

**Albertson's, Incorporated and United Food and Commercial Workers Union, Local No. 7.**  
Cases 27-CA-11463, 27-CA-11474, 27-CA-11490, and 27-CA-11509

April 23, 1993

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

On May 26, 1992, Administrative Law Judge Gordon J. Myatt issued the attached decisions.<sup>1</sup> The Respondent filed exceptions. The General Counsel filed an answering brief.

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

The Board has considered the decisions and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions and to adopt the recommended Orders as modified.

ORDER

The National Labor Relations Board adopts the recommended Orders of the administrative law judge as modified below and orders that the Respondent, Albertson's Incorporated, Denver, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the Orders as modified.

1. Substitute the following for paragraph 1(b) in each Order.

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

2. Substitute the attached notices for each notice attached to the administrative law judge's decisions.

<sup>1</sup> On July 21, 1992, the Board granted the General Counsel's motion to consolidate these four cases.

<sup>2</sup> The 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.

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Relations Board, after a hearing in which all parties had an opportunity to present evidence, has found that we violated the National Labor Relations

310 NLRB No. 199

Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain in good faith with United Food and Commercial Workers, Local No. 7 by failing to provide the Union with requested information relating to a grievance of employee Dan Cook, or of any other employee.

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

WE WILL immediately provide the above Union with the information it requested on August 15, 1990, relating to the grievance of employee Dan Cook.

ALBERTSON'S, INCORPORATED

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Relations Board, after a hearing in which all parties had an opportunity to present evidence, 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 in good faith with United Food and Commercial Workers, Local No. 7 by failing to provide the Union with requested information relating to a grievance of employee Eugene Meis, or of any other employee.

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

WE WILL immediately provide the above Union with the information it requested on August 15, 1990, relating to the grievance of employee Eugene Meis.

ALBERTSON'S, INCORPORATED

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Relations Board, after a hearing in which all parties had an opportunity to present evidence, 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 in good faith with United Food and Commercial Workers, Local No. 7 by failing to provide the Union with requested informa-

tion relating to a grievance of employee David Hucke, or of any other employee.

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

WE WILL immediately provide the above Union with the information it requested relating to the grievance of employee David Hucke.

ALBERTSON'S, INCORPORATED

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Relations Board, after a hearing in which all parties had an opportunity to present evidence, 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 in good faith with United Food and Commercial Workers, Local No. 7 by failing to provide the Union with requested information relating to work-hours contributions to the Rocky Mountain UFCW Unions and Employers Trust Plan (Pension Plan) for unit employees covered by collective-bargaining agreements in the following geographical area:

1. Denver, Boulder, Colorado Springs, Grand Junction, Greeley, Security and Longmont, Colorado.
2. Casper, Wyoming.

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

WE WILL immediately provide the above Union with the information it requested relating to the pension plan contributions for unit employees covered by collective-bargaining agreements.

ALBERTSON'S, INCORPORATED

*Barbara E. Greene and Chet Blue Sky, Esqs.*, for the General Counsel.

*Laura J. Hamblin and Michael B. Schwarzkopf, Esqs.*, of Boise, Idaho, for the Respondent.

*John P. Bowen, Esq.*, of Wheat Ridge, Colorado, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GORDON J. MYATT, Administrative Law Judge. Upon a charge filed by United Food and Commercial Workers, Local No. 7 (the Union) against Albertson's Incorporated (the Re-

spondent), the Regional Director for Region 27 issued a complaint and notice of hearing on November 14, 1990.<sup>1</sup> The substantive allegations of the complaint allege that the Respondent violated its statutory bargaining obligation by refusing to furnish the Union, as the collective-bargaining representative, with requested information relevant to the processing of a grievance concerning the suspension and demotion of a unit employee. This conduct is alleged to be a violation of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). The Respondent filed an answer which admitted certain facts, denied others, and specifically denied committing any unfair labor practices.

A hearing was held in this matter on April 2, 1991, in Denver, Colorado. All parties were represented by counsel and afforded full opportunity to examine and cross-examine witnesses and to present material relevant on the issues. Briefs have been submitted by the parties and have been duly considered.

On the entire record in this matter, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation which has its headquarters in Boise, Idaho. It operates a chain of supermarkets engaged in the retail sales of groceries and related products. One such supermarket (Store #868) is located in Broomfield, Colorado and is the only facility involved in this matter. In the course and conduct of its business operations, the Respondent annually purchases and receives goods, materials, and services valued in excess of \$50,000 directly from suppliers located outside the State of Colorado. In addition, the Respondent annually derives gross revenues in excess of \$500,000 from its business operations. On the basis of the above, I find the Respondent is, and has been at all times material, an employer within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

United Food and Commercial Workers, Local No. 7 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

On July 29, unit employee Dan Cook was suspended and demoted from his position as freight crew manager<sup>2</sup> at the Broomfield facility. The unrefuted testimony indicates that Cook immediately notified Joe DeMers, a business agent for the Union, of the situation involving his employment. DeMers informed Cook that the collective-bargaining agreement covering the Broomfield store required the employee to first attempt to work out the matter with the store management and if that proved unsuccessful, the Union would file

<sup>1</sup> All dates refer to the year 1990 unless otherwise indicated.

<sup>2</sup> According to Respondent's records, Cook's work classification was freight crew manager. See R. Exh. 1. The Union's grievance, however, described Cook's job classification as "head clerk and night crew foreman." See Jt. Exh. 2.

a grievance on his behalf.<sup>3</sup> Cook's efforts to resolve the problem at the store level were unsuccessful and he notified DeMers of this fact.

Shortly thereafter (the exact date is not clear in the record), DeMers went to the Broomfield store and spoke to Eric Brothers, the assistant store manager, about the Cook matter. When DeMers asked for the particulars regarding the suspension and demotion of Cook, he was told that all of the information would have to come from Respondent's central labor relations office at the Boise headquarters. DeMers testified he considered his conversation with Brothers to be a step 1 meeting under the grievance procedure. On August 15, DeMers sent a written request by certified mail to Respondent's Boise office asking for a step 2 grievance meeting on the matter. (See Jt. Exh. 2.) The grievance request was signed by DeMers in his capacity as Cook's union representative. Accompanying the request was a separate document (containing the identical certified mail receipt number as the grievance request) asking for specific information which the Union asserted was necessary to "properly evaluate and process" the grievance. (See G.C. Exh. 1(a), attachment A.) The information request listed the following:

1. The personnel field [sic] of Dan Cook, including, but not limited to, work or performance evaluations, disciplinary actions, commendations, progress reports, documentation of counseling, documentation of verbal warnings, and all other documentation contained herein [sic], except for routine personnel actions.
2. To the extent Mr. Cook's personnel file does not reflect the same, all documentation of counseling and/or training Mr. Cook was given with regard to Head Clerk duties as Night Crew Foreman.
3. The reasons for, and the information relied upon by the Company in, demoting Dan Cook.
4. A list of witnesses and a copy of any and all written statements or memos of oral statements made by them.

The request set September 15 as the outside limit for receipt of the information.

DeMers testified he made request for the information in order to determine if the action taken against Cook was for "just cause" or in violation of the bargaining agreement. He stated the information was necessary for the Union to decide whether to pursue the grievance or initiate other steps to settle the matter.

Karen Freckleton, a contract administrator for the Respondent with responsibility for the geographic area which included the Broomfield store, testified the Respondent received the Union's grievance on behalf of Cook on August 17. Freckleton sent a written reply to the Union on August 27, in which she stated the Respondent would investigate the grievance and respond when the investigation was completed.

<sup>3</sup>The contract between the Respondent and the Union contained a detailed and elaborate grievance procedure up through arbitration. For purposes here, it provided for the aggrieved employee to attempt to resolve the matter first with store management. If this effort was unsuccessful, then a written grievance, signed by the employee, would be filed within certain time limitations. This, in turn, would trigger a meeting between representatives of the Respondent and the union on the issue. see. Jt. Exh. 1, art. 45, sec. 123-129.

(Jt. Exh. 3.) On October 24, Freckleton sent a written response containing the results of the Respondent's investigation of the grievance and denied it at that step. (R. Exh. 1.)

Freckleton admitted that neither she nor any other representatives of Respondent ever furnished the information requested by the Union. Freckleton stated she had no recollection of seeing the Union's request for information, although she did author the responses to the grievance on August 27 and October 24. According to Freckleton, the Cook grievance was received along with several others from the Union at a time when the secretary for her unit was seriously ill, and some of the grievances were assigned to other contract administrators. While acknowledging that her unit was small and close knit (approximately 15 persons), Freckleton stated she was unaware of the complaint involving the failure to furnish the requested information to the Union until a month before the instant hearing.

The unrefuted testimony indicates that at the time of the instant hearing, Respondent has not supplied the Union with the requested information relating to the Cook suspension and demotion. Further, that the Union is taking the grievance to arbitration without the benefit of the requested information.

#### Concluding Findings

It has long been settled case law that an employer has a statutory duty to supply requested information to a union, which is the collective-bargaining representative of the employer's employees, if the information is relevant and reasonably necessary to the union's proper performance of its duties and responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). See also *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). This obligation extends not only to information that is useful and relevant for the purpose of contract negotiations, but also encompasses information necessary to the administration of the collective-bargaining agreement. *Central Soya Co.*, 288 NLRB 1402 (1988). In this vein, requested information necessary for proceeding with and arguing grievances under a collective-bargaining agreement, including that necessary to decide whether to proceed with a grievance or arbitration, must be provided by an employer. *NLRB v. Acme Industrial Co.*, supra, at 437-438; *American National Can Co.*, 293 NLRB 901 (1989); *Howard University*, 290 NLRB 1006, 1007 (1988); *Eazor Express*, 271 NLRB 495 (1984). The standard for determining the relevancy of requested information is a liberal one and it is necessary only to establish "the probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial Co.*, supra at 437. See also *Leland Stanford Junior University*, 262 NLRB 136 (1982).

Applying the above principles to the facts of the instant case, I find that the Respondent has breached its statutory bargaining obligation by failing to supply the Union with the requested information concerning the Cook suspension and demotion. I credit the testimony of DeMers that he sent the information request along with the grievance on August 15. DeMers was a candid and forthright witness and his testimony is supported by the grievance and information request documents received in evidence. (Jt. Exh. 2 and G.C. Exh. 1(a), attachment A.) In contrast, Respondent has offered

nothing to persuasively refute this evidence other than the testimony of Freckleton, which I find was ambivalent and dubious at best. While she could not recall seeing the information request, she did not deny that it had been received along with the grievance. Rather, her testimony was replete with dubious explanations and speculations, all of which point to the fact that the information request had "fallen through the cracks," possibly as a result of the illness of the office secretary. I reject this explanation; especially in view of Respondent's answer to the complaint paragraph 9(b) in which the Respondent admits it received the Union's information request regarding the Cook situation. Thus, I find Freckleton's testimony to be misleading and designed to obscure the truth. The only reliable statement to be ascertained from her the testimony is that the information was never supplied to the Union. In these circumstances, I find that the request for information was indeed received by the Respondent and the information was never provided to the Union.

The Respondent contends that the grievance is procedurally defective because it was not signed by Cook, as required by bargaining agreement, but by DeMers. Respondent appears to reason that the failure to follow the contract requirements relieves it of the statutory obligation to provide the Union with the requested information. I find this contention to be without merit.

Initially, it should be noted that the Respondent at no time prior to the instant hearing raised the issue of procedural defect as a basis for its failure to provide the requested information. Indeed, the record reveals that the Respondent treated the Cook matter as one routinely winding its way through the established grievance procedure. This is evidenced by Freckleton's letters of August 27 (acknowledging receipt of the grievance), and October 24 (denying the grievance on its merits). Thus the Respondent cannot now be heard to claim that a procedural defect invalidates a request for information which, if supplied, would enable the Union to determine whether to pursue the underlying grievance that the Respondent has acknowledged as being at the step 2 level of the grievance procedure. Equally important, the question of whether the grievance is procedurally defective goes to the ultimate issue of arbitrability and not to the issue of the Respondent's statutory obligation to provide the information. Since the information sought was for the purpose of aiding the Union in determining whether to pursue the grievance, including through arbitration, Respondent cannot avoid its statutory responsibility to furnish the information by claiming procedural defectiveness of the grievance itself. Cf. *Proctor & Gamble Mfg.*, 237 NLRB 747 (1978); *Safeway Stores*, 236 NLRB 1126 (1978).

On the basis of the foregoing, I find and conclude that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with the requested information relating to the Cook grievance.

#### CONCLUSIONS OF LAW

1. Respondent Albertson's Incorporated is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Food and Commercial Workers, Local No. 7 is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material, the Union has been the designated and recognized exclusive collective-bargaining representative

of the Respondent's employees in an appropriate bargaining unit.

4. By failing to provide the Union with requested information relating to the suspension and demotion of employee Dan Cook, the Respondent has failed and refused to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act.

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

#### THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, it shall be ordered to cease and desist therefrom and take to take certain affirmative action designed to effectuate the policies of the Act. Respondent shall be ordered to immediately provide the Union with the information requested on August 15, 1990, regarding the suspension and demotion of employee Dan Cook.

On these findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended<sup>4</sup>

#### ORDER

The Respondent, Albertson's Incorporated, Denver, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the United Food and Commercial Workers Union, Local No. 7, by failing to provide the Union with requested information relating to employee grievances.

(b) In any like or related manner violating Section 8(a)(5) and (1) of the Act.

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

(a) Provide the Union with the information requested on August 15, 1990, relating to the suspension and demotion of employee Dan Cook.

(b) Post at its Broomfield, Colorado facility copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

<sup>4</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>5</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

*Barbara E. Greene and Chet Blue Sky, Esqs.*, for the General Counsel.

*Laura J. Hamblin and Michael B. Schwarzkopf, Esqs.*, of Boise, Idaho, for the Respondent.

*John P. Bowen, Esq.*, of Wheat Ridge, Colorado, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

GORDON J. MYATT, Administrative Law Judge. Upon a charge filed by United Food and Commercial Workers, Local No. 7 (the Union) against Albertson's, Incorporated (the Respondent), the Regional Director for Region 27 issued a complaint and notice of hearing on November 14, 1990.<sup>1</sup> The substantive allegations of the complaint allege that the Respondent violated its statutory bargaining obligation by refusing to furnish the Union, as the collective-bargaining representative, with requested information relevant to the processing of a grievance concerning the suspension and demotion of a unit employee. This conduct is alleged to be a violation of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). The Respondent filed an answer which admitted certain facts, denied others, and specifically denied committing any unfair labor practices.

A hearing was held in this matter on April 2, 1991, in Denver, Colorado. All parties were represented by counsel and afforded full opportunity to examine and cross-examine witnesses and to present material relevant on the issues. Briefs have been submitted by the parties and have been duly considered.

On the entire record in this matter, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Respondent is a corporation which has its headquarters in Boise, Idaho. It operates a chain of supermarkets engaged in the retail sales of groceries and related products. One such supermarket (Store #854) is located in Northglenn, Colorado and is the only facility involved in this matter. In the course and conduct of its business operations, the Respondent annually purchases and receives goods, materials and services valued in excess of \$50,000 directly from suppliers located outside the State of Colorado. In addition, the Respondent annually derives gross revenues in excess of \$500,000 from its business operations. On the basis of the above, I find the Respondent is, and has been at all times material, an employer within the meaning of Section 2(6) and (7) of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

United Food and Commercial Workers, Local No. 7 is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

On August 20, unit employee Eugene Meis was demoted from the position of manager to meatcutter in the meat de-

partment of Respondent's Store #854. Meis contacted his union representative, Joe DeMers, who came to the store on August 30 to hold a step 1 grievance meeting with the store director, Ed Page. DeMers testified that when he questioned Page about the reasons for the Meis' demotion, he was told that Page did not make the decision, and any information DeMers wanted would have to be secured from Respondent's headquarters in Boise, Idaho. DeMers stated he then asked to see the "employee file" of Meis. According to DeMers, Page attempted to find the file but could not. Page told DeMers that since Meis had recently transferred from another store, the file had not been received as yet. DeMers further testified that when he insisted he needed the information from the file, Page stated he would notify Boise that the employee file was not in his store and the Union was requesting it.

While acknowledging he had a conversation with DeMers about the Meis grievance, Page was unable to recall whether the union representative requested to see the employee file which normally was kept at the store. According to Page, he discussed numerous grievances with DeMers over a period of time, and he had no firm recollection that DeMers asked to see the information contained in the employee's store file. He admitted, however, that DeMers had come to the store seeking information about the circumstances surrounding the demotion of Meis. Page also acknowledged that the file would ordinarily contain copies of the employee's performance reports, writeups, and other personnel information.

Subsequent to the meeting with Page, DeMers sent a grievance report form to Respondent's industrial relations department in Boise requesting a step 2 meeting. This request was sent by certified mail. (Jt. Exh. 2.) On September 5, Karen Freckleton, a contract administrator for the Respondent, acknowledged receipt of the grievance and indicated a forthcoming response once Respondent had completed its investigation of the matter. (Jt. Exh. 3.)

DeMers further testified that when he heard nothing from Page about the information he requested, he sent a written request for specific information directly to the Boise office on September 25. This request was on a printed form containing blank spaces which DeMers stated he filled out by hand. Unlike the step 2 meeting request, this form did not indicate the name of the Respondent as addressee on its face, nor did DeMers send it by certified mail. The request asked that the information be submitted no later than October 10. (See G.C. Exh. 1(c), attachment A.) According to DeMers, he merely addressed the envelope and mailed the information request to Respondent's Boise office.<sup>2</sup>

On October 2, Laura Hamblin, a labor relations representative for Respondent, sent a written response indicating the results of Respondent's investigation and denying the grievance. (Jt. Exh. 4.) It is undenied that Respondent never supplied the information contained in the Union's written request.

<sup>2</sup> Frank Panteloglew, also a business agent for the Union, testified that it was not always possible for the business agents to get information requests completed in typed form. He stated there were occasions when business agents would complete the forms after office hours and no clerical staff was available. In such instances, the forms would be completed by hand and sent to the Respondent. Panteloglew stated, however, that he always sent his information requests by certified mail.

<sup>1</sup> All dates refer to the year 1990 unless otherwise indicated.

Although the pleadings reflect otherwise,<sup>3</sup> at the hearing the Respondent's witnesses uniformly denied ever receiving the information request from the Union. Freckleton denied that she ever saw the information request in Respondent's office files. Freckleton stated she could not recall receiving information requests from the Union which were not typed (as opposed to being filled out by hand) and which did not have the Respondent's name and office address typed at the top as addressee. While she admitted that on occasions the Union would submit handwritten grievances, Freckleton insisted that information requests were always typed. She also stated that the Union's requests for information were always sent by certified mail rather than by ordinary mail. According to Freckleton, the first time she became aware of the Union's information request regarding Meis was when she saw a copy of the complaint approximately a month before the instant hearing.<sup>4</sup>

Michael Schwarzkopf, Respondent's director of labor relations and chief counsel in this proceeding, was called as an adverse witness by counsel for the General Counsel and questioned regarding settlement conversations held subsequent to the issuance of the complaint. Schwarzkopf stated he informed the counsel for the General Counsel, during the course of such discussions relating to this and other cases, that the Respondent had never received the written information request from the Union. He was unable to recall, however, in which conversation this statement was made. By way of an explanation for the contradiction between Respondent's admission concerning the written information request and its denial of receipt of the request at the hearing, Schwarzkopf stated he could "only imagine" he "was dashing off the answer" at the time he responded to the complaint.

Bev Hutchison, administrative secretary in Respondent's industrial relations department, testified she had never seen a written request for information from the Union concerning the Meis' demotion. Hutchison acknowledged that she absent from work due to illness from August 1990 to January 1991. She stated that upon her return, she never saw a copy of the written request in the office. According to Hutchison, all such requests which she has seen are in typed form and have Respondent's address as part of the heading. She also stated that approximately 75 percent of the correspondence received from the Union is by certified mail and information requests are always sent in that manner.

Finally, Lucy Dill, a secretary, testified that one of her responsibilities was to open the incoming mail and route it to the proper persons in the department. Dill stated she had never seen a copy of the Union's request for information on the Meis grievance. Dill also stated the requests for information were always received by certified mail and were always typed. Dill admitted, however, that she had received griev-

ances on occasions from the Union which were handwritten rather than typed.

#### Concluding Findings

The primary question to be determined here is whether the Union made a request of the Respondent for information relating to the demotion of Meis. As stated at the hearing, this factual determination rests primarily on which version of the events is deemed most credible and reliable. Having observed the witnesses closely and considering all of the record evidence, I find that the Union did indeed make a request for information which the Respondent failed to supply.

First, I deem it to be profoundly significant that the Respondent, in answering the allegations of the complaint, admitted that the Union had made a written request for the information on September 25. I find the explanation of Respondent's counsel, to the effect that this admission was an inadvertent error due to haste in "dashing off the answer," to be totally unpersuasive. Scrutiny of the entire answer, and especially those portions relating to the subsections of paragraph 9, clearly demonstrates that the answer was well crafted and quite specific in addressing the specific allegations of the complaint.

In addition, I do not credit the testimony offered by the Respondent in its attempt to establish that the Union never made a request for the information. In this regard, I note that while Schwarzkopf maintained he informed counsel for the General Counsel during postcomplaint discussions that the Respondent had not received the Union's information request, his testimony was vague and he could not establish when this occurred with any precision. Indeed, such a claim, if it existed, would have been advanced initially and emphatically by Respondent in an effort to avoid this very proceeding. I also find the testimony of Freckleton on this point to be unreliable and not worthy of belief. I particularly note that in another case involving the Respondent (*Albertson's, Inc.*, JD(SF)-61-92), issued this date, I have found the testimony of this witness to be contrived and misleading. I find no reason here to alter my prior assessment of her testimony. As in the prior case, Freckleton stated she had not seen a copy of the complaint and the attached information request until approximately a month before the instant hearing; even though the record shows it was received by the Respondent on November 19. Since it has been established in the prior case that Respondent's industrial relations department is a small and cohesive unit, I find it extremely suspect that she was not aware of the information request until a month before this hearing. In my judgement, this is merely continuing evidence of the untrustworthiness of Freckleton's testimony.

Finally, I do not find the statements of Dill and Hutchison, indicating that the Union's information request was never received by the Respondent, to be persuasive. Although Dill testified the Union's correspondence was usually typed, she acknowledged that some grievances received from the Union were handwritten. Hutchison likewise acknowledged that at least 25 percent of the correspondence sent by the Union was by ordinary mail. Thus, it is apparent that correspondence relating to grievances was not always typed and that the Union did not always send its correspondence to the Respondent by certified mail.

In sum, I find that the record evidence and the credited testimony establishes that the Union submitted a request to

<sup>3</sup>The answer filed by the Respondent, dated December 27, denied all of the substantive allegations of the subsections of par. 9 of the complaint (alleging the Union's request for and Respondent's failure to supply the information), with the sole exception of subsection 9(c) (alleging the Union made a written request for the information on September 25). This particular subsection of the complaint was specifically admitted by the Respondent. See G.C. Exhs. 1(c) and 1(d).

<sup>4</sup>The complaint was issued by the Regional Director on November 14, 1990, and received by the Respondent on November 19. G.C. Exhs. 1(c) and 1(d).

the Respondent for information relating to the demotion of unit employee Meis, and the Respondent failed to supply the information. The request was first a general one made orally to Store Director Page, when DeMers asked to see the employee's file, and was particularized in the written request sent to the Respondent on September 25.<sup>5</sup>

Turning to the ultimate issue here, it has long been settled case law that an employer has a statutory duty to supply requested information to a union, which is the collective-bargaining representative of the employer's employees, if the information is relevant and reasonably necessary to the union's proper performance of its duties and responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). See also *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). This obligation extends not only to information that is useful and relevant for the purpose of contract negotiations, but also encompasses information necessary to the administration of the collective-bargaining agreement. *Central Soya Co.*, 288 NLRB 1402 (1988). Thus, requested information necessary for arguing grievances under a collective-bargaining agreement, including that necessary to decide whether to proceed with a grievance or arbitration, must be provided by an employer. *NLRB v. Acme Industrial Co.*, supra, at 437-438; *American National Can Co.*, 293 NLRB 901 (1989); *Howard University*, 290 NLRB 1006, 1007 (1988); *Eazor Express*, 271 NLRB 495 (1984). The standard for determining the relevancy of requested information is a liberal one and it is necessary only to establish "the probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial Co.*, supra at 437. See also *Leland Stanford Junior University*, 262 NLRB 136 (1982).

Since it is more than evident that the Union sought the information here for the purpose of aiding it in determining whether to pursue the grievance on behalf of a unit employee, it follows that the Respondent had a statutory obligation to furnish requested information. By failing to do so, the Respondent has violated Section 8(a) (5) and (1) of the Act.

#### CONCLUSIONS OF LAW

1. Respondent Albertson's Incorporated is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Food and Commercial Workers, Local No. 7 is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material, the Union has been the designated and recognized exclusive collective-bargaining representative of the Respondent's employees in an appropriate bargaining unit.

4. By failing to provide the Union with requested information relating to the demotion of unit employee Eugene Meis, the Respondent has failed and refused to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act.

<sup>5</sup>I reject Respondent's claim that the Union contractually waived the right to request the information directly from the store director. This involves a strained reading of the contract provisions, which I am not prepared to do. Moreover, any asserted "waiver" in this case was vitiated by the Union's subsequent written request which was submitted to the Boise headquarters.

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

#### THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, it shall be ordered to cease and desist therefrom and take to take certain affirmative action designed to effectuate the policies of the Act. Respondent shall be ordered to immediately provide the Union with the information requested regarding the demotion of Employee Eugene Meis on August 20, 1990.

On these findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended<sup>6</sup>

#### ORDER

The Respondent, Albertson's, Incorporated, Denver, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the United Food and Commercial Workers Union, Local No. 7, by failing to provide the Union with requested information relating to employee grievances.

(b) In any like or related manner violating Section 8(a)(5) and (1) of the Act.

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

(a) Provide the Union with the information requested relating to the demotion of employee Dan Cook on August 20, 1990.

(b) Post at its Northglenn, Colorado facility copies of the attached notice marked "Appendix."<sup>7</sup> Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

<sup>6</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>7</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

*Barbara E. Greene and Chet Blue Sky, Esqs.*, for the General Counsel.

*Laura J. Hamblin and Michael B. Schwarzkopf, Esqs.*, of Boise, Idaho, for the Respondent.

*John P. Bowen, Esq.*, of Wheat Ridge, Colorado, for the Charging Party.

## DECISION

## STATEMENT OF THE CASE

GORDON J. MYATT, Administrative Law Judge. Upon a charge filed by United Food and Commercial Workers, Local No. 7 (the Union) against Albertson's Incorporated (the Respondent), the Regional Director for Region 27 issued a complaint and notice of hearing on December 5, 1990.<sup>1</sup> The substantive allegations of the complaint allege that the Respondent violated its statutory bargaining obligation by refusing to furnish the Union, as the collective-bargaining representative, with requested information relevant to the processing of a grievance concerning the suspension and demotion of a unit employee. This conduct is alleged to be a violation of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). The Respondent filed an answer which admitted certain facts, denied others, and specifically denied committing any unfair labor practices.

A hearing was held in this matter on April 3, 1991, in Denver, Colorado. All parties were represented by counsel and afforded full opportunity to examine and cross-examine witnesses and to present material relevant on the issues. Briefs have been submitted by the parties and have been duly considered.

On the entire record in this matter, I make the following

## FINDINGS OF FACT

## I. JURISDICTION

The Respondent is a corporation which has its headquarters in Boise, Idaho. It operates a chain of supermarkets engaged in the retail sale of groceries and related products. One such supermarket (Store #1811) is located in Westminster, Colorado and is the only facility involved in this matter. In the course and conduct of its business operations, the Respondent annually purchases and receives goods, materials and services valued in excess of \$50,000 directly from suppliers located outside the State of Colorado. In addition, the Respondent annually derives gross revenues in excess of \$500,000 from its business operations. On the basis of the above, I find the Respondent is, and has been at all times material, an employer within the meaning of Section 2(6) and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

United Food and Commercial Workers, Local No. 7 is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

On March 28, unit employee Dave Hucke was demoted from the position of market manager to meatcutter at Respondent's Store #1811. Joe DeMers, a union business agent, went to the store on April 2 and spoke with the store director, Gary Hart, regarding the demotion. Hart informed DeMers that the decision was made by Respondent's division office and he had nothing to do with it. DeMers then asked to see the employee's personnel file that was kept at the

store.<sup>2</sup> Hart permitted DeMers to inspect the file, and the latter determined that the only infraction it contained was a written warning for a timecard violation in October 1989. DeMers inquired about the documentation supporting the recent demotion of Hucke and Hart replied that he did not have any. DeMers then stated he needed that information and Hart promised the union representative that he would contact the Respondent's division office regarding DeMers' request. DeMers also asked for a copy of the 1989 warning but Hart refused to provide it.

On April 5, DeMers sent a grievance report form to Respondent's Boise headquarters requesting a step 2 meeting regarding the Hucke demotion. (Jt. Exh. 2.) Karen Freckleton, a contract administrator for the Respondent, replied on April 19, indicating that a response would be made once the Respondent had completed its investigation of the grievance. (Jt. Exh. 3.)

DeMers testified that the Respondent and the Union were in contract negotiations during the months of April through June. He stated that during a number of the negotiating sessions he spoke with Michael Schwarzkopf, Respondent's director of labor relations, about the Hucke grievance. According to DeMers, Schwarzkopf usually responded by saying the Respondent was still investigating the matter. On cross-examination, DeMers acknowledged it was a "possibility" that Schwarzkopf told him during one of these discussions that Schwarzkopf had reviewed Hucke's file and there was no documentation to support the demotion.

In early October, DeMers asked the Union's retail director, John Mathewson, to contact the Respondent concerning information on the Hucke grievance.<sup>3</sup> On October 5, Mathewson sent a letter to the Respondent protesting the failure of the Respondent to reply to the Hucke grievance at the step 2 level and making a request for "a copy of any and all documentation" in Hucke's personnel file. In this letter, Mathewson noted that DeMers had examined Hucke's store file and failed to discover any documentation supporting the demotion. (G.C. Exh. 2.) On October 8, Schwarzkopf replied to Mathewson's inquiry, acknowledging that the Respondent had not responded to the Union's step 2 request. In the letter he set forth the reasons for the demotion. Schwarzkopf noted that the Union's (DeMers') earlier review of Hucke's file revealed no documentation of any "deficiency in Hucke's performance," and stated that nothing had changed since the time of the employee's demotion. (R. Exh. 1.)

Schwarzkopf was the Respondent's only witness in this proceeding. He testified he felt the Union was seeking "to prove a negative" since there was no such documentation relating to the demotion in the file. He further stated that he had a telephone conversation with Mathewson after receiving a copy of the underlying charge in this case, and learned for the first time that the Union intended to take the grievance to arbitration. According to Schwarzkopf, the union representatives could testify at the arbitration hearing that there was no documentation to support the demotion; thereby implying there was no need to supply the Union with informa-

<sup>2</sup> Individual stores maintained a personnel file for each employee currently working there. In addition, master personnel files for all employees were maintained at the Respondent's headquarters in Boise, Idaho.

<sup>3</sup> As the retail director, Mathewson supervised the work of the union business agents in Colorado and Wyoming.

<sup>1</sup> All dates refer to the year 1990 unless otherwise indicated.

tion from Huckle's personnel file.<sup>4</sup> Schwarzkopf admitted that it was not the practice of the Respondent to take disciplinary action against an employee without putting supporting documentation in the employee's personnel file.

#### Concluding Findings

In refusal-to-furnish information cases such as this, the law is well established. An employer has a statutory duty to supply requested information to a union, which is the collective-bargaining representative of the employer's employees, if the information is relevant and reasonably necessary to the union's proper performance of its duties and responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). See also *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). This obligation extends not only to information that is useful and relevant for the purpose of contract negotiations, but also encompasses information necessary to the administration of the collective-bargaining agreement. *Central Soya Co.*, 288 NLRB 1402 (1988). Thus, requested information necessary for pursuing grievances under a collective-bargaining agreement, including that necessary to decide whether to proceed with a grievance or arbitration, must be provided by an employer. *NLRB v. Acme Industrial Co.*, supra, at 437-438; *American National Can Co.*, 293 NLRB 901 (1989); *Howard University*, 290 NLRB 1006, 1007 (1988); *Eazor Express*, 271 NLRB 495 (1984). The standard for determining the relevancy of requested information is a liberal one and it is necessary only to establish "the probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial Co.*, supra at 437. See also *Leland Stanford Junior University*, 262 NLRB 136 (1982).

It is more than evident that the Union here was seeking information from Huckle's personnel file to determine whether and how to proceed on the grievance of the employee's demotion.

When DeMers reviewed Huckle's personnel file in the store and discovered there was nothing to support the demotion, his request for a copy of the 1989 written warning was refused by Hart. He also made known at that time that the Union wanted to see any documentation relating to the demotion. Although DeMers renewed the request for the demotion documentation in subsequent discussions with Schwarzkopf and was advised that none existed, the Union neither abandoned nor limited the scope of its request for information from the employee's personnel file. Mathewson's letter of October 5, seeking "any and all documentation" contained in Huckle's personnel file is graphic evidence of this fact. Thus, even if the prior requests for information were construed to be limited solely to the demotion documentation, which the Respondent asserts did not exist, Mathewson's letter expanded the request to encompass all documentation in Huckle's personnel file.<sup>5</sup>

<sup>4</sup>At the time of the instant hearing the parties were in the process of selecting an arbitrator from a panel provided by the Federal Mediation and Conciliation Service.

<sup>5</sup>The fact that the Respondent maintained two sets of personnel files for employees (one in the store and one at its headquarters) is of no consequence here in assessing whether the Respondent has adequately met its statutory obligation to provide the information

There is no contention here that the material sought by the Union was not relevant to the discharge of its duties as the collective-bargaining representative. There is only the contention that the demotion documentation did not exist; even though Schwarzkopf admitted the Respondent normally did not take disciplinary action against employees without documenting the reason for it in their files. Thus, the requested information becomes all the more relevant to the Union in pursuing the grievance, through possible arbitration, on behalf of the demoted employee.

Nor does it rest with the Respondent to determine how the Union should utilize the requested information in handling the grievance or presenting its position at arbitration. The view adopted by Schwarzkopf that the union representatives could testify there was no documentation on the demotion in the file at the time the demotion occurred is a gratuitous arrogation of the responsibilities which lie solely with the Union, and in no way relieves the Respondent of its statutory obligation to provide the requested information. Cf. *Ohio Power Co.*, 216 NLRB 987 (1975); *Los Angeles Chapter, Sheet Metal Contractors*, 246 NLRB 886 (1979).

In these circumstances, I find the Respondent failed to meet its statutory obligation to provide the Union with the documentation it had in its possession at the time of the Union's request. By so doing, the Respondent has refused to bargain in good faith with the Union, as the representative of the unit employees, and has violated Section 8(a)(5) and (1) of the Act.

#### CONCLUSIONS OF LAW

1. Respondent, Albertson's, Incorporated, is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Food and Commercial Workers, Local No. 7 is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material, the Union has been the designated and recognized exclusive collective-bargaining representative of the Respondent's employees in an appropriate bargaining unit.

4. By failing to provide the Union with requested information from the personnel file of demoted unit employee David Huckle, the Respondent has failed and refused to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act.

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

#### THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, it shall be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Respondent shall be ordered to immediately provide the Union with the information requested from the personnel file of demoted employee David Huckle.

sought by the Union. The critical issue is whether the information existed and the Respondent complied with the request.

On the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the Act, I issue the following recommended<sup>6</sup>

#### ORDER

The Respondent, Albertson's, Incorporated, Denver, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the United Food and Commercial Workers Union, Local No. 7, by failing to provide the Union with requested information relating to employee grievances.

(b) In any like or related manner violating Section 8(a)(5) and (1) of the Act.

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

(a) Provide the Union with the information requested from the personnel file of demoted employee David Hucke.

(b) Post at its Westminster, Colorado facility copies of the attached notice marked "Appendix." Copies of the Notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

<sup>6</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>7</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

*Barbara E. Greene and Chet Blue Sky, Esqs.*, for the General Counsel

*Laura J. Hamblin and Michael B. Schwarzkopf, Esqs.*, of Boise, Idaho, for the Respondent.

*John P. Bowen, Esq.*, of Wheat Ridge, Colorado, for the Charging Party.

#### DECISION

##### STATEMENT OF THE CASE

GORDON J. MYATT, Administrative Law Judge. Upon a charge filed by United Food and Commercial Workers, Local No. 7 (the Union) against Albertson's Incorporated (the Respondent), the Regional Director for Region 27 issued a complaint and notice of hearing on December 5, 1990.<sup>1</sup> The substantive allegations of the complaint allege that the Respondent violated its statutory bargaining obligation by refus-

<sup>1</sup>All dates refer to the year 1990 unless otherwise indicated.

ing to furnish the Union, as the collective-bargaining representative, with requested information relevant and necessary to the processing of grievances concerning pension plan contributions for unit employees in various geographical locations in Colorado and Wyoming. The contributions in dispute were made pursuant to provisions contained in existing collective-bargaining agreements or in agreements for which successor agreements were in the process of being negotiated.<sup>2</sup> This conduct is alleged to be a violation of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). The Respondent filed an answer which admitted certain facts, denied others, and specifically denied committing any unfair labor practices.

A hearing was held in this matter on April 3, 1991, in Denver, Colorado. All parties were represented by counsel and afforded full opportunity to examine and cross-examine witnesses and to present material and relevant on the issues. Briefs have been submitted by the parties and have been duly considered.

On the entire record in this matter, I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION

The Respondent is a corporation which has its headquarters in Boise, Idaho. It operates a chain of supermarkets engaged in the retail sales of groceries and related products. The Respondent's supermarkets covered by collective-bargaining agreements with the Union in Denver, Boulder, Colorado Springs, Security, Greeley, Longmont, and Grand Junction, Colorado and Casper, Wyoming, are the facilities involved in this matter. In the course and conduct of its business operations, the Respondent annually purchases and receives goods, materials and services valued in excess of \$50,000 directly from suppliers located outside the State of Colorado. In addition, the Respondent annually derives gross revenues in excess of \$500,000 from its business operations. On the basis of the above, I find the Respondent is, and has been at all times material, an employer within the meaning of Section 2(6) and (7) of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

United Food and Commercial Workers, Local No. 7 is a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE ALLEGED UNFAIR LABOR PRACTICES

In each of the collective-bargaining agreements between the Respondent and the Union covering unit employees in the various locations in Colorado and Wyoming, there were provisions for employer contributions to the Rocky Mountain UFCW Unions and Employers Trust Pension Plan (Pension

<sup>2</sup>The unit locations covered by existing agreements were Denver, Boulder, Colorado Springs, Security, Greeley, and Longmont, Colorado. In addition, there was an agreement in effect covering a unit of employees in Casper, Wyoming. A successor agreement was in the process of being negotiated by the Respondent and the Union for unit employees in Grand Junction, Colorado. Each of the existing agreements was a successor to prior agreements containing provisions for pension plan contributions for unit employees. See Jt. Exhs. 1-13, 19, and the oral stipulation of the parties on the record.

Plan).<sup>3</sup> The Pension Plan was jointly administered by the Union and Employers who were parties to agreements with the Union. An equal number of union and employer representatives constituted the board of trustees setting policy, and an independent firm (Sedgewick James of Colorado, Inc.) provided the management for the Pension Plan.

The unrefuted evidence indicates the relevant pension plan provisions in the collective-bargaining agreements at issue here provided for a set amount (45 cents) per work hour each month for the unit employees as the signatory employer's contribution to the Pension Plan. These same provisions then permitted the employer to make substantially lower payments per work hour (5 cents) to the Pension Plan for a specified number of months, after which the payments reverted to the original amount.<sup>4</sup>

On January 8, Maureen Beighey, employed by Sedgewick as the assistant manager of pension services for the Pension Plan, wrote to the Respondent concerning alleged deficiencies in the Respondent's contributions under the Casper, Wyoming agreement for work hours in 1988 and 1989. On behalf of the Pension Plan, Beighey asserted the Respondent made contributions at the rate of 20 cents rather than 45 cents per work hour, which the Pension Plan contended was required by the agreement. The amount of the deficiency claimed was \$53,736.52. (Jt. Exh. 14.) Again on May 5, Beighey notified the Respondent, in writing, that its contributions for March 1990 work hours under the Colorado agreements were deficient. The total amount of the deficiency claimed was \$66,265.42. (Jt. Exh. 15.) Next, on July 12, Beighey wrote to the Respondent asserting deficiencies in the contributions for the April and May work hours under the Colorado agreements. (Jt. Exh. 16.) Finally, on September 6, the administrative officer of the Pension Plan notified the Respondent of a deficiency in the amount of \$1,714.60 in the Respondent's contribution for the June work hours under the Grand Junction agreement. (Jt. Exh. 17.)

In addition to the written notification of deficiencies sent directly to the Respondent, it is undisputed that Beighey notified the Trustees at their meetings, attended by representative of both the Respondent and the Union, of the Respondent's deficiencies in its pension plan contributions. Victor Schaff, executive assistant to the president of the Union and a trustee of the Pension Plan, informed John Bowen, the Union's attorney, of the matter. Bowen in turn spoke with Michael Schwarzkopf, Respondent's director of labor relations, and held a step 1 grievance meeting on the question of the delinquencies. In response to Bowen's claim that the Respondent failed to remit the proper contributions, Schwarzkopf took the position that the Respondent was not delinquent and was making its contributions in accordance with the terms of the respective agreements.

On October 4 and 5, Bowen filed seven grievances on behalf of the Union requesting a step 2 meeting—one under

each of the collective-bargaining agreements. (See G.C. Exh. 1(c), Exhibit A.) Among other things, the grievances contained the following request for information:

- (1) All documents showing actual contributions made for the period involved.
- (2) All documents relied upon by the company in determining the contribution made for the period.

Karen Freckleton, a contract administrator for the Respondent, replied in writing on October 18 that the grievances were being investigated and a response would forthcoming upon its completion. (Jt. Exh. 18.) On October 22, Schaff wrote the Respondent about the grievances and renewed the Union's request for the information set forth in the written grievances. (G.C. Exh. 3.)

Schwarzkopf testified as the Respondent's only witness. According to Schwarzkopf, the Respondent did not supply the information to the Union because the Union already had in its possession all of the information relied upon by the Respondent in making the contributions under the various agreements. The following excerpts of the transcript record, setting forth portions of Schaff's cross-examination by Schwarzkopf, graphically reveal the basis for the Union's claim for the requested information and the Respondent's contention that the Union had the information in its possession:

Q. (By Mr. Schwarzkopf): It's true, Vic, isn't it that these grievances that are part of Joint—General Counsel's Exhibit 1(c) are grievances that go solely to the issue in the claim that Albertson's paid at an improper contribution per hour rate?

A. Yes, that's right.

Q. Okay. And you spoke generally under questioning by the General Counsel, by Mr. Blue Sky, that the reason you were requesting this information was to be certain that the contributions were properly made, do you recall saying that?

A. Yes, I believe that's correct.

Q. Okay. And granting that that's so and granting that it is so that the only disagreement as represented by these seven grievances that are General Counsel's 1(c) exhibits what in the world could any of the additional information you've requested have to do with processing the grievance?

A. My thinking on that is that the company has not responded to the grievance to speak of, they have not furnished any evidence that they intend to comply with the request or the remedy requested. I take that to indicate that the indication that they are denying the grievance in its entirety and in order to fully investigate it we requested the documents that you actually used in order to determine these contributions and we haven't received that. I think that's definitely a part of the grievance. You did not comply with the remedy requested so it's still outstanding and in order for us to really determine whether there is a delinquency or not we need to have those records to make that determination, it's that simple. [Tr. 41–42.]

<sup>3</sup>The pension plan provisions for the Colorado units were contained in art. 41 of each of the agreements with the exception of Grand Junction, which was contained in art. 29 of that agreement. The relevant section of the Casper, Wyoming agreement was art. 19.

<sup>4</sup>Generally the period of the reduced rate was 34 months, depending upon when the particular agreement was negotiated. In addition, the Casper, Wyoming agreement apparently required a period when the work hours contribution was increased to 20 cents per hour before reverting to the 45-cent-per-hour rate.

### Concluding Findings

As noted, the Respondent contends the Union possessed all of the information the Respondent relied on in determining the rate to be applied to the work-hours contributions to the Pension Plan under the various agreements. Presumably this implies that the Union had full knowledge, through the Pension Plan, of the number of work hours reported under each agreement and, by virtue of being a party to the agreements, copies of the provisions setting forth the rate to be applied to the monthly work hours. In addition, the Respondent argues for the first time in its brief that the information requested was neither necessary nor relevant to processing the grievances since the Union "waived" the grievances by failing to timely file them pursuant to the terms of the respective collective-bargaining agreements.

Settled law has established that an employer has a statutory duty to supply requested information to the collective-bargaining representative of the employer's employees, if the information is relevant and reasonably necessary to the union's proper performance of its duties and responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). See also *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). This obligation extends not only to information that is useful and relevant for the purpose of contract negotiations, but also encompasses information necessary to the administration of the collective-bargaining agreement. *Central Soya Co.*, 288 NLRB 1402 (1988). Thus, requested information necessary for determining whether there has been compliance with the terms of a collective-bargaining agreement, including that necessary to decide whether to proceed with a grievance or arbitration on a perceived breach of the agreement, must be provided by an employer. *NLRB v. Acme Industrial Co.*, supra, at 437-438; *American National Can Co.*, 293 NLRB 901 (1989); *Howard University*, 290 NLRB 1006, 1007 (1988); *Eazor Express*, 271 NLRB 495 (1984). The standard for determining the relevancy of requested information is a liberal one and it is necessary only to establish "the probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial Co.*, supra at 437. See also *Leland Stanford Junior University*, 262 NLRB 136 (1982).

There can be no real question here as to whether the information sought by the Union was relevant and necessary to its function of policing the collective-bargaining agreement. Clearly the requested information would assist the Union in determining whether the amounts of the delinquencies asserted by the Pension Plan were accurate. It would also enable the Union to determine whether the manner by which the Respondent calculated the work-hours contributions was in violation of the terms of the collective-bargaining agreements. Thus, it is evident that the requested information was relevant and reasonably necessary "to the Union in carrying out its statutory duties and responsibilities." *Rockwell-Standard Corp.*, 166 NLRB 124 (1967), enf. 410 F.2d 953 (6th Cir. 1965). Indeed, it is apparent from the position adopted by the Respondent at the hearing that the Respondent did not seriously contest the relevancy of the requested information. Rather, the Respondent adamantly contended that the Union already had the all the information in its possession to pursue the grievances on the claimed delinquencies.

Turning to this contention, I find it places too narrow a scope on the Union's statutory right to request and be provided with relevant information necessary to policing compliance with its collective-bargaining agreements. Cf. *W-L Molding Co.*, 272 NLRB 1239 (1984). There is no claim that the information did not exist or that its production would be burdensome. Rather, the Respondent, in effect, is asserting for itself a right to determine what information is necessary for the Union to ascertain whether there has been a breach of the terms of the collective-bargaining agreements. This the Respondent can not lawfully do. The mere fact that the Union had the delinquency statements from the Pension Plan and the bargaining agreements in its possession does not relieve the Respondent of its statutory duty to provide the additional relevant information requested by the Union. *New Jersey Bell Telephone Co.*, 289 NLRB 318 (1988); *Borden, Inc.*, 235 NLRB 982 (1978); *Kroger Co.*, 226 NLRB 512 (1976).

Finally, the Respondent's contention that the Union waived its right to the requested information, because the grievances were not timely filed, is without merit. As noted, this defence was never asserted by the Respondent until the filing of its brief in this matter. Thus the Respondent cannot now be heard to claim that a procedural defect invalidates the Union's statutory right to the requested information. More important, the question of whether the grievances were procedurally defective goes to the ultimate issue of arbitrability and not to the issue of the Respondent's statutory obligation to provide the information. Cf. *Proctor & Gamble Mfg.*, 237 NLRB 747 (1978); *Safeway Stores*, 236 NLRB 1126 (1978).

On the basis of the above, I find and conclude that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with the requested information relating to the asserted delinquencies in the Respondent's work-hours contributions to the pension plan.

### CONCLUSIONS OF LAW

1. Respondent Albertson's, Incorporated is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
2. United Food and Commercial Workers, Local No. 7 is a labor organization within the meaning of Section 2(5) of the Act.
3. At all times material, the Union has been the designated and recognized exclusive collective-bargaining representative of the Respondent's employees in the appropriate bargaining units set forth in the collective-bargaining agreements at issue here.
4. By failing to provide the Union with requested information relating to work-hours contributions to the Pension Plan for unit employees covered by collective-bargaining agreements in various geographical areas, the Respondent has failed and refused to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act.
5. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

### THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, it shall be ordered to cease and desist therefrom and take to take certain affirmative action designed to effec-

tuate the policies of the Act. Respondent shall be ordered to immediately provide the Union with the requested information relating to the work-hours contributions to the Rocky Mountain UFCW Unions and Employers Trust Plan (Pension Plan) for unit employees covered by collective-bargaining agreements in the following geographical areas:

1. Denver, Boulder, Colorado Springs, Grand Junction, Greeley, Security and Longmont, Colorado.
2. Casper, Wyoming

On these findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended<sup>5</sup>

#### ORDER

The Respondent, Albertson's, Incorporated, Denver, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the United Food and Commercial Workers Union, Local No. 7, by failing to provide the Union with requested information relating to the work-hours contributions to the Rocky Mountain UFCW Unions and Employers Trust Plan (Pension Plan) for unit employees covered by collective-bargaining agreements in the following geographical areas:

1. Denver, Boulder, Colorado Springs, Grand Junction, Greeley, Security and Longmont, Colorado.

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

2. Casper, Wyoming

(b) In any like or related manner violating Section 8(a)(5) and (1) of the Act.

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

(a) Immediately provide the Union with the requested information relating to the work-hours contributions to the Rocky Mountain UFCW Unions and Employers Trust Plan (Pension Plan) for unit employees covered by collective-bargaining agreements in the following geographical areas:

1. Denver, Boulder, Colorado Springs, Grand Junction, Greeley, Security and Longmont, Colorado.
2. Casper, Wyoming

(b) Post at the above Colorado and Casper, Wyoming facilities copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

<sup>6</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."