistically unsound, but my incentive plan that I gave you as a proposal, that's there. That's the incentive plan. I'm not changing my incentive plan. What I have to do is change my way of explaining it to you so that you understand it.

MR. WILKES: Wait a minute. I just understood that we were going to give some consideration of what we had just suggested to you as a different method of compensation. But you're not going to change it.

MR. ALMAN: Let me finish. What you just recommended will be taken under advisement. And there may be a change. But until there is a change indicated by us you have my incentive plan.

The Unions could not agree among themselves whether they had requested census for insurance.

MR. WILKES: They'll have to provide us the census data. If we request it we can get that right now.

MR. SNEAD: We asked for that last time and we didn't get it.

MR. WILKES: We asked for census data?

MR. SNEAD: Yes.

MR. WILKES: Who asked for it?

MR. SNEAD: We asked for it when Ralph talked to the woman at the other insurance place.

MR. WILKES: If census data for insurance has been requested it absolutely should be provided.

MR. ALMAN: Anything that you have requested from me, you or Maurice, I've given you.

MR. WILKES: By God, we requested a breakdown on your proposal on the effective savings, and you haven't provided us with that. And I fully intend to have it. We requested that over a week ago.

Robert Alman asked,

Do I have the agreement from you that we have reached impasse in our negotiations?

MR. WILKES: Hell, no. The only reason you've reached impasse is because you've declared it and you're refusing to bargain. That's the only reason we've reached impasse.

U. November 16, 1988

At the beginning of the session Wilkes asked for information,

Number one, we asked you to prepare in writing an incentive proposal for the service team. Roy said that you would do that yesterday after the long lunch that you took. But we still have not seen that. So if you did it yesterday we'd appreciate it if you'd give it to us this morning.

Number two, we have repeatedly requested a cost savings breakdown on the concession demands. And I understand that this is an estimate, but certainly you do have that information, or you should have that information, and we are requesting once again, for about the fourth time, that information.

Alman responded that he felt he had supplied the Unions with the figures which would enable them to perform the necessary calculations.

UPIU advised that it had filed unfair labor practice charges against Respondent.

V. November 17, 1988

Don Wilkes renewed the Unions request for information,

You stated to us that you have provided all the necessary figures for us to determine those numbers ourselves. And maybe you have. But we still are requesting that information, and we would like to make a comparison of your figures to the ones we come up with.

Wilkes continued (in part):

We informed you yesterday that we had filed charges against you . . . and we did not intend to go further with you as far as negotiation until such time as those charges were resolved.

That continues to be our position this morning.

Wilkes complained that Respondent had not been able to explain its incentive plan proposal. Alman stated that the plan could be explained by Roy Nott,

It is readily understandable. It is the same plan for everyone.

MR. WILKES: Wait a minute. It's easily explainable and understandable. Do me the favor of doing that for us one more time, Robert.

Nott is not here and you can't do it; right?

MR. ALMAN: No, I cannot do it. That's right. I cannot explain that incentive plan. . . . let us recess over lunch, and I'll have Nott come back (and explain the incentive plan).

The financial data, you have. And I want to specifically state again to you. . . . I don't know the savings I'm having until the contract is over with.

Noel Ralph Green, UPIU Local 395 President, commented,

I've asked this before, Robert. Could we get a copy of the experience on the insurance?

MR. ALMAN: What is it you want?

MR. GREEN: The insurance experience.

MR. WILKES: For the last three years.

. . . .

MR. ALMAN: I made a note of it. Anything else?

W. November 18, 1988

On November 18 Robert Alman wrote Don Wilkes:

Notwithstanding your premature preemption of further collective bargaining negotiations yesterday, November 17, 1988, which you based on an erroneous conclusion that the filing of charges with the National Labor Relations Board privileges your refusal to bargain with us, we are prepared to resume negotiations with the U.P.I.U. on November 22, 1988 at 9 AM at the Airport Holiday Inn in Jacksonville.

As you know, the company is scheduled to resume negotiations with the I.B.E.W. on November 29, 1988.

X. November 23, Final Offer

On November 23, 1988, Robert Alman wrote Don Wilkes:

Enclosed is a copy of the company's final offer for a new collective bargaining agreement. The offer includes an incentive plan proposal which contains the service team plan. The team manual has been revised so as to delete "Team Work Rules" on page 15 in their entirety and thus ensuring this document is not a bargaining issue.

We hope that the union will consider and accept this proposal. If the offer is rejected or the membership fails to ratify it, the company intends to implement this final offer on Friday, December 2, 1988. Absent ratification by that date, the following sections of the submitted offer will be deleted; ratification bonus, Section 1(c), Payroll Deduction and Section 11, Arbitration.

Among other provisions, the final offer contained a provision entitled "waiver of bargaining rights and amendments to agreement:"

During the negotiations resulting in this Agreement, the Company and the Union each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter as to which the National Labor Relations Act imposes an obligation to bargain.

This Agreement contains the entire understanding, undertaking, and agreement of the Company and the Union.

All outstanding grievances by either the Union or the Company are hereby dropped effective on the date of this Agreement.

Y. November 27, 1988

Don Wilkes received a copy of Robert Alman's November 23 letter and final offer (see above) on November 27, 1988.

Z. November 28, 1988

On November 28 Don Wilkes telegraphed Robert Alman:

I have received your contract proposal which will be implemented on December 2, 1988. There are several provisions in this proposal which need further discussion and clarification. The UPIU is hereby requesting a bargaining session to be held immediately. Waiting your reply I remain

AA. November 29, 1988

On November 29 Robert Alman telegraphed Don Wilkes:

In response to your request the company will be available to meet with the Union to clarify our final proposal.

The meeting will be at the Holiday Inn Jacksonville Airport on Tuesday December 6 at 100PM.

Despite the above telegram the parties met at 1 p.m. on November 29. Robert Alman started the meeting by stating that the UPIU caused the impasse in negotiations. Don Wilkes took issue with Alman's comment. Wilkes argued that Respondent had caused difficulties in negotiations but that the parties were not at impasse. Wilkes stated the Union had questions regarding Respondent's final offer:

[T]aking the document just as you have presented it to us by the mail, we've got some questions, some questions that have never been asked, some parts of it that have never been addressed. There are some areas that we did address that the company expressed considerable concern in, but when the final document was prepared there was no mention made of those areas whatsoever. And I'm talking about the incentive program for one.

. . . . You indicated to us on several occasions that yes, we can work something out in those areas along those lines. And then it did not get developed when you gave us this final proposal. To us that's punitive. It's punitive in that you have proposed a document that goes basically back to what your original proposal was, and all the discussions we've had centered around areas that we maybe could have mutually agreed upon, you have just thrown out.

I'm certainly concerned that we do not have Roy Nott here today. I think he should be here. Especially at this stage of the negotiations.

And I had hoped that he [Roy Nott] had went back and reread his proposal on the incentive plan, and would be able to come here today and explain this thing to us so that we could clearly understand it and go back and present it to our membership.

. . . . It's very unusual for a company to send a final proposal through the mail and say four days from now, which was in effect when we got it, even though I did receive it Saturday, in the middle of a holiday weekend, very unusual to send us a proposal and say, "Four days

from now it has got to be ratified or you're going to lose this, this, this and this.

So we need adequate time.

Wilkes' questions regarding the final offer including questions about the proposed incentive plan. Alman's response included the following,

There are many questions that cannot be answered right now on the incentive plan, because the incentive plan is something that is truly going to have to be adjusted once it starts being place in effect.

. . . . MR. WILKES: Then I guess I can assume what you mean is that it's not well defined in the proposals you gave us, it will be defined at some later date, and you will explain it to us as time goes on.

MR. ALMAN: Yes, I think that would be a good way to say it.

. . . . MR. WILKES: . . . what you're telling us and the way your document is worded that backs up your statement, that after the contract is ratified you, management, will then determine how the incentive program is going to be applied. We have no further bargaining rights.

MR. ALMAN: You're right. I carefully avoided saying that, because it is not my intend to sit and

. . . . We don't intend to ride roughshod over you. If someone sits and has a recommendation that will enhance the incentive system, management would be foolish not to take that into consideration.

. . . . MR. WILKES: . . . You are asking us in affect [sic] a wage structure that you can't even tell us what it's going to be.

You're asking people to go to work and not even know what they're going to earn, Robert.

MR. ALMAN: That's the best I can do in answer to you on the incentive.

Wilkes asked Alman whether management was willing to limit to a week the period in which supervisors would do bargaining unit work; whether unit employees would be able to bank half their bonus as proposed by the Union in negotiations; what other matters would be considered in developing the incentive program and lump-sum payments; will the Union be allowed to appoint its own representatives to the Operating Board; under the final offer of Respondent, will Respondent be able to contract out any work that currently falls within the jurisdiction of UPIU and IBEW; that Respondent explain how the pro-rata vacation system would work as set forth on page 22 of its final offer; to explain the object of section 22, page 31, entitled waiver of bargaining rights, and indication in that section of final offer, that both Respondent and the union were dropping outstanding grievances; does Respondent's final offer include a comprehensive insurance plan with a no stop/loss provision where the employees must pay a full 25 percent of their claim; would the wage proposal provide all existing employees under schedule A and everyone hired after the contract begins under schedule B but at only 75 percent of the B scale for their first

6 months; where will reserve crew personnel fall within the two wage scales; does Respondent plan to place specified employees which were named by Wilkes, into top operator positions; does Respondent's final offer for ratification bonus of \$2000 for shift workers and \$1000 for day workers, represent Respondent's best offer; and does Respondent realize their complete proposal represents a 12-1/2-percent overall reduction in the base rate.

Russell Hamilton, UPIU Local 766, asked if there was a time limit for infractions contemplated under penalty provisions of failure to show for scheduled overtime as specified in section 6,B, page 14.

John Everett, UPIU Local 395, asked if under section 7, page 15, of the final offer, an employee could be laid off in excess of 6 months then rehired at a top operators position. Wilkes asked if under the final offer, a person could be hired at top operator position but be paid less than a subordinate position employee under scale A.

Noel Ralph Green, UPIU Local 395 president, asked what the terms and conditions are under the final proposal health insurance plan (the Ameriplan/HMO).

Several other questions were asked of Alman. Alman remarked that he was noting all the questions. He did not attempt to answer the questions regarding Respondent's final offer. Robert Alman said that the questions would be answered.

Wilkes asked to be supplied with a copy of the FQM manual which is referenced in the final offer.

BB. December 1, 1988

Robert Alman stated that he had not had time to type answers to the Union's questions. However, Alman began reading answers to questions presented by the Union at the last session. Alman stated that in answer to the question of when would the baseline period begin for the incentive plan, the answer was it's going to start on Friday. Alman stated the incentive program would be driven by the meeting of its goals and that it would be possible for there to be negative incentive even though Respondent was showing a profit and vice versa.

Alman asked that rather than him going on to answer all the Union's questions, he preferred that the Union present their contract counterproposal for discussion.

Wilkes objected and asked for answers to the Union's questions. However, Wilkes presented the Union's counterproposal to Alman.

The parties discussed some of the items in the Union's counterproposal. Wilkes stated that the Union was not willing to drop all the pending grievances which, he argued, should be decided under the terms of the former collective-bargaining agreement which was in effect at the time the grievances arose.

Wilkes again asked for Alman's responses to the Union's questions:

MR. WILKES: Have you got those questions and answers, Robert?

MR. ALMAN: Not written out, no, sir.

MR. WILKES: When are we going to get those?

MR. ALMAN: . . . You'll certainly have them in time for any ratification vote, if you need them written out. But in the priority of things that I had to accomplish

back there it was to discuss this [union counter] proposal that you gave me.

Subsequently,

MR. WILKES: Have we got to wait until next week to get those [answers to our questions]?

MR. ALMAN: What difference does it makes, you're not having a ratification.

MR. WILKES: You're going to implement the contract before you give us the answers to those questions?

MR. ALMAN: Yes. What have the questions got to do with the implementation?

MR. WILKES: They've got a hell of a lot to do with it.

. . . .

I need those tomorrow.

MR. ALMAN: I can probably get them to you tomorrow, by tomorrow afternoon.

MR. WILKES: What time tomorrow afternoon, 1:00?

. . . .

MR. ALMAN: What is the difference between tomorrow and Monday?

MR. WILKES: There is a substantial difference, inasmuch as our membership is going to have to start working under the terms of this damn contract in the morning. There is going to be a lot of questions asked of us that we can't answer until we get the answers from you.

The parties continued their discussion with the Union asking additional questions. For example,

MR. WILKES: Are we talking two different things when we say cause (under your final offer) and just cause (as stated in the last effective contract)?

MR. ALMAN: I don't know. I've always had to prove my case.

The Union stated on several occasions that Roy Nott was not present to answer questions which were not answered by Alman.

CC. December 2, 1988

Respondent advised the unions negotiators that their final offer would be implemented on December 2, 1988.

Among other things the final offer included as paragraph 3, section 22:

All outstanding grievances by either the Union or the Company are hereby dropped effective on the date of this Agreement.

The final offer proposal of Respondent included at (sec. 24, part 2), paragraph 1,

There will be one HMO Plan available and this will be HMO Ameri Plan.

Included in Respondent's proposal was a "representative team manual," and a copy of its "incentive plan proposal."

DD. *December 19, 1988*

Don Wilkes testified that on December 19 Respondent supplied the Union with the requested census data related to the insurance program.

EE. *October 11, 1989*

Pursuant to an order issued by me on April 16, 1990, I received in evidence testimony from Don Wilkes regarding conversations he had with General Manager Roy Nott on October 11, 1989.

According to Wilkes, Nott approached him while he was in the office of Robert Alman to discuss grievances. Wilkes testified,

Mr. Nott came into the office, told me that he had been having some closed-door sessions with the Union president in an effort to identify those issues that it would take to settle this contract, that he wanted a settlement. I assured him that we also wanted a settlement, that that's what we had been trying to achieve since day one and that if it was possible to achieve a settlement short of the hearing we certainly were willing to do that. They had nine issues listed on the board.

Wilkes testified that during their discussions on the morning of October 11, Nott

said, well, it wasn't bad strategy, we intended of force the Union to strike and to replace them at the B wage scale.

Wilkes testified that later on October 11, he had a second conversation with Nott. Wilkes testified (in part):

I made the statement to Mr. Nott that we really should not have had this dispute; that management had a great degree of flexibility with regard to contracting work and he stated for the second time that day that it was not a bad strategy for the Company employees because they expected the Union to go on strike and they would replace everybody at 75 percent of the B wage scale which was 75 percent of the A wage scale. Everybody that I represent was making A wage scale. . . . jumped his case about it that time.

Credibility Findings

The evidence mentioned above regarding the negotiation sessions was taken from transcripts. The parties stipulated those transcripts into evidence. In that regard the evidence is not in dispute. I fully credit the transcripts of the negotiation sessions. To the extent there are conflicts between independent recollections recalled at the hearing herein, and the negotiation session transcripts, I credit the transcripts.

There was one issue which is clearly in dispute.

A. *October 11, 1989*

During the hearing on November 13, 1989, Union Representative Don Wilkes testified regarding two conversations he had with Roy Nott of Respondent, on October 11, 1989.

Originally I excluded Wilkes testimony (permitting receipt of his testimony only as offers of proof) on the grounds that it involved settlement negotiations. However, by order dated

April 16, 1990, I reversed my ruling. On June 19, 1990, the hearing reopened.

On June 19 Wilkes was called for cross-examination by Respondent. Wilkes testified that Roy Nott came into a meeting Wilkes was having with Director of Labor Relations Robert Alman, on the morning of October 11, 1989, and that he met a second time with Nott on the afternoon of October 11.

Roy Nott was called by Respondent. Nott admitted that he had gone into the meeting with Alman and Wilkes on the morning of October 11, 1989, and that the three of them did discuss contract negotiations, the issues that prevented agreement and that there was a hypothetical situation discussed involving the question of whether Respondent would replace strikers at lower wages if the Union had gone out on strike. Nott denied that he told Wilkes that the Respondent had bargained with the object of forcing the Union to strike with plans to permanently replace strikers at the B wage scale. Nott admitted that he met with Wilkes later that afternoon but Nott again denied saying Respondent had bargained with an objective of forcing a strike with the intent to permanently replace strikers at B scale wages.

After Respondent rested, the General Counsel called Respondent's then former Director of Labor Relations Robert Alman. Alman testified in corroboration of the testimony of Don Wilkes.

On cross-examination Alman admitted that he left Respondent's employment due, in part, to his relations with his supervisor. Alman denied that he had a poor relationship with Roy Nott. Nott was subsequently recalled by Respondent.

I was impressed with the demeanor of Don Wilkes. In view of his testimony and especially in view of the corroborative testimony of Robert Alman, I credit Wilkes testimony of his October 11, 1989 meetings with first Nott and Alman and subsequently, with Nott.

During the November 13, 1989 hearing, Wilkes testified that during the morning meeting, Nott commented that, "it wasn't bad strategy, we intended to force the Union on strike and to replace them at the B wage scale."

Respondent argued in its memorandum, that Wilkes testimony on June 19, 1990, was different. On that occasion Wilkes testified that during the morning meeting, Nott commented that,

he didn't think it was a bad strategy, that the company expected the union to go on strike over the proposals and they were going to hire permanent replacements at the B wage scale.

Respondent is correct. There were differences in Wilkes November 13 and June 19 testimony. However, I do not conclude from that difference, that Wilkes was an unreliable witness. It appears to me that Wilkes was testifying to the best of his recollection. Unless someone memorizes his testimony it would be less than reasonable to expect one's recollection to be exactly the same over a 7-month period.

Robert Alman testified as to his recollection of what Nott said during the morning meeting, "it was the company's intent to have the union go on strike so that the employees would be permanently replaced with the two-tier wage system."

I am convinced that both Wilkes and Alman were testifying to the best of their abilities. I find that Roy Nott used words which conveyed to both Wilkes and Alman that it was Respondent's intent, in bargaining, to force the Union out on strike and to replace strikers with lower paid employees.

The testimony of Wilkes, Nott, and Alman on June 19 shows that the October 11, 1989 conversations involved contract settlement rather than settlement of the unfair labor practice proceedings. Therefore, I was correct in reversing my original ruling at the hearing. All the evidence, including the original offers of proof of Wilkes' November 13, 1989 testimony regarding the October 11, 1989 conversations, are received in evidence.

B. Conclusions

As shown below, I have determined that Respondent engaged in bad-faith bargaining by failing to respond to the Unions' questions and requests for documents; by bargaining with an intent to avoid reaching agreement; and by implementing its final offer without ever reaching impasse.

The negotiations show that the unions engaged in sincere negotiations. The unions gave full consideration to proposals by Respondent.

Respondent, on the other hand, consistently refused to engage in sincere negotiations. Proposals by the unions were rejected without receiving due consideration and proposals were made by Respondent at a time when Respondent's agents were unable to explain those proposals.

That was the stage of negotiations on December 2, 1988, when Respondent implemented its last offer. At that time Respondent had not given due consideration to the various offers of the UPIU, Respondent's chief negotiator admitted on December 1, that UPIU had made serious concessions, and, at that time Respondent's final offer included items which Respondent's agents could not explain to the unions and items which had not been fully developed.

Subsequently, in October 1989, Respondent admitted that it had bargained with the intent of forcing a strike in order to replace unit employees with lower paid employees.

I have considered the record against the following complaint allegations:

1. Did Respondent fail to furnish requested information:

Good-faith bargaining necessarily requires that claims made by either bargainer should be honest claims. . . . If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy. . . . *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 38 LRRM 2042, 2043 (1956).

Frequently, when the issue is one of whether an employer failed to furnish requested information, the question rises or falls on whether the requested information is relevant. Here, as shown below, the parties did not reach that issue. Instead, the Unions asked but the Respondent did not refuse. The Respondent expressed an inability to answer some questions; the Respondent did not get around to answering other questions and, although Respondent never questioned relevancy it failed to supply requested information (documents).

As to some questions, Respondent's spokespersons told the Unions that they did not know the answer to the questions. As shown below, that was the case regarding Respondent's incentive pay proposal. As to some requests for documents, Respondent's spokespersons told the Unions that the documents would be supplied whenever they were printed. However, the documents were never supplied. As shown below, that was the case regarding various manuals requested by the Unions.

Even though Respondent did not answer many of the Unions' questions and even though it failed to supply requested documents, Respondent declared an impasse and implemented its final contract proposal. See *United Stockyards Corp.*, 293 NLRB 1 (1989).

The record shows that the Unions asked questions about, and requested copies of, various manuals.

During the May 24 bargaining session, Respondent distributed to the Unions its draft "Fernandina Quality Management" manual.

That document (FQM), included a recognition clause indicating the signatory union was the sole bargaining agent of the employees, a preface, sections entitled critical success factors, quality management philosophy, Fernandina Division mission statement, principles regarding quality, people, integrity, and profitability, general topics including legal responsibility, recognition (see above), payroll deduction (i.e., union dues and fees), and bulletin boards, and definitions including base compensation, contractor equivalence, customers, day, employee, FQM manual, helper, incentives, maintenance leader, mechanic, operating board, operating board chairman, operating teams, operator, performance management, probationary employee, quality management, recall list, service teams, shift leader, statistical process control, suppliers, team, team facilitator, team manager, team manual, team members, team rules, technician, and week.

The last page of the FQM contained the following statements:

The detailed language concerning the body of this labor agreement will be developed during the course of these negotiations.

The company reserves the right to either add to, delete or modify any of its proposals during these negotiating sessions.

Under the definitions section of the FQM, noted above, the term "FQM MANUAL" is defined:

The Fernandina Quality Management Manual is a "living" document which explains the Division's management plan. All mill-wide issues are addressed in the manual. This manual can be modified by the Operating Board with the Chairman's approval. Nothing in this manual can supercede or be in contravention of this collective bargaining agreement.

Regarding a claim from the Unions that the FQM was vague, Alman responded,

And the specificity that you are looking for right now, I can't give you because I don't know truthfully what the thoughts are of what the best way to operate

the bleached team is or the unbleached team or the finishing area or the maintenance team. I don't know.

Alman commented,

I have a suggestion. I recognize your need to ask me questions and I also recognize the fact that my answers to you are not going to be satisfactory, not because of any willingness on my part to deliberately make it so, but more again because I don't know the answers.

Alman suggested that the Union hold off further questions until after the first "team" meetings were held. Alman suggested holding a team meeting for the bleached area on the following day.

Alman commented,

I cannot give you definitive answers to questions, because by doing that I would be telling you that I can read a crystal ball.

I don't know what questions will evolve at a meeting tomorrow or the next day. All I know is, that when I sit and talk with people, I, management, talk with our employees about problems we have, and how do they view it and what do they think of the solutions to the problems, then that is the way it can evolve into what we believe will be an efficiently run organization, and get us the savings that we have to get without going the hard way.

If you want the hard way we can go the hard way. That choice is yours.

I'm not threatening. But I'm saying to you this. The mill is not going to run under the present conditions. We're going to make some changes. We're going to either make the changes with your cooperation or we're going to make changes that you may not like.

On August 9 the Unions asked for a copy of the operative FQM manual which was referenced in the Respondent's proposed collective-bargaining agreement.

At the August 29 session Don Wilkes asked Respondent for a copy of its Fernandina Quality Management Manual and the following exchange occurred:

MR. WILKES: Let me read what you've said here. "Fernandina Quality Management Manual is a living document which explains the division's management plan."

MR. ALMAN: Right.

MR. WILKES: Now, again you're telling us you don't have the management plan.

MR. ALMAN: No.

MR. WILKES: Let me read on. "All mill-wide issues are addressed in the manual. This manual can be modified with the division general manager's approval."

MR. ALMAN: The manual will evolve in its final form at the conclusion of the negotiations. Specifically, when you sit here and you say all mill-wide issues are addressed in the manual, I don't really know until I'm done with these negotiations what will be mill-wide issues. I mean we have—if I tell you one, I would say to you there may be 15 drafts of manuals.

. . . .

I do not have a finished manual to hand across the table to you.

. . . .

I will show you a manual and give you a manual before the negotiations are over, but right now I am not contemplating that manual being a negotiable item.

Again, on October 3 the Union asked for a copy of the FQM. Alman responded to that request, "When we get a manual developed you'll have one."

On October 7 UPIU asked Robert Alman for copies of the team manuals referenced in Respondent's proposed contract. Alman replied that reference should be deleted from the contract proposal, that the team manuals were not negotiable.

On October 24 Wilkes asked Alman when he would present team manuals to the Unions. Alman responded that it would be before ratification vote but Alman indicated he was unsure when. Alman said he did not know what the team manuals would include because he had not seen a finished copy.

Alman continued, saying that the team manuals would be included in the collective-bargaining agreement but that they were a management book and not subject to collective bargaining. Wilkes said that he needed to be provided with copies of the manuals.

On October 25 the Union again asked for team manuals. Alman stated that the Company might have made a typographical error in its August 29 proposal and that the Company was perhaps, proposing that team manuals *could* supersede the collective-bargaining agreement. Alman stated at this meeting that the team manuals were not a matter to be negotiated, but then indicated he was not sure.

Alman told the Unions,

I said I will get back to you when I present the team manual to you. And I told you that you will have the team manual in sufficient time to look, examine, question. If it is a negotiable item we will then negotiate it. If it is not a negotiable item we will not negotiate it.

Alman said that team manuals should be left out of negotiations until Respondent provided copies to the Unions. Wilkes responded,

But that would put us in a position of not being able to respond to your 24 [in Respondent's contract proposal] until we get them in hand and take a look at them.

MR. ALMAN: Fine. 24, I will accept the fact that we'll aside until you have the team manual for you to either accept, reject or question.

MR. WILKES: The same thing with 25.

MR. ALMAN: Go ahead.

Wilkes argued that Alman's position on the team manuals "makes a mockery out of this whole damn bargaining process."

During the November 11 session Alman presented the Unions copies of incentive pay plan proposals, with separate

copies for each union (UPIU and IBEW), and a "representative team manual." Wilkes asked Alman,

Is the key word there representative team manual?

MR. ALMAN: Yes. Because as late as last night it was a manual specifically for a team, and I recognized I did not have the time to have all of the other team manuals reviewed. That is not a negotiable item. That is an item I will sit and again discuss and explain with you.

Wilkes and Alman discussed whether team manuals could supercede the collective-bargaining contract:

MR. WILKES: Is your answer "Yes, that it will not supercede the [collective bargaining] contract unless the union and the company mutually agree."?

MR. ALMAN: No, my answer is not yes to that, because you're taking the position that the team itself, as representative of the union, cannot reach any agreement.

MR. WILKES: The teams are not representatives of the unions. The people that you're looking at across this table are the representatives of the unions.

MR. ALMAN: It cannot supercede what is said in the contract if it has an effect upon the body as a whole. But if the team itself chooses to change some of the terms and conditions, then the position will be that they do have that right.

In addition to the manuals, the Unions asked questions about, and requested documents regarding, other matters.

On November 11 UPIU asked Respondent for financial data concerning its proposal that UPIU give up Sunday premium pay.

On November 11,

MR. WILKES: The second question I have is, in our request for information I believe we were pretty specific in that we asked that you provide us not only economic data of the present wage rate, benefits, that sort of thing, but also an actual breakdown in your proposal or whatever that proposal was going to be, with regard to wage rates, benefits, contract provisions, that sort of thing.

[T]o give you an example, your proposal, and I don't know what you got over there, but your proposal so far does not have any call time, report pay. . . . (a) radical change in holidays and vacations.

[Our attorneys] said we "are entitled to economic data, both that presently is in effect and that which is proposed."

MR. ALMAN: Let me look at that, and I will get back to you one way or another.

At the November 16 session Wilkes asked for information,

Number one, we asked you to prepare in writing an incentive proposal for the service team. Roy said that you would do that yesterday after the long lunch that

you took. But we still have not seen that. So if you did it yesterday we'd appreciate it if you'd give it to us this morning.

Number two, we have repeatedly requested a cost savings breakdown on the concession demands. And I understand that this is an estimate, but certainly you do have that information, or you should have that information, and we are requesting once again, for about the fourth time, that information.

On November 17, Don Wilkes renewed its request for information,

You stated to us that you have provided all the necessary figures for us to determine those numbers ourselves. And maybe you have. But we still are requesting that information, and we would like to make a comparison of your figures to the ones we come up with.

Noel Ralph Green, UPIU Local 395 president, commented,

I've asked this before, Robert. Could we get a copy of the experience on the insurance?

MR. ALMAN: What is it you want?

MR. GREEN: The insurance experience.

MR. WILKES: For the last three years.

MR. ALMAN: I made a note of it. Anything else?

Wilkes complained that Respondent had not been able to explain its incentive plan proposal. Alman stated that the plan could be explained by Roy Nott,

It is readily understandable. It is the same plan for everyone.

MR. WILKES: Wait a minute. It's easily explainable and understandable. Do me the favor of doing that for us one more time, Robert.

Nott is not here and you can't do it; right?

MR. ALMAN: No, I cannot do it. That's right. I cannot explain that incentive plan. . . . let us recess over lunch, and I'll have Nott come back (and explain the incentive plan).

The financial data, you have. And I want to specifically state again to you. . . . I don't know the savings I'm having until the contract is over with.

On November 29 UPIU questioned Respondent about its proposed HMO medical plan.

On November 29, 1988, the following exchange occurred between Wilkes and Alman. Robert Alman:

There are many questions that cannot be answered right now on the incentive plan, because the incentive plan is something that is truly going to have to be adjusted once it starts being place in effect.

MR. WILKES: Then I guess I can assume what you mean is that it's not well defined in the proposals you gave us, it will be defined at some later date, and you will explain it to us as time goes on.

MR. ALMAN: Yes, I think that would be a good way to say it.

MR. WILKES: . . . what you're telling us and the way your document is worded that backs up your statement, that after the contract is ratified you, management, will then determine how the incentive program is going to be applied. Ne have no further bargaining rights.

MR. ALMAN: You're right. I carefully avoided saying that, because it is not my intend to sit and

We don't intend to ride roughshod over you. If someone sits and has a recommendation that will enhance the incentive system, management would be foolish not to take that into consideration.

MR. WILKES: . . . You are asking us in affect [sic] a wage structure that you can't even tell us what it's going to be.

You're asking people to go to work and not even know what they're going to earn, Robert.

MR. ALMAN: That's the best I can do in answer to you on the incentive.

Then, on December 1, the following occurred:

MR. WILKES: Have you got those questions and answers, Robert?

MR. ALMAN: Not written out, no, sir.

MR. WILKES: When are we going to get those?

MR. ALMAN: . . . You'll certainly have them in time for any ratification vote, if you need them written out. But in the priority of things that I had to accomplish back there it was to discuss this [Union counter] proposal that you gave me.

MR. WILKES: Have we got to wait until next week to get those (answers to our questions)?

MR. ALMAN: What difference does it makes, you're not having a ratification.

MR. WILKES: You're going to implement the contract before you give us the answers to those questions?

MR. ALMAN: Yes. What have the questions got to do with the implementation?

MR. WILKES: They've got a hell of a lot to do with it.

I need those tomorrow.

MR. ALMAN: I can probably get them to you tomorrow, by tomorrow afternoon.

MR. WILKES: What time tomorrow afternoon, 1:00?

MR. ALMAN: What is the difference between tomorrow and Monday?

MR. WILKES: There is a substantial difference, inasmuch as our membership is going to have to start working under the terms of this adman contract in the morning. There is going to be a lot of questions asked of us that we can't answer until we get the answers from you.

The Unions made several requests to be furnished with copies of the FQM and teams manuals. Although Respondent finally supplied the Unions with a "representative" team manual, the Unions were not given copies of all distinct manuals, FQM or teams.

As negotiations continued Alman took different positions regarding the manuals including questioning whether those manuals were negotiable items and whether the manuals superseded the collective-bargaining agreement.

Regardless of whether Respondent viewed the manuals as negotiable items, it is apparent from the discussions during negotiations that those manuals are germane to the negotiation process. According to what Respondent's agents were telling the Unions, it was anticipated that the manuals would include items relevant to terms and conditions of employment. In view of the fact that the manuals were to include material relevant to collective bargaining those manuals are presumptively producible at the Unions' request regardless of whether they are negotiable items. Moreover, an examination of the record also shows that the manuals did include negotiable items.

The Unions were not supplied with the requested financial data included in the Unions request on November 11 and afterward.

Respondent never explained its incentive plan to the Unions. As shown above, Alman admitted that he could not explain the incentive plan and no one else present during critical negotiating sessions explained the plan included in Respondent's final offer.

At the hearing on June 19, 1990, Roy Nott testified that he was not sure that Robert Alman "ever fully understood the incentive system." The record also calls into question whether Roy Nott ever understood Respondent's proposed incentive plan. As shown above, during the November 15 negotiating session Nott admitted that the figures in Respondent's incentive plan proposal did not add up and that he did not understand the reason for that discrepancy. Nott never did get around to explaining that discrepancy.

On December 1, the day before implementation, Alman admitted to the Unions that he had not prepared the answers to all their questions.

Even after it declared impasse and implemented its final offer, Respondent continued to fail to answer the Unions' questions and to provide the Unions with requested information including its failure to provide the Unions with an explanation of its "incentive plan," and to provide copies of all team and FQM manuals.

On December 19, some 17 days after Respondent implemented its final offer, Respondent supplied UPIU with requested census data.

The discussion at the December 1 negotiation session illustrates that perhaps Robert Alman did not understand why the Unions needed requested information before implementation of Respondent's final offer. Unions, of course, have responsibilities regarding communications to both their members and other unit employees as well as to others. Additionally information is valuable in fulfilling their bargaining responsibilities. In order to properly fulfill their various responsibilities, unions are entitled to timely responses from their questions and requests. Certainly in a situation of imminent implementation of a final offer, the unions were entitled to full information.

Here, Respondent was in control of both the time of its response and the date for implementation. Implementation was handled on a rapid timetable whereas Respondent's response was handled on a slow or nonexistent timetable. The result was that the Union was deprived of an opportunity to engage in knowledgeable and timely action.

By failing to respond to the Union's relevant questions and by failing to supply UPIU with requested relevant information, Respondent engaged in violations of Section 8(a)(1) and (5). *United Stockyards Corp.*, 293 NLRB 1 (1989); *General Electric Co.*, 294 NLRB 146 (1989); *Airport Aviation Services*, 292 NLRB 923 (1989).

Respondent did not question the relevancy of the various requests and questions. As shown above, Alman did question whether the manuals contained negotiable items but he did not question whether the manuals were relevant to the negotiating process. As to the questions and requests, as shown above, all were raised during negotiations and all involved matters raised by Respondent in its contract proposals.

Respondent by failing to supply the Unions with requested responses and documents, engaged in bad-faith bargaining.

2. Did respondent engage in bad-faith bargaining?

Respondent argued that *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984), established the standard for determining whether bad-faith bargaining has occurred. In *Atlanta Hilton*, the Board found,

Under Section 8(d) of the Act, an employer and its employees' representative are mutually required to "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment. . . . but such obligation does not compel either party to agree to a proposal or require the making of a concession." Both the employer and the union have a duty to negotiate with a "sincere purpose to find a basis of agreement," but "the Board cannot force an employer to make a 'concession' on any specific issue or to adopt any particular position." The employer is, nonetheless, "obligated to make *some* reasonable effort in *some* direction to compose his differences with the union, if § 8(a)(5) is to be read as imposing any substantial obligation at all."

It is necessary to scrutinize an employer's overall conduct to determine whether it has bargained in good faith. "From the context of an employer's total conduct, it must be decided whether the employer is lawfully engaging in hard bargaining to achieve a contract that it considers desirable or is unlawfully endeavoring to frustrate the possibility of arriving at any agreement." A party is entitled to stand firm on a position if he reasonably believes that it is fair and proper or that he has sufficient bargaining strength to force the other party to agree. *NLRB v. Advanced Business Forms Corp.*, 474 F.2d 457, 467 (2d Cir. 1973).

Although an adamant insistence on a bargaining position is not itself a refusal to bargain in good faith, *Neon Sign Corp. v. NLRB*, 602 F.2d 1203 (5th Cir. 1979), other conduct has been held to be indicative of a lack of good faith. Such conduct includes delaying tactics, unreasonable bargaining demands, unilateral changes in mandatory subjects of bargaining, efforts to

bypass the union, failure to designate an agent with sufficient bargaining authority, withdrawal of already agreed-upon provisions, and arbitrary scheduling of meetings. [Footnotes omitted.]

The General Counsel's position, as advanced in its brief, is that Respondent engaged in delaying tactics, attempted to deal directly with employees, made early and continuing predictions of failure, radically departed from the manner in which prior negotiations had been conducted, attempted to eliminate the International Union as a party to the contract, attempted to divide and conquer the union committee, would not bargain about mandatory subjects, insisted on a broad management-rights clause and zipper clause, eliminated just cause for discipline and discharge, insisted on emasculating the grievance procedure, insisted on an amorphous incentive plan, failed to answer questions and provide requested information, and gave a short period between its final offer and implementation.

I find herein that the record supports the General Counsel's allegations. The record proved that Respondent engaged in bad-faith bargaining by, among other things, denying the Unions requested information; by delaying negotiations until it declared impasse; by refusing to consider the Unions proposals, and by failing to present a contract which it had fully formulated or understood.

The following topics include many of the matters raised by the General Counsel:

a. Did Respondent try to eliminate the International?

Respondent's final offer did not include the International as a party to the Agreement. By removing the International as a party to the proposed contract Respondent thereby insisted in its final offer on eliminating the International Union (UPIU) as a party to the contract even though the International representatives were the principal spokespersons throughout negotiations and the International was traditionally a party to prior contracts.

b. Respondent's bargaining objective?

Respondent, through its General Manager Roy Nott, admitted to International Representative Don Wilkes on October 11, 1989, that it engaged in bargaining with an objective of forcing the UPIU to strike in order to replace its employees with lower paid employees.

c. Did Respondent radically depart from the manner of prior negotiations?

From the initial negotiation session Respondent set out to change the collective-bargaining procedure. Robert Alman emphasized on several occasions that bargaining would fail if the parties were forced to resort to traditional give and take bargaining under the format of the old contract.

Alman argued that it was important to have team meetings and that those meetings would result in some indication of where Respondent should go in negotiations.

Although Respondent rejected the Unions' contract proposals out of hand, it, by insisting on team meetings, failed to counter with anything the Unions could consider for purposes of future negotiations. The Unions were placed in a position of being unable to advance negotiations. If they

agreed to the team meetings they would do nothing more than provide an avenue for possible development of bargaining issues. That avenue was available at the discretion of Respondent. Respondent would have been in position to either accept, reject, or ignore matters raised in team meetings. On the other hand, if the Unions disagreed, they thereby delayed bargaining progress.

During the May 24, 1988 bargaining session, Robert Alman asked for a show of hands as to how many negotiators for the Unions had been involved in negotiations before. Then Alman commented,

If there is one guarantee I can make to you, it will be that in a very short while, possibly before this day is out, you will come to the conclusion that this will be a different type of bargaining than you are used to.

Later Alman continued,

customarily, you are used to the company sitting and saying, for example, delete one holiday, and the union saying add one holiday. . . . going that way in these negotiations would be the court of last resort. Listen carefully to that statement, because I will tell you that if we're forced into that style, our perception on this side will be that we have failed.

I say that because we believe that with a team management driven organization—and make no mistake about it, gentlemen, the key words are team management—that we can sit and come up with a contract that we all not only can live with but are relatively happy with it.

Alman proposed a procedure of having teams including employees, consider rules to live by over the next few years, then bring those proposals back to the bargaining table:

We'll take a team, and I would like to see two or three or whatever number hourly employees that would be involved in that department or team, have someone here from the negotiating committee who is from that area involved in the team, have the designated team leader sit there, and then everyone together try and draw up some of the rules and regulations they would like to live by for the next several years, and this is with the understanding that clearly all of it what we develop has to be brought back here to the table for everyone's approval.

Now, initially, it would be the intent for Roy [Nott, the general manager] and I, as I would assume Eddie [Barnes, UPIU] and Levy [Crosby, UPIU], to also sit in the room and watch what is going on and where needed, be helpful.

George Dorsey, IBEW local union president, objected to the above "team" proposal stating that in his view, it would circumvent normal negotiations by requiring the teams to replace the Unions in the bargaining process. Dorsey went on to say that he felt that procedure would violate the National Labor Relations Act.

Robert Alman replied to Dorsey,

You're partially correct in what you've said, at least about the law, but first of all, you used the word "circumvent." That's a strong word. Some of you are aware of it, but let me just give you some of my background, because maybe if you understand me a little bit better, you'll understand where I'm coming from.

UPIU Representative Eddie Barnes made some comments at the beginning of the June 21 session including the following regarding the FQM Respondent had distributed to the Unions at the last session:

[W]e are not telling you that we are just hands down on your "pass out" but at the face value of it, we don't—we are not interested in the concept as we see it at this time, but we are, you know, prepared to talk and we are here to negotiate.

Regarding a claim from the unions that the FQM (Fernandina Quality Management Manual) was vague, Alman responded,

And the specificity that you are looking for right now, I can't give you because I don't know truthfully what the thoughts are of what the best way to operate the bleached team is or the unbleached team or the finishing area or the maintenance team. I don't know.

Subsequently, Alman commented,

I have a suggestion. I recognize your need to ask me questions and I also recognize the fact that my answers to you are not going to be satisfactory, not because of any willingness on my part to deliberately make it so, but more again because I don't know the answers.

Alman suggested that the Union hold off further questions until after the first "team" meetings were held. Alman suggested holding a team meeting for the bleached area on the following day.

UPIU Representative Barnes objected saying that the negotiating committee had been elected to represent the employees.

Subsequently the Union asked if Respondent intended to hold team meetings regardless of the Unions' objections. Alman responded,

No. I don't like to put things in black and white on the second day I'm meeting with you. I may put them like that on the fiftieth day or fortieth day in black and white after we have reached a point where the conversation is futile

Later the Unions asked if the FQM was Respondent's contract proposal. Alman responded,

No. Really, I haven't looked in Webster's Dictionary for what the term "proposal"—what the term proposal specifically means; it was the framework upon which I intended to build these negotiations.

During the June 21 bargaining session, UPIU presented Respondent with the first written proposal from the Union,

We have a proposal here that we have yet to present to you. It is going to serve as our proposal. We are not closing the door about talking about your proposal [the FQM]. We think it would be appropriate, at this time maybe, if we could present this proposal and let you, if you would like to review it. It is pretty self-explanatory. It is more traditional, as I said before, than what you have presented to us.

The Union then went over its proposal which, according to what the Unions' representatives told Respondent, was in a traditional format.

After breaking to examine the union contract proposal, Alman replied,

Looking over what you have given us and leaving aside the economics, because like anything else, that will be the last thing, of course, that we end up discussing, I believe that almost all of the noneconomic issues that you have raised can be addressed when we sit down and get into this team concept business, the FQM plan.

Respondent's requested holding team meetings the following day. The Unions objected to having any team meetings on the next day. Instead the Union proposed,

maybe if we had some time in the morning so that the committee could do a little bit of research and stuff, maybe we would be prepared to say when we will be ready to have a team type meeting.

. . . .

. . . we do and have already agreed that we will have the team type meeting, . . .

At the beginning of the June 22 session, Barnes spoke for the Unions,

We feel like we can agree to the [team] meetings but we are certainly going to do the bargaining at this table, this committee here. I think we have made that clear. We are certainly going to afford every employee in that plant an opportunity to attend these meetings if he or she wishes.

During the July 15 session, Eddie Barnes complained to Respondent that the Union had been misled regarding the team meetings and that 90 percent of the meetings held the preceding 2 days, were taken up by General Manager Roy Nott,

Due to Mr. Nott's presentation in these meetings the last two days it's going to be extremely difficult for us to trust Mr. Nott or agree to have team meetings as he has set forth in these meetings. He's made so many threats if we don't have these meetings we're not going to get a very good proposal.

. . . .

He has circumvented this bargaining committee here. He has made threats and tried to intimidate the people to use as leverage in this bargaining session, and that's not right.

At the July 28 session Don Wilkes replaced Eddie Barnes as chief spokesman for the Union. Wilkes complained that the team meetings came close to circumventing the entire collective-bargaining process.

UPIU Representative Don Wilkes stated near the beginning of the August 19 session,

What we have not seen, number one, and there is several things. We have not seen any attention to the Union's [contract] proposal by management, so that we could have some sort of a feel for what you're talking about with regard to our proposal.

We have not yet been able to determine exactly what portions of the present labor agreement or contract you wish to change to achieve more flexibility than what you presently have. We need to know that.

We have talked about the possibility of a team meeting. And we're not inclined to do that, but we told you that it looked like that we're going to have to have some discussion like that in an effort, or in order to address your proposal intelligently and more responsibly.

But I've got to tell you, Robert, we're not all sitting here chomping at the bits to have these team meetings. We do not intent [sic] to circumvent the Collective Bargaining process, no matter whether we have a meeting or whether we don't.

. . . .

And you know, we've got group concept, team concept, in this mill already. The structure, you know, we do not understand the Company's desire to just totally tear down the present structure, the basic structure of the work force, the departments, or the lines of progression.

. . . .

But just not tear down the basic structure of the contract, throw it all out and say we want to start over with as vague of terms as we possibly can. And that's what we see now. So we're prepared to move ahead and bargain in good faith. But we've looked at your agenda, we've made some response to it, and we'd like you to do the same things with ours.

Robert Alman replied to Wilkes,

We said at the outset that for this bargaining to be successful there was a vast amount of money that we had to have in savings, and we felt truthfully that we could get that more through the efficiencies of the operation, such as working with a participative management style, team concept, etc.

The other way of getting savings is truly not a win, win situation for both parties. The other way starts going towards, for lack of a better term, the conventional bargaining posture that we've all been used to over the years, and that will not really be of benefit to both of us here.

. . . .

If that's what you're saying to me, that we're not having team meetings next week Because we have wasted seven, eight meetings over here.

After nine meetings we have not really done anything that could be considered substantial.

Our intent is to have team meetings to discuss all aspects of the work that the people will be doing exclusive, of course, of wages, etc.

Johnny Snead, UPIU Local 766 president, replied that the negotiating team was a team and,

And we asked you the same questions you want these people [teams] to ask, and you couldn't answer our damn questions. How are they going How are you going to answer their questions when they ask you the same thing?

Don Wilkes told Alman that the Union would not be maneuvered into a position of having union members making proposals to the union negotiating committee. Wilkes asked Alman for,

a general idea of what you would need to do to change the present terms of the labor agreement to accomplish what you set out to accomplish.

Alman replied, "Concepts." We do not have anything specific. We have concepts.
Alman commented,

I cannot give you definitive answers to questions, because by doing that I would be telling you that I can read a crystal ball.

I don't know what questions will evolve at a meeting tomorrow or the next day. All I know is, that when I sit and talk with people, I, management, talk with our employees about problems we have, and how do they view it and what do they think of the solutions to the problems, then that is the way it can evolve into what we believe will be an efficiently run organization, and get us the savings that we have to get without going the hard way.

If you want the hard way we can go the hard way. That choice is yours.

I'm not threatening. But I'm saying to you this. The mill is not going to run under the present conditions. We're going to make some changes. We're going to either make the changes with your cooperation or we're going to make changes that you may not like.

Wilkes told Alman that the Union was not opposed to worker involvement and, in fact, had worked for more worker involvement for years but that the Union was obligated on behalf of its members to bargain with the Employer and explained that the Union was unwilling to allow the Employer to have the team meetings in a loose, casual conversational type manner from which Respondent would develop its proposals and come back to the bargaining table and inform the Union that the proposal was what the employees wanted.

Respondent made a contract proposal on August 29, 1988, Alman indicated that Respondent made the proposal reluctantly, that the Unions would have been better off if they had gone along with all Respondent's demands regarding team meetings.

Alman continued to pursue the team meeting concept. During the negotiating session on October 6, 1988, Alman explained what he expected of the team meetings,

I am not sure exactly what will occur at the team meetings. It may be a complete bomb. It may very well be that people will just sit and look at their navels.

That may say something also. But until you get up there and see what happens, we don't really know. We think that there can be fruitful discussion.

MR. WILKES: We're not refusing to have the sessions. But what we are refusing to do is turn the damn collective bargaining process over to Roy Nott and the team leaders.

Wilkes and Alman continued later:

MR. WILKES: What are we going to do when we get in there [the team meetings]? Are we going to discuss the process that they're involved in and how we can better improve it?

MR. ALMAN: I would think that's along the lines. I will guarantee you one thing.

MR. WILKES: We don't need that in the contract, we can do that now.

MR. WILKES: So you're going to talk productivity, quality and quantity of output. You can do that under the present contract. You call it all it [sic] time, shift meetings.

MR. ALMAN: Let them have the meeting to see what comes of it.

During the October 7 session the Unions again agreed to hold team meetings. The agreement was to hold a team meeting in the finishing department.

During the October 24 session Don Wilkes complained that the team meeting held in the finishing department was unsuccessful. Wilkes complained that General Manager Roy Nott came into the meeting and was overheard to say: "I've got better things to do than this, and I hope to hell we can get out of here so I can get on with what I've got to do."

During the October 25 negotiating session Alman told UPIU that he did have the authority to answer the unions questions and he argued that other ITT facilities had the team concept included in their contracts. Alman went on,

When I say that we intend to have it [the team concept in our contract], I don't expect to have it as it is written in my proposal, unless you categorically reject everything. Because if you categorically reject everything and there is impasse, and if I end up implementing, then I'll end up implementing what is written. What I am looking for are the modifications that are necessary for the acceptance by you and your membership at a ratification meeting.

On October 31, Respondent gave the Union a 10-day notice to terminate the contract.

Then during the November 11, 1988 session, Wilkes and Alman were discussing team manuals:

MR. WILKES: Is your answer "Yes, that it will not supercede the [collective bargaining] contract unless the union and the company mutually agree."?

MR. ALMAN: No, my answer is not yes to that, because you're taking the position that the team itself, as representative of the union, cannot reach any agreement.

MR. WILKES: The teams are not representatives of the unions. The people that you're looking at across this table are the representatives of the unions.

MR. ALMAN: It cannot supercede what is said in the contract if it has an effect upon the body as a whole. But if the team itself chooses to change some of the terms and conditions, then the position will be that they do have that right.

The record shows that the unions were presented with the "team concept" as an impediment to negotiations. Robert Alman continually insisted on holding team meetings as a precondition to consideration of proposals by the Unions.

Respondent, in its brief, argues that the team concept was innovative and that there was nothing illegal about that proposal.

It is correct that certain team concepts may involve nothing illegal. However, in this case, as shown above, Robert Alman insisted on interrupting negotiating progress until the team concept was initiated and he insisted on connecting negotiating progress to the team meetings. Negotiations were delayed because of his insistence on the team meetings.

Additionally, as articulated by Alman, the team concept did not contribute to negotiations. Instead it delayed progress and confused issues.

Alman's explanations as to what the "teams" would contribute to the negotiation process were unclear and confused. The only definitive explanation was that the team meetings could show a path for negotiations. However, it was never shown that the "teams" could do anything more than make suggestions.

In any event, the record established that, regardless of what Respondent planned to derive from the team meetings, the "team meetings" insistence resulted in serious delays in negotiations.

In view of the above, I agree with the General Counsel that Respondent engaged in delaying tactics by insisting on the team meetings, and Respondent attempted to negotiate directly with employees as opposed to the Unions, by insisting on the team meetings as a collective-bargaining vehicle.

d. Respondent failed to answer questions and supply information?

This particular argument has been considered above—see 1, Did Respondent fail to furnish requested information: (above).

Moreover, in light of the bargaining issue, the evidence mentioned above under failure to supply requested information, shows that throughout negotiations Respondent continually proposed provisions which it either had not fully formulated or which its agents did not understand. That is especially noticeable as to the various manuals and as to the incentive pay plan. At the time of implementation on December 2, Respondent had not formulated all the various manuals

and its agents did not understand its proposed incentive pay plan.

That evidence illustrates that Respondent was not bargaining in good faith. Respondent was advancing proposals which were not seriously considered before being advanced to the Union and Respondent was never aware of what it wanted in the way of a collective-bargaining agreement. Instead Respondent placed items on the table as impediments to negotiations. Items which it had not fully developed and understood.

Both the employer and the union have a duty to negotiate with a "sincere purpose to find a basis of agreement," but "the Board cannot force an employer to make a 'concession' on any specific issue or to adopt any particular position." The employer is, nonetheless, "obligated to make some reasonable effort in some direction to compose his differences with the union, if Sec. 8(a)(5) is to be read as imposing any substantial obligation at all." [*Atlanta Hilton & Tower*, 271 NLRB at 1603.]

The negotiation session notes concerning the Union's request for information, reveals that Respondent did not negotiate with "a sincere purpose."

e. Did Respondent fail to consider the Unions' proposals?

Respondent, in its brief, argued that the Unions unreasonably delayed negotiations by refusing to accept the team meetings concept. I agree that Respondent proposed but the Unions had difficulty accepting, the team meetings concept.

However, I do not accept Respondent's argument that the Unions were at fault in delaying negotiations.

It was Respondent that insisted on holding team meetings and on delaying consideration of the Unions' collective-bargaining proposals in the hope that the team meetings would somehow show a better path to collective bargaining. The Unions consistently showed an eagerness to proceed through the collective-bargaining process but were consistently thwarted by Robert Alman's insistence on waiting to see what happened in the team meetings.

On June 21, UPIU presented Respondent with its first written proposal.

The Union then went over its proposal with Respondent during the negotiating session.

After breaking to examine the union contract proposal, Alman replied,

Looking over what you have given us and leaving aside the economics, because like anything else, that will be the last thing, of course, that we end up discussing, I believe that almost all of the noneconomic issues that you have raised can be addressed when we sit down and get into this team concept business, the FQM plan.

UPIU Representative Don Wilkes stated during the August 19 session,

What we have not seen, number one, and there is several things. We have not seen any attention to the Union's [contract] proposal by management, so that we

could have some sort of a feel for what you're talking about with regard to our proposal.

We have not yet been able to determine exactly what portions of the present labor agreement or contract you wish to change to achieve more flexibility than what you presently have. We need to know that.

Robert Alman replied to Wilkes,

We said at the outset that for this bargaining to be successful there was a vast amount of money that we had to have in savings, and we felt truthfully that we could get that more through the efficiencies of the operation, such as working with a participative management style, team concept, etc.

The other way of getting savings is truly not a win, win situation for both parties. The other way starts going towards, for lack of a better term, the conventional bargaining posture that we've all been used to over the years, and that will not really be of benefit to both of us here.

. . . .
If that's what you're saying to me, that we're not having team meetings next week Because we have wasted seven, eight meetings over here.

After nine meetings we have not really done anything that could be considered substantial.

Our intent is to have team meetings to discuss all aspects of the work that the people will be doing exclusive, of course, of wages, etc.

On November 4, 1988, the following exchange occurred during negotiations:

MR. WILKES: Maybe I'm lost, Robert, but we spent all day yesterday jointly [UPIU and IBEW] drawing up this general proposal for you. There are some local issues which we did not attempt to get involved in.

MR. ALMAN: I just asked the question. We have taken a look at your proposal. I appreciate the effort that you have put into it. However, I would sit and say that it fundamentally does not address where we still feel we have to go to have an efficient operation.

On November 15 Wilkes talked to Alman during negotiations, about Respondent's consideration of UPIU's last contract proposal:

MR. WILKES: Robert, when we gave you this proposal we sat here and went through it, and you left the room, and I looked at my watch. You were gone less than three minutes. Less than three minutes from the time you left the room with it until you came back and said "we reject this."

The discussion continued,

MR. GREEN: I want to say something for the record before you leave. You said we had been stalling and refusing to bargain. If you'll look at our original proposal and look at the last one we gave you, I think you'll see a hell of a change. We addressed your proposal. We got off of our original and changed a lot of things. And if

you look at your original there ain't a whole hell of a

MR. ALMAN: Let me explain something to you. What you vote upon is ultimately what the company submits across the table to you. You don't vote upon what you submit to me. Otherwise we wouldn't have any negotiations.

The above are examples of how negotiations continued until Respondent declared impasse.

The record shows that during negotiations until October 25, Respondent resisted the Unions' efforts to have it respond to the Union's contract proposals usually with a suggestion that those matters should be a subject for team meetings to consider.

After October 25, Alman continued to summarily refuse to consider the Union's proposals with comments including "it fundamentally does not address where we still feel we have to go"; we reject this; and "what you vote on is ultimately what the company . . . submits."

Finding as to the bad-faith bargaining allegation

I agree with the arguments of the Charging Party and the General Counsel. Respondent appeared to go out of its way to create disagreement. For example, Respondent chose to eliminate the International from its proposed contract with UPIU.

Respondent took action which unreasonably delayed negotiations. Respondent insisted on matters, i.e., the team meetings, team manuals, etc.—which had no reasonable expectation of advancing negotiations and which, in fact, seriously delayed negotiations.

Although Robert Alman argued that the team meetings could develop the path for negotiations, it was never shown how those meetings would aid negotiations. It was never shown why there was a need for teams to develop a path for negotiations.

The team proposal placed the Unions in a no-win situation. Regardless of whether the Unions agreed or rejected the team meetings, Respondent would be in position to control future progress in negotiations without regard to the Unions' desires. If the Unions agreed to the team meetings, Respondent retained the right to select what, if anything, it would use from those team meetings. If the Unions rejected the team meeting, or hesitated in approving the team meetings, which is what occurred, Respondent was in position to continue to insist on the meetings and, thereby, delay meaningful collective bargaining.

The record shows nothing more was accomplished through the team meetings than some direct dealing with employees at the cost of serious delay in the negotiation progress. Subsequently, Respondent attempted to use that delay to establish impasse.

The "team" concept as advanced by Respondent, was keyed directly to the negotiation process and was different from the team concept in many industries where teams are more directly involved with other matters such as quality of product. Here, the team meetings were suggested by Robert Alman as a device which would show a "path" for negotiations.

Throughout negotiations, Respondent failed to provide the Unions with answers to their questions regarding many of

Respondent's bargaining proposals including the team and FQM manuals, team meetings, and incentive pay. Respondent also failed to supply UPIU with requested information including census data until after implementation. Oftentimes Respondent told the Unions that it simply did not know the answers to their questions regarding Respondent's proposals. The Unions had the right to have those questions answered in order to properly exercise their obligations. Respondent should have made knowledgeable officials available for questioning, in order to respond fully to the Unions' questions. By failing to do so Respondent short-circuited the negotiations.

As stated in *Harrah's Marina Hotel & Casino*, 296 NLRB 1116, 1133 (1989):

Respondent did not engage in serious negotiations with the Union. It consistently refused to fully consider the Unions proposals. It delayed negotiations by insisting on team meetings at a time when it did not understand what it could accomplish with team meetings. Respondent made counter proposals which oftentimes had not been fully formulated—such as the case with the various manuals—and which oftentimes it did not understand—which was the case regarding its incentive pay proposals. And Respondent admittedly engaged in bargaining with an objective of causing the Unions to strike in order to replace unit employees with lower paid employees.

Section 8(a)(5) of the Act makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representative of its employees." Section 8(d) defines the duty to bargain collectively as the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." In *NLRB v. Insurance Agents*, 361 U.S. 477, 485 (1960), the Supreme Court stated that "(c)ollective bargaining . . . is not simply an occasion for purely formal meetings between management and labor, while each maintains an attitude of 'take it or leave it'; it presupposes a desire to reach ultimate agreement, to enter into a collective bargaining contract." The parties must deal with each other in a serious attempt to adjust differences and reach an acceptable common ground.

I am convinced from my examination of the record that Respondent did not make a serious attempt to adjust differences and reach an acceptable common ground. I reach that decision not on the belief that Respondent acted illegally in presenting a novel approach to bargaining. Instead I base my finding on the record which shows that Respondent's objective was to consistently frustrate negotiations rather than to seriously work toward agreement. Respondent continually made suggestions which placed the Union in a position of being dammed if it did and dammed it it did not, without any possibility of advancing negotiations; Respondent continually failed to respond to the Unions' questions and requests for documents and Respondent continually refused to give serious consideration to the numerous proposals of the

Unions. See *D.C. Liquor Wholesalers*, 292 NLRB 1234 (1989); *Modern Mfg. Co.*, 292 NLRB 10 (1988).

The record shows that Respondent engaged in collective bargaining with an intent to avoid reaching agreement with UPIU in violation of Section 8(a)(1) and (5) of the Act. *Hotel Roanoke*, 293 NLRB 182 (1989); *United Technologies Corp.*, 296 NLRB 571 (1989).

In *NLRB v. A-1 Ring Size Sandwiches*, 732 F.2d 872 (11th Cir. 1984), the court granted enforcement of a surface bargaining order by the Board even though the employer met at reasonable times and places, and it bore no animus toward the union. The court stated,

Enforcement of the obligation to bargain collectively is crucial to the statutory scheme. And, as has long been recognized, performance of the duty to bargain requires more than a willingness to enter upon a sterile discussion of union-management differences. [732 F.2d 872, 874.]

In *United Technologies Corp.*, 296 NLRB at 572, the Board found that,

the Union could not have agreed to a contract prior to the withdrawal of recognition even if it capitulated to the Respondent's every demand.

Here the UPIU was placed in a similar position. Prior to implementation of its final offer by Respondent, the only way the UPIU could have agreed to a contract would have been to have signed a blank check. At that time the Respondent had not proposed a contract which included discrete matters including among other things a fully developed incentive pay plan and fully developed manuals such as team and FQM manuals referenced throughout negotiations. As shown below, Respondent had not fully responded to questions regarding seniority and contracting out work. Only by agreeing to an incentive pay plan which would be formulated subsequently by Respondent without input from UPIU, by agreeing to a contract without viewing the final manuals and by agreeing to seniority provisions and subcontracting provisions without having its outstanding questions answered, could the UPIU have agreed to a contract.

3. Did Respondent implement its final offer without negotiating to an impasse and did Respondent bargain to impasse over its FQM proposal?

At the opening of the hearing the General Counsel amended the complaint to allege that Respondent illegally bargained to impasse over its FQM proposal. In view of my finding set forth below, I find that the General Counsel did not prove that Respondent bargained to impasse over its FQM proposal. As found below, the parties were in dispute over only three issues at the close of negotiations of December 1, and the FQM proposal was not one of the three.

The record illustrated that the parties were not at impasse before December 1, 1988.

During the October 31, 1988 negotiating session the parties discussed Respondent's 10-day notice to terminate the existing collective-bargaining contract.

Don Wilkes commented,

I heard you make some comments this morning, with regard to the company's proposal, that you're flexible on this, that you're willing to negotiate and change some of this. We've not heard that before. We sat here and talked about them, and in every instance you have not moved one inch off of anything. And your comments have been to us, "This is what we need to run the mill." And that's your justification for throwing out the whole contract and making the whole world change.

We continue to have a great deal of concern with regard to the working conditions and the wages and benefits. And I'd like to point out, we have not even heard from you concerning a wage/benefit package. And yet you still have served us with a ten day notice.

We do not have anything to guide us with regard to where you're trying to get and what you're willing to provide the employees in return for it.

Later during the session, Robert Alman stated that the termination of the contract on November 11 meant that four things could happen, (1) the employees could strike, (2) the Company could lock out the employees, (3) the parties could just continue negotiating, or (4) that "I can shortly thereafter inform you that I'm going to implement" the "terms and the conditions of my offer that I believe I've reached impasse on."

Alman added, the "Company is seriously considering any and all of these."

The Union objected that Respondent had not gone over UPIU's contract proposal:

MR. WILKES: We afforded you an opportunity to go through your proposal. You have no [sic] afforded us that same opportunity.

MR. ALMAN: To go through what?

MR. WILKES: To go through our proposal. You said you had gone through ours. But you've not afforded us an opportunity to go through our proposal.

MR. ALMAN: I told you.

MR. WILKES: We sat here Monday and Tuesday of last week and allowed you to go through your proposal.

MR. ALMAN: I told you that I had reviewed your proposal and it doesn't address our needs. You have ignored what I have been saying to you. If you have a different proposal that you want to put together, then that's what I would suggest you use the remaining time for.

MR. WILKES: You've reviewed it without benefit of any discussion or dialogue whatsoever?

MR. ALMAN: Yes, because when I see the words "as is" I'm intelligent enough to understand what as is means.

UPIU presented Respondent with another contract proposal on November 4 (supra).

Wilkes told Alman the unions were available to meet on the afternoon of November 4 and on all the following days of Saturday, Sunday, Monday, Tuesday, Wednesday, and Thursday (i.e., November 5 through 10, 1988).

Alman responded that the negotiations should be able to conclude by meeting on November 9, 10, and 11.

At the end of the meeting Wilkes asked Alman to separately and individually point out provisions of the unions

contract proposal which Respondent finds objectionable. Wilkes continued,

We're just like you, we're not going to counter our counter. We've given you a proposal. And when you left out of the room [earlier today] you said you would look at it and you wanted us to look at it. And I thought you said make some changes in it.

We're prone to changes, obviously. We wouldn't have given you the proposal if we hadn't of been. But it's your nickle now, so to speak.

MR. ALMAN: I accept that burden.

On November 23, 1988, Respondent mailed its final offer to the UPIU. Don Wilkes testified that UPIU received that final offer on November 27, 1988.

As shown above Alman's November 23 letter to Wilkes reads:

Enclosed is a copy of the company's final offer for a new collective bargaining agreement. The offer includes an incentive plan proposal which contains the service team plan. The team manual has been revised so as to delete "Team Work Rules" on page 15 in their entirety and thus ensuring this document is not a bargaining issue.

We hope that the union will consider and accept this proposal. If the offer is rejected or the membership fails to ratify it, the company intends to implement this final offer on Friday, December 2, 1988. Absent ratification by that date, the following sections of the submitted offer will be deleted; ratification bonus, Section 1(c), Payroll Deduction and Section 11, Arbitration.

Despite Alman's statement that removal of the "Team Work 35 Rules" ensures that the representative team manual is not a bargaining issue, the manual presented to UPIU on November 23 included numerous matters regarding terms and conditions of employment for unit employees. For example the document included statements regarding safety and cleanliness in the workplace, the mission of teams, job descriptions, and outlines of required job skills. Teams and team responsibilities fall within the scope of matters which were discussed in practically every bargaining session before November 23.

When Respondent met with UPIU on November 29 it initially took the position that it would not bargain over its final offer. Respondent refused to consider changing its announced implementation date of December 2, 1988, despite its belief, as admitted by Robert Alman, that the UPIU's most recent counterproposal evidenced significant movement by UPIU.

In that regard the transcript of the December 1 bargaining session shows the following discussion. Alman, in response to the Union's counterproposal contract which was presented to Respondent at the December 1 session, said:

I was very pleasantly surprised at the effort and the movement that you did make, because it does show significant movement on your part.

I believe that we are in close proximity to one another as far as reaching a settlement that you could live with and get ratified, and that I feel would meet my objectives and my needs.

Respondent, in its brief, admitted that the parties made substantial progress toward agreement during their December 1 negotiation session. Respondent argued that after reviewing the UPIU's counterproposal, Robert Alman stated that there remained three areas of dispute: contracting, seniority, and the Company's insurance proposal.

The transcript of the December 1 session revealed that Alman outlined the three areas of dispute at page 46 of that transcript and the session continued for a total December 1 transcript of some 185 transcript pages.

As to seniority, there was substantial discussions as to how employees would be rated as qualified or more qualified including discussions as to whether the teams would be involved in rating and whether supervisory employees rehired in unit positions after a layoff would be rated more qualified than a more senior unit employee.

In the area of job qualification which was critical to the seniority issue, Alman showed a refusal or an inability to identify how matters would be handled under Respondent's final offer:

MR. ALMAN: The job requirements are going to be different than what they are today, so you can't sit and say that the guy is qualified. The guy may be qualified for a job under the old system, but with the new expectations being placed on the man and his performance, the only thing I can really say accurately is I'm going to assume, but that assumption doesn't prove out negative or positive until I see the man perform.

As to insurance, after Robert Alman stated that the Company would go along with a union plan if it was better for the same money, Green (UPIU) pointed out the Company "won't give us the information we need to go do that search."

As to contracting out work, Respondent, as it had in bargaining sessions since October 5, continued to fail to respond to the Unions' questions regarding how many unit employees would be laid off or what Respondent planned regarding contracting out work.

There is evidence in the December 1 transcript which shows that the parties continued move in the direction of agreement.

MR. ALMAN: If I said to you that I would guarantee you that no supervisor took a bargaining unit job, would have a ratified contract?

MR. WILKES: You would damn sure be a step closer.

. . . .

MR. EVERETT: That's the point where you're talking about we're close.

However, Robert Alman said the Company intended to pay the B scale upon implementation of its final offer. Alman made that comment against the background of confusion over the incentive pay. Respondent had admitted that the plan was not fully developed and that it would develop over a period of time after implementation. Alman admitted that he could not answer the UPIU's questions about incentive pay and that the figures in Respondent incentive pay proposal did not add up.

Respondent implemented its final offer on December 2.

The record, including the matters shown above, illustrates that the parties were not at impasse on November 23 when Respondent sent its final offer letter. Even Respondent, in its brief, admitted that the parties made substantial movement after that date. Respondent's argument, cited above, is to the effect that impasse occurred on December 1 when the parties were unable to reach agreement on the issues of seniority, contracting out and insurance. After Robert Alman noted the three disputed areas during the December 1 session, the remainder of that session's transcript shows some flexibility on those issues as noted above and some confusion and unanswered questions.

However, the parties did illustrate final disagreement on those three areas at the end of the December 1 session and, as argued by Respondent, the parties agreed that they were unable to reach agreement on those three matters.

The question remaining is one of whether the parties were at legal impasse.

In *D.C. Liquor Wholesalers*, 292 NLRB 1234, supra, the Board found, among other things, that the employer did not give the union sufficient time after submitting its final demands. Here, those demands were not actually finalized until Robert Alman outlined the three areas of dispute on December 1. Implementation occurred as scheduled, on December 2.

Moreover, as shown herein, Respondent, by bargaining in bad faith and by failing to furnish requested information, created a climate of unfair labor practices which may have precluded Respondent from legally declaring an impasse.

As stated in *Park Inn Home for Adults*, 293 NLRB 1082, 1087 fn. 9 (1989):

We note, however, that Park Inn cannot claim a valid impasse here in light of the climate created by its own unfair labor practices, as set forth above, in which the final stage of bargaining took place. *Taft Broadcasting Co.*, 163 NLRB 475 (1967). See also *Shipbuilders (Bethlehem Steel) v. NLRB*, 320 F.2d 615, 621 (3rd Cir. 1983), and cases cited there. Hence, Park Inn was obligated to maintain the status quo and was not privileged at that stage of bargaining to implement even the exact terms of its final offer.

Here, I find that the parties were not at legal impasse. As to the three outstanding issues, Respondent never fully responded to the Unions' inquiries, the UPIU was not given adequate opportunities to negotiate after those matters were outlined on December 1, the three alleged issues were never definitively finalized by Respondent, and Respondent created a climate of unfair labor practices which precluded it from legally declaring an impasse.

In view of the full record, I find that Respondent negotiated with an intent to avoid agreement. Respondent refused to inform the Union following requests by the Unions and Respondent implemented its final offer without reaching legal impasse.

CONCLUSIONS OF LAW

1. UPIU has been at times material the exclusive representative for the purposes of collective bargaining of the following employees:

Included: All production and maintenance employees at the Employer's Fernandina Beach, Florida facility.

Excluded: Employees represented by other labor organizations, all other employees, guards and supervisors as defined in the Act.

2. By bargaining with UPIU, with no intention of reaching an agreement, Respondent has violated Section 8(a)(1) and (5) of the Act.

3. By unilaterally implementing its "final offer" on December 2, 1988, without bargaining to impasse with UPIU, Respondent has violated Section 8(a)(1) and (5) of the Act.

4. By failing and refusing to furnish UPIU requested information which information was necessary for the UPIU to fulfill its bargaining responsibilities, in a timely fashion, Respondent violated Section 8(a)(1) and (5) of the Act.

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

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. As I have found that Respondent engaged in illegal activity by unlawfully bargaining in bad faith with UPIU with no intention of reaching a collective-bargaining agreement; by unilaterally implementing its final offer at a time when it had not bargained to impasse; and by refusing to supply UPIU with relevant information necessary to UPIU's bargaining responsibilities, I shall recommend that Respondent be ordered to restore terms and conditions of work for bargaining unit employees to the status quo of December 1, 1988; that upon request, it supply UPIU with information relevant to UPIU's bargaining responsibility; and, on request, bargain in good faith with UPIU. It appears that the remedy may include make-whole requirements resulting from Respondent's illegal implementation of its final order. *Storer Communications*, 294 NLRB 1056 (1989). If necessary, the extent of Respondent's make whole obligation should be set through compliance proceedings.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The Respondent, I.T.T. Rayonier, Inc., Fernandina Beach, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

¹If 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.

(a) Refusing to bargain with UPIU as the duly designated representative of a majority of its employees in the bargaining unit appropriate for purposes of collective bargaining within the meaning of Section 8(b) of the Act:

Included: All production and maintenance employees at the Employer's Fernandina Beach, Florida facility.

Excluded: Employees represented by other labor organizations, all other employees, guards and supervisors as defined in the Act.

(b) Unilaterally implementing terms and conditions of employment during the course of collective bargaining without the parties having reached a genuine impasse.

(c) Refusing to furnish UPIU with information requested, which is necessary for UPIU to perform its function as a representative of employees in the above-described bargaining unit.

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

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

(a) Continue to recognize and bargain with UPIU as the duly designated representative of its employees in the above-described appropriate unit.

(b) On request by UPIU, revoke the unilateral changes in the rates of pay, wages, and other terms and conditions of employment that were placed into effect among employees in the appropriate bargaining unit, until such time as the Respondent negotiates with UPIU in good faith or an impasse in negotiations is reached.

(c) Furnish UPIU with the information requested, which is necessary for UPIU to perform its function as a representative of employees in the above described bargaining unit.

(d) Post at its facility in Jacksonville, Florida, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 15, 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.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

²If 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."