

**Olin Corporation and International Brotherhood of Electrical Workers, AFL-CIO & CLC, Local Union 649 and United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, Local #555, AFL-CIO.** Cases 14-CA-22280 and 14-CA-22281

September 30, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On July 13, 1993, Administrative Law Judge Claude R. Wolfe issued the attached decision. The General Counsel and the Respondent filed exceptions and supporting briefs and the Respondent filed a reply brief.

The National Labor Relations Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions<sup>1</sup> and to adopt the recommended Order.

ORDER

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

<sup>1</sup>We note that the Respondent did, in fact, offer to provide the Group Universal Life Plan to the Charging Unions on the same terms that it was offered to, and accepted by, the other unions. Thus, we agree with the judge that the other unions were not offered greater overall economic packages.

*Kathy J. Talbott-Schehl and Robert S. Siegel, Esqs.*, for the General Counsel.

*Diana R. Francis, Esq.*, for Respondent Olin Corporation.

*Barry J. Levine, Esq.*, for both Charging Party Unions.

DECISION

STATEMENT OF THE CASE

CLAUDE R. WOLFE, Administrative Law Judge. This consolidated proceeding was litigated before me at St. Louis, Missouri, on May 11, 1993, pursuant to charges filed by the Charging Unions and served on Respondent on January 19, 1993, and a consolidated complaint issued on March 1, 1993, alleging Olin Corporation (Respondent) has violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). Respondent denies it has violated the Act as alleged.

On the entire record, and after considering the demeanor of the witnesses and the posttrial briefs of the parties, I make the following

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

The complaint alleges, Respondent admits, and I find Respondent is a corporation with an office and place of business in East Alton, Illinois, manufactures brass and ammuni-

tion products and, during the 12-month period ending January 31, 1993, in the course of conducting this business, sold and shipped products, goods, and materials valued in excess of \$50,000 directly from its East Alton, Illinois location to points located outside the State of Illinois. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

At all times material to this proceeding the Charging Party Unions have been and continue to be labor organizations within the meaning of Section 2(5) of the Act.

III. SUPERVISORS AND AGENTS

The following individuals at all times material to this proceeding held the positions set forth after their respective names and have been supervisors and agents of Respondent within the meaning of Section 2(11) and (13) of the Act.

Timothy Sutter—Manager of Employee Benefits  
Edward G. Warden—Manager of Labor Relations & Services  
Paul Fultz—Director of Industrial Relations  
Randy Timmerman—Associate Director of Industrial Relations

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Relevant Facts*

Both Charging Party Unions (the IBEW and the Pipefitters) have been the designated and recognized collective-bargaining representatives of units of Respondent's employees for many years<sup>1</sup> and have long had collective-bargaining agreements with Respondent covering those employees. The last such agreements between Respondent and these two labor organizations became effective on their terms on December 7, 1992, and expire on December 3, 1995. These current agreements were reached after several bargaining sessions in late 1992. The Unions agreed on or about December 4, 1992, to Respondent's final offer. The Pipefitters and IBEW agreements are substantially identical with some small variation not relevant to this proceeding. Respondent presented the two Unions with typed copies of its final offer signed by Respondent on December 5, 1992. In addition to the items ultimately included in the collective-bargaining

<sup>1</sup>The IBEW unit is stipulated to be:

All electricians first class, linemen first class, electrician group leaders, linemen group leaders, journeymen electrical-electronic technicians and trainees, journeymen, electrical-electronic technicians, group leaders, and electrician apprentices employed at the Respondent's East Alton, Illinois facility, EXCLUDING all employees in the ZONE 2 Maintenance Department, all office clerical and professional employees, guards, supervisors as defined by the Act, and all other employees.

The Pipefitters unit is alleged and admitted to be:

All pipefitters first class, pipecoverers (insulators) first class, pipefitter apprentices, pipecoverer trainees, and pipefitter group leaders employed at the Respondent's East Alton, Illinois facility, EXCLUDING all office clerical and professional employees, guards, supervisors as defined in the Act, all employees employed in the powder mill maintenance department, and all other employees.

agreements ratified by the Unions on December 6, the typed final offer received by each Union prior to the ratification refers first to the term of the contracts, wages, fringe benefits, and numerous other items which later appeared in the printed agreement. In addition, each "final offer" concludes as follows:

Other Understandings

1. The Company is to print the contract in booklet form and distribute them as quickly as possible.

2. The Company assures the Union that no greater overall economic terms will be offered to any other union at this location during these negotiations. It guarantees that, if such should occur, then such terms would automatically and immediately be made available to your Union.

X X X X

The above constitutes Olin's COMPLETE AND FINAL OFFER for the terms of a new Agreement.

The final offers as written, including the "Other Understandings" language, were presented to the employees for ratification. Although the "Other Understandings" were part of the final offer they do not appear in the printed contracts. Nevertheless they were part of the document considered by the employees at the ratification meeting. The parties stipulated this "me too" clause has been included in all of Respondent's final offers since 1980.

In negotiations with the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM), Respondent agreed to a Group Universal Life Plan (GULP) which permitted employees to secure life insurance for their spouses and children which had not previously been available. The IAM also proposed a change in the start of workweek from 8 a.m. Monday to midnight Sunday. Respondent agreed to this proposal. This posed a problem for Respondent because the rescheduling of the workweek for the IAM, who represents about 85 percent of Respondent's approximately 3400 hourly employees at East Alton, meant that there would be a problem with different schedules for hourly employees represented by other unions. Accordingly, Respondent then proposed the IAM negotiated schedule change to the International Chemical Workers (ICW) and the Western Employees' Trades Council, AFL-CIO (Trades Council) along with the GULP program. ICW and Trades Council agreed and both received GULP. The Charging Unions were not offered GULP during their negotiations, and I am persuaded they were not aware it existed until the weekend on which they ratified their respective agreements with Respondent. At that time they became aware it had been given to other units.

Edward Warden, manager of labor relations and services, was authorized by his superior, Director of Industrial Relations Paul Fultz, on December 5 to offer GULP to the Charging Party Unions in exchange for agreement on the workweek change negotiated by the other unions. Warden communicated this offer to the Charging Unions who (1) rejected it as an untimely offer after the agreed cutoff date for contract proposals, and (2) took the position they were entitled to GULP under the "me too" provision quoted. When the Charging Party Unions stated an intent to grieve the matter, they were advised it was not grievable and GULP was

a noneconomic item. This plan is noncontributory from the employer who merely deducts premiums from the wages of those employees voluntarily electing for GULP coverage and then submits those premiums to the agency administering GULP at no cost to the Respondent. The only cost to Respondent was \$4,867.20 initial startup costs for programming.

B. Discussion and Conclusions

The General Counsel argues (1) that the "me too" provision in Respondent's final offer was ratified and accepted by the membership of the Charging Party Unions, (2) the clause is unambiguous and binding on Respondent, (3) GULP is an economic item covered by said clause, (4) Respondent violated the Act by not unconditionally granting GULP participation to the units represented by the Charging Unions, (5) the postnegotiation offering of GULP in exchange for the change in the start of the workweek did not satisfy Respondent's bargaining obligation, and (6) the conditioning of GULP on the acceptance of the workweek without prior notice and opportunity to bargain constitutes an unlawful mid-term modification of the "me too" clause of the final offer.

Respondent's position is that (1) GULP is a noneconomic item not covered by the "me too" clause, (2) the provision refers to "greater overall economic terms" rather than item-by-item equality among contracts, (3) any ambiguity in the clause was clarified before ratification, (4) Respondent discharged any obligation it may have had under the "me too" provision by offering GULP to the Charging Party Unions on substantially the same terms it had offered to the unions which had received GULP, and (5) an order to require Respondent to provide the Charging Party Unions with GULP gratis would exceed the Board's remedial powers, citing *H. K. Porter Co. v. NLRB*, 397 U.S. 99 (1970).

Respondent has added the clause in question to each of its final offers given to unions during negotiations since 1980 and gave the clause a letter and number designation in sequence with the lettering and numbering of the preceding bargained on items set forth in the final offer. The "me too" clause was not a bargained for item. Respondent inserted it for its own purposes (i.e., (1) to assure a late negotiating union secures no greater overall economic package than one negotiating earlier and (2) to forestall unemployment compensation for sympathy strikers) and received nothing from the Unions in exchange therefor so far as the record shows. Notwithstanding the fact the "me too" clause was in effect an unconditional grant, Respondent by adding it to its final offers with appropriate sequential numbering incorporated it in those offers which were forwarded to the unions for ratification. The resulting collective-bargaining agreements when reduced to writing do not contain the clause, but neither party contends the "me too" provision is not in effect. Their arguments concerning its applicability illustrates they agree the clause itself is enforceable in appropriate circumstances, and I conclude it is. The question remaining is whether it is applicable in the circumstances before me. The answer to this question depends on whether GULP is an economic item and, if so, does the wording of the clause require Respondent to grant GULP coverage to its employees represented by the Charging Party Unions without any consideration received therefor or bargaining thereon. I am persuaded, for the following reasons, that GULP is an economic item but that the

clause does not require Respondent to give it gratis to the units represented by the Charging Party Unions.

GULP is an economic item. Respondent plainly considers it an item of value of employees which it can use as a bargaining tool in its efforts to secure a workweek change from the Charging Party Unions. Moreover, the Board has concluded, with court approval, that all remuneration for services performed is encompassed by the term “wages” as used in the Act.<sup>2</sup> A plan such as GULP which is only available to employees is both a condition of employment and a type of remuneration proffered as an “emolument of value” accruing to employees out of their employment relationship and thus cognizable under the Act as “wages,”<sup>3</sup> an obviously economic item.<sup>4</sup> This view was shared by the United States Circuit Court of Appeals for the Third Circuit when it held more than 50 years ago that insurance rights in substance are part of a discriminatee’s lost wages.<sup>5</sup>

The “me too” clause is not ambiguous. It clearly sets forth a guarantee that if it offers another union “greater overall economic terms” than those offered the union to whom the final offer containing the clause is directed, then those terms will be made available to the union receiving the final offer. It does not, however, guarantee that every single economic item proffered one union that has not been offered another must be offered gratis to the union which had not been given the offer. The General Counsel has made no showing that by negotiating GULP with other unions Respondent has offered or granted them “greater overall economic terms” than it offered or negotiated with the Charging Party Unions, nor does a review of the entire record establish that is the case. Moreover, Respondent proffered uncontradicted testimony by its director of industrial rela-

tions, Paul Fultz, that the Charging Party Unions were offered economic packages during negotiations exceeding in overall value those offered other unions.

On the record as a whole, I must conclude that the General Counsel has not carried its burden of showing the proffer of GULP to other unions along with other economic terms constituted an offer of “greater overall economic terms” to them than those offered to the Charging Party Unions. Accordingly, I find the General Counsel has not made out a prima facie case that, as the complaint alleges, Respondent violated Section 8(a)(5) and (1) of the Act by offering other unions greater economic terms than those offered the Charging Party Unions, by failing to comply with the terms of its final offer, nor by refusing to grant GULP gratis to its employees represented by the Charging Party Unions. With respect to General Counsel’s contention that Respondent’s postbargaining efforts to negotiate GULP coverage in exchange for workweek changes constituted an unlawful mid-term modification of the “me too” clause in the final offer, I have found that clause has not been shown to be applicable to the GULP issue. I further find there is no basis at all for a conclusion the “me too” clause was unlawfully modified, assuming for the purposes of discussion that the clause was a contractual agreement subject to the strictures of Section 8(d) of the Act rather than merely a unilateral promise contingent on a future condition and bereft of any consideration for said promise. With respect to the postbargaining efforts to bargain for the changed workweek in exchange for GULP and other considerations, there is no reason whatsoever to find these efforts were in bad faith or otherwise inappropriate.

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

#### ORDER

The complaint is dismissed.

<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>2</sup>*Inland Steel Co.*, 77 NLRB 1, 4 (1948), *enfd.* 170 F.2d 247 (7th Cir. 1948), *cert. denied* 336 U.S. 960 (1949); *Central Illinois Public Service Co.*, 139 NLRB 1407, 1415 (1962); *Postal Service*, 302 NLRB 767, 776 (1991).

<sup>3</sup>*Central Illinois Public Service*, *supra*.

<sup>4</sup>Contrary to Respondent, the fact that the discussion of what constituted wages arose in these cases because a question of what were mandatory subjects of bargaining was at issue does not diminish the conclusions of the Board and the courts concerning the scope of the term “wages” as used in the Act.

<sup>5</sup>*NLRB v. Stackpole Carbon Co.*, 128 F.2d 188, 191 (3d Cir. 1942).