

The Shell Company (Puerto Rico) Limited and International Association of Machinists and Aerospace Workers, AFL-CIO. Cases 24-CA-6335, 24-CA-6364, and 24-CA-6414

November 23, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On March 2, 1993, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions, and the General Counsel filed an answering brief.

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

The judge found, inter alia, that the Respondent violated Section 8(a)(5) and (1) by failing to furnish to the Union requested financial information. We agree with the judge that the Respondent's economic claims with respect to its Airport operation triggered a duty to disclose relevant financial information under *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

The credited evidence shows that in preparation for bargaining on a successor contract the Respondent effectively pleaded that it was presently unable to pay.² The Respondent expressly told Union Negotiator Juan Maldonado that economic conditions had affected them "very badly, very seriously," that present circumstances at its Airport operation were "bad" and a matter of "survival" and, that "we are telling you all of this because we need your help, your assistance, because of this condition." In portraying to the Union its present circumstances at the Airport, the Respondent expressly referred to steps it already had taken to address the threats to its survival, i.e., a hiring freeze of all management and employee positions and an early

¹The 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), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge inadvertently stated that a May 17, 1991 letter (Jt. Exh. 30) was from Vazquez to Maldonado. The letter was from Maldonado to Vazquez.

²The complaint does not allege that the Respondent engaged in surface bargaining. In adopting the judge's 8(a)(5) and (1) findings, we find it unnecessary to reach or consider the question whether the Respondent's bargaining posture was, as the judge found, "aimed at inducing or forcing impasse so its contract goals could be implemented as formulated." For the same reason, we do not rely on the judge's finding that the Respondent's bargaining posture was predicated on its reading of Board cases rather than one designed to gain union cooperation in bargaining.

retirement plan, and stated that it was losing business, that it had lost an important customer, and that it faced serious regulatory and cost problems. Indeed, in a letter to employees dated March 8, 1991,³ the Respondent admitted that it had informed Maldonado that the situation at the Airport was "critical" and a matter of "survival." Although the Respondent referred to economic disadvantages it had in relation to other competitors, Maldonado's credited testimony reveals that the essential core of the Respondent's bargaining posture as a whole, as expressed to the Union, was grounded in assertions amounting to a claim that it could not economically afford the most recent contract at its Airport operation, that it was faced with a present threat to that operation's survival, and that, therefore, it was at present unable to pay those terms in the successor contract.⁴

In view of Maldonado's credited testimony, we agree with the judge that the Union was entitled to verify the Respondent's dire claims with respect to the survival of its Airport operation. The Board's decision in *Nielsen Lithographing Co.*, 305 NLRB 697 (1991), petition denied sub nom. *Graphic Communications Local 508 v. NLRB*, 977 F.2d 1168 (7th Cir. 1992), is not to the contrary. In *Nielsen*, unlike here, the employer repeatedly stated that it was still making a profit; the thrust of its economic assertions pertained to its future economic competitiveness.⁵ Similarly, in *Burruss Transfer*, 307 NLRB 226 (1992), the employer's claims were grounded in its claims of competitive disadvantage, and it did not assert that it needed economic concessions as a matter of survival. Further, in *Beverly Enterprises*, 310 NLRB 222 (1993), the employer expressly stated that it was not going out of business and essentially indicated that it simply was

³The judge erroneously stated that this letter was dated March 22, 1991.

⁴We also note that the Respondent, through its human resources manager, Ana T. Battle, asked Union Negotiator Maldonado on January 19, 1991, to release the Respondent from its contractual commitment to pay overtime to union stewards attending an arbitration proceeding because "as we explained to you [previously] . . . we cannot pay all of this amount of money to the stewards." As the judge found, the Respondent thereby gave to the Union yet another indication that the Respondent, consistent with its previous economic assertions, was claiming that it could not meet its present economic obligations.

The judge inadvertently attributed the January 19, 1991 remarks to the Respondent's attorney, Tristan Reyes-Gilestra, rather than to Battle. In adopting the judge's crediting of Maldonado, we do not rely on Reyes-Gilestra's failure to explain the basis for the Respondent's request.

⁵Chairman Stephens notes that he dissented in *Nielsen* because he viewed the employer's claims of economic hardship there as sufficient to trigger a duty to furnish relevant economic information under *Truitt*. He views the Respondent's claims here as also sufficient to trigger a *Truitt* obligation. Because he would find that a *Truitt* obligation arises in both cases, he finds it unnecessary to consider whether *Nielsen* and the instant case are factually distinguishable under the majority view in *Nielsen*.

not as profitable as it once had been.⁶ And in *Concrete Pipe & Products Corp.*, 305 NLRB 152 (1991), the employer's claims were wholly derived from its stated desire to be competitive and its claims as to "survival" did not refer to any imminent risk or immediate economic peril.

As the Board majority noted in *Nielsen*, supra at 700.

Depending on the facts and circumstances of a particular case, the evidence may establish that the employer is asserting that the economic problems have led to an inability to pay or will do so during the life of the contract being negotiated.

Because of the immediacy of the Respondent's claims here concerning the Airport's present survival and "critical" condition, we find that the facts and circumstances warrant a finding that the Respondent pleaded a present inability to pay.⁷

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, The Shell Company (Puerto Rico) Limited, San Juan, Puerto Rico, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

⁶Chairman Stephens notes that he did not participate in *Burruss Transfer* and *Beverly Enterprises* and he expresses no view as to whether those cases were correctly decided or whether they are factually distinguishable from the instant case.

⁷The Respondent notes that during negotiations it expressly disclaimed that it was pleading an inability to pay. Such a disclaimer, however, is not dispositive. See *Continental Winding Co.*, 305 NLRB 122, 133, 141 (1991).

We agree with the judge that the Respondent violated Sec. 8(a)(5) and (1) by failing to furnish the comparative survey that it had prepared. We note that *A.M.F. Bowling Co.*, 303 NLRB 167 (1991), cited by the judge, was denied enforcement on the basis that the union did not actually ask the employer for the document at issue. 977 F.2d 141, 146-147 (4th Cir. 1992). That is not the case here.

Antonio F. Santos, Esq., for the General Counsel.
Tristan Reyes-Gilestra, Esq., of San Juan, Puerto Rico, for the Respondent.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. On May 22, 1991,¹ International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) filed a charge against The Shell Company (Puerto Rico) Limited (Respondent, the Company, Shell, or the Employer) in Case 24-CA-6335. The Union filed another charge against Respondent in Case 24-CA-6364 on July 11, and filed an amended charge in this case on August 30. The Union filed yet another

¹All dates are in 1991 unless otherwise noted.

charge against Respondent in Case 24-CA-6414 on October 8, and filed an amended charge in that case on November 19. A second amended charge in this case was filed on December 17. Based on all but the last amended charge, the Regional Director for Region 24 issued an order consolidating cases, second consolidated amended complaint and notice of hearing (the complaint) on November 29. The complaint alleges that Respondent has violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). Respondent filed a timely answer to the complaint wherein, inter alia, it admitted the jurisdictional allegations of the complaint.

Hearing was held in these cases in Hato Rey, Puerto Rico, on August 10 and 11, 1992. The record was held open until November 4, 1992, to allow the parties sufficient time to agree on proper translation from Spanish into English of the voluminous written documentation in the record. Briefs were received from the parties on or about January 31, 1993. Based on the entire record, including my observation of the witnesses, and after consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

It is admitted, and I find, that at all times material to this proceeding, the Shell Company (Puerto Rico) Limited is a corporation, with an office and place of business at Pueblo Viejo, Guaynabo, and at Luis Munoz Marin International Airport, Carolina, Puerto Rico, wherein it has been engaged in the nonretail sale of petroleum bulk and packaged products. As noted the jurisdictional allegations of the complaint were admitted and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE INVOLVED LABOR ORGANIZATION

It is admitted, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that Respondent has violated Section 8(a)(1) and (5) of the Act by failing or refusing to supply the Union with necessary and relevant information on various dates beginning March 1. With respect to the specific information sought, the complaint alleges that:

1. (a) Since on or about February 25, the Union, by letter, has requested Respondent to furnish it with, inter alia, the following information:

(i) Operating and financial statements of the Company for the past three (3) years.

(ii) Copies of any studies and surveys, whether by outside consultants or within the Company which form the basis for the position that by not getting a higher margin of profit it is necessary for the Company's survival to cut bargaining unit wages, benefits and to reduce terms and conditions of employment.

(b) Since on or about March 8, the Union, by letter, has requested Respondent to furnish the Union with, inter alia, the following information:

(i) Most recent available balance sheet with details normally prepared by the Company.

(ii) Revenue and cost breakdowns as follows in the last 4 years:

A. Revenues: actual sales separated from any other income such as sales of assets, investment income, etc. When feasible, include data on the number of different products.

B. Costs: This should include a detailed breakdown (such is normally contained in an auditor's supplementary report) of all costs of products sold, including administrative and selling expenses. This data should include wages, together with all fringe benefits costs (including pensions, insurance and payroll taxes) paid to members of I.A.M. Similar data should be provided for all nonrepresented employees.

(iii) Any available operating and financial projections for the year 1991-1992.

(c) Since on or about July 1, the Union, by letter, has requested Respondent to furnish the Union with, inter alia, the following information relating to Respondent's admission that it was subcontracting the work formerly performed by its janitors and P.P.A.s (plantworkers):

(i) Provide copy of the contract between Shell Company and the subcontractor company. If no contract exists, explain in detail the specific condition in which the subcontract of work will be performed.

(ii) Provide the names, address, rate of pay, and benefits that the employees performing the subcontracted work receive, and what rules of conduct they will be guided from.

(d) Since on or about August 15, the Union, by letter, has requested Respondent to furnish the Union with, inter alia, the following additional information relating to Respondent's admission that it was subcontracting the work formally performed by its janitors and P.P.A.s:

(i) Who supervises the employees and the operation, or from whom they receive their orders or instructions on a daily basis.

(e) Since on or about July 1, the Union, by letter, has requested Respondent to furnish the Union with, inter alia, the following information in relation to Respondent's operations in Guayanilla, Puerto Rico:

(i) Is it true or not that the Shell Company will provide petroleum products to the customers in the East and South side of the Island from Guayanilla? If the answer is yes, provide the effective date and copy of any contract. Did Shell purchase any equipment for the purpose? When was the equipment purchased and when was it received?

(ii) Provide the number of employees that will be used by the subcontractor company to perform unit work.

(f) Since on or about August 15, the Union, by letter, has requested Respondent to furnish the Union with, inter alia, the following additional information relating to Respondent

subcontracting the work formerly performed by its janitors and P.P.A.s:

P.P.A.

(i) How many trucks at \$4.50 are serviced daily and weekly? If the amount varies on a weekly basis, then also provide the information by month.

(ii) How many employees does Caribbean Petroleum have, their shift of work, amount of hours, working—daily and weekly?

(iii) Please respond to my question on No. 6 of my letter of July 1. If you are not going to respond, explain why. Who supervises the employees or from whom they receive orders or instructions on a daily basis?

(iv) Please explain if you have a written contract with Caribbean Petroleum; and if your main competition has a written contract, and if you have a copy of them.

(v) Provide copies of purchasing orders since June 25 on.

(vi) Please inform if they bill you on a weekly or monthly basis, and provide copies including copy of the payments made.

Janitor

(i) Please respond to my question No. 6 of my letter of July 1. If you are not going to respond, explain why.

(ii) Provide copies of the service purchase orders covering the periods since June 25 on.

(g) Since on or about August 15, the Union, by letter, has requested Respondent to furnish the Union with, inter alia, the following additional information relating to Respondent's operations in Guayanilla, Puerto Rico:

(i) Inform all the charges made by the subcontractor, if any. Copy of the service purchase orders; if it does not cover all charges, provide additional documents to cover all charges.

(ii) Provide the name of the subcontractor.

(iii) How many trucks are serviced from that area daily and weekly? If the weekly amount fluctuates, then by month.

(iv) Name the different towns that are serviced from the South operation.

The complaint alleges that since October 18, 1967, the Union has been the representative for collective bargaining of a majority of the employees in an appropriate unit of Respondent's employees and, by virtue of Section 9(a) of the Act, is the exclusive representative of all the employees in the unit for the purposes of collective bargaining.

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

All production and maintenance employees employed by the Respondent at its Catao and Guayanilla plants, at the International Airport at Isla Verde and its office in San Juan, Puerto Rico, as airport attendants, plant workers and laborers, but excluding office clerical employees, salesmen, professional personnel, watchmen, guards and supervisors, as defined in the Act.

The complaint alleges that Respondent also violated Sections 8(a)(1) and (5) of the Act by:

(h) Since on or about July 1, changing existing terms and conditions of employment of the employees in the unit by unilaterally implementing its bargaining proposals, as set forth in a document entitled "Agreement" sent to the Union annexed to a letter dated June 24.

(i) Since on or about July 1, unilaterally altering the certified bargaining unit by excluding its Guayanilla plant and its office in San Juan from the certified bargaining unit description and eliminating existing job classifications such as janitor, laborer, and leadworker.

(j) Since on or about July 1, unilaterally imposing changes in the wages, hours, and other terms and conditions of employment of the employees in the unit by, inter alia, laying off or firing certain employees in the unit, and by eliminating the classification and functions of leadworkers, and by reducing and/or changing the wages and fringe benefits of said employees, all without first negotiating such changes in wages, hours, and other terms and conditions of employment with the Union. Those employees who were laid off or fired include:

| | |
|------------------|-------------------|
| Luis M. Diaz | Victor L. Cruz |
| Juan A. Ortiz | Carlos I. Perez |
| Carmelo Pimentel | Eduardo Rodriguez |
| Hector Hernandez | |

(k) Since on or about June 24, unilaterally subcontracting out bargaining unit work formerly performed by the P.P.A.'s and janitors at Respondent's facilities.

A. An Overview of the Case and Issues Presented

As pertinent to this proceeding, the Shell Company (Puerto Rico) Limited, provided nonretail sale and distribution of petroleum products at two locations in Puerto Rico, The Luis Marin International Airport near San Juan and a plant and storage facility called the Catano plant. Until 1982, Shell had operated a facility evidently similar to Catano called its Guayanilla facility. Since 1982, this plant had been closed and there are no present plans to reopen it. Shell also has an office in San Juan.

Since October 18, 1967, the Union has been the certified exclusive bargaining representative of Shell's employees in a unit described thusly: All production and maintenance employees employed by the Company at its Catano and Guayanilla plants, at the International Airport at Isla Verde and its office at San Juan, Puerto Rico, as airport attendants, plantworkers, and laborers, but excluding office clerical employees, salesmen, professional personnel, watchmen, guards, and supervisors as defined in the Act.

From the evidence submitted, it appears that at all times material to this proceeding, the Union had bargaining unit employees only at the Airport and Catano locations. These fell into the category of leadworkers, airport attendants and janitors at the airport and plantworkers and janitors at the Catano plant. The parties had entered into successive collective-bargaining agreements since the Union was certified and past labor relations appear to have been relatively stable and good between them over the years. However, events beginning in 1989 resulted in changed financial circumstances for Shell which foreshadowed more difficult negotiations for a new contract to replace the one expiring March 16, 1991. In

1989, the Puerto Rico Consumer Affairs Department (DACO) entered a ruling that fixed profit margins on petroleum products, and fixed such margins at a level below that needed by Shell to operate at the financial level it believed necessary to make a profit and satisfy its shareholders. A review of this ruling came out in October 1990 and was adverse to Shell and the other oil companies operating in Puerto Rico.

Also, in 1989, Shell lost the contract to provide fuel to American Airlines at the airport, resulting in the layoff of a number of its airport employees and a lessening of its volume of business at that facility. In or about January 1991, after a well advertised period of uncertainty, Eastern Airlines, another Shell Airport customer, ceased operations to and from Puerto Rico. This was followed by the cessation of service by another customer of Shell's, Mexicana Airlines, in or about April 1991. By the spring of 1991, it was clear that for Shell to maintain a presence at the airport, it would have to win back the American Airline contract and thus it filed a bid with that air carrier. The attempt was not successful, and in October 1991, Shell closed its airport facility and laid off all employees at that location.

Aside from the airport situation, Shell was evidently impacted by the profit margin ruling at its Catano operation. It believed that it was in an unfavorable position with respect to employee numbers and costs vis-a-vis its primary competitors, Texaco and Esso. Thus, it sought in negotiations to lower its employee complement to eliminate what it deemed unproductive worktime and to lower its wages and benefits to a level competitive with or lower than those paid by Texaco and Esso. In addition to seeking truly significant concessions from the Union with respect to the bargaining unit, Shell froze employment and nonbargaining unit salaries. It did not, however, cut the wages of nonbargaining unit employees nor did it involuntarily eliminate nonbargaining unit positions. Shell also offered in the fall of 1990 early retirement to employees who fit certain requirements. These employees would not be replaced.

As will be discussed in detail hereinafter, the negotiations began with a prenegotiation meeting between the principals for the Company and the Union in which the stage was set for negotiations. Representing the Company at this meeting and throughout negotiations were Ana T. Battle, Shell's human resource manager, Rueben Vazquez, its operations manager, and Tristan Reyes-Gilestra, an attorney evidently employed for the negotiations. Representing the Union was its longtime grand lodge representative, Juan Maldonado. Vazquez and Maldonado had negotiated over previous contracts and had dealt with one another for years in grievance and other proceedings that involved the Company and the Union. Battle and Reyes-Gilestra were relative newcomers to the relationship.

The Company took the position in negotiations that it considered that its proposals were necessary for the survival of the Airport operation and necessary to achieve a competitive position at the Catano plant. It stressed throughout these proceedings that it was not pleading poverty or inability to pay in the negotiations, but was simply adopting a firm position in order to become more competitive in the short run and in the future. Whether this is an accurate description of its bargaining posture is a key element in this case. The Union took the position that from the outset the Company was asking for

help from the Union because of its poor financial situation. Accordingly, the Union consistently requested throughout negotiations certain financial and other information which would let it ascertain the truthfulness of the Company's position and the extent to which concessions were necessary. It also sought any studies which the Company had prepared to justify its concession requests based on its asserted need to become more competitive. The Company steadfastly refused to supply such information primarily because of its assertion that it was not obligated to supply such information as a matter of law, and secondarily because it considered the information confidential.

Because of the Company's refusal to supply the requested information, the Union ceased meeting with the Company in negotiation sessions after the expiration of the contract in March 1991, taking the position that the information was necessary for it to continue negotiations. The Company, after extending the economic terms of the expired contract for about 3 months, announced on June 24, 1991, its intention to implement what it called its final offer. It did implement this offer, in part on June 24 and the remainder on July 1, contending that it was lawful to do so as the Union's refusal to negotiate had deadlocked negotiations and it was thus allowed to take such action under existing law.

Thus, the numerous specific complaint allegations aside, there are presented for determination a few critical questions: (1) What was the posture of the Company in negotiations with respect to its financial situation? (2) Was the information requested by the Union necessary to its continued presence in negotiations? (3) Was the Company bargaining in good faith in refusing to supply the requested information? (4) When did the Union receive notice of the changes implemented in wages, benefits, and other terms and conditions of employment, including the elimination of the leadworker position and the elimination or subcontracting of the janitorial and P.P.A. functions? (5) Was the Company's implementation of its so-called final offer lawful under the circumstances? and (6) Was the implemented contract reasonably encompassed within its final offer?

This case was tried primarily with the use of written documentation and not testimony from witnesses. With two or three exceptions, virtually everything that transpired between the parties is documented in a letter, memorandum, or other writing and these are relied on by the parties as their primary evidence herein. For this reason, the facts recite far more such evidence than would be the normal case.²

B. Events Setting the Stage for Negotiations

In November 1990, Maldonado received Joint Exhibit 2, a letter from Shell's operations manager, Rueben Vazquez, in which Shell offered a voluntary early retirement program to employees meeting certain conditions. Seven named bargaining unit members met these requirements. In December 1990, Vazquez called and asked to meet Maldonado after Christmas. Maldonado returned the call and said he would meet on January 3. They met on that date at the Valencia Restaurant in Hato Rey at noon. At this meeting were also Battle and Attorney Reyes-Gilestra, whose presence was a

surprise to Maldonado as he expected to meet alone with Vazquez.

According to Maldonado, after some small talk, Battle said that she wanted to talk about the Company's bad economic situation, noting that she would be the Employer's spokesperson during contract negotiations. Battle said that the Employer had lost considerable business at the airport, that Eastern Airlines had ceased their flights, that Shell had lost business to competitors, that they felt the price increase was affecting the airport, and that it was a matter of survival for the airport, operation. The price increase related to the profit margin decision by the Puerto Rico Consumer Affairs Department. She also said that the Environmental Agency in Puerto Rico was requiring Shell to replace all fuel tanks in their gas stations throughout the island and this would adversely affect the Company. During this conversation, according to Maldonado, Reyes-Gilestra and Vazquez would occasionally elaborate on some point made by Battle. The point of the conversation was to convince Maldonado that the Company was in the situation of trying to survive. Vazquez asked Maldonado for his help given the situation.

Maldonado asked Battle what the Company was doing to face this critical situation and she responded that it had frozen all employee positions as well as management positions. The Company was encouraging all employees to take early retirement and, for those that did, their positions would not be filled. After hearing this explanation, Maldonado indicated that he would help. He asked that the Company come to the bargaining table prepared to explain the entire situation to the bargaining committee and provide all necessary information so the Union would be in a position to face the situation. According to Maldonado, all three company representatives agreed.

Maldonado testified that his willingness to help seemed to surprise Reyes-Gilestra and Battle. Battle then said she would like to explain how Shell compares with its competitors. She told him that Shell was at a competitive disadvantage against its competitors, Esso and Texaco, because they had larger operations in Puerto Rico and were able to purchase product at a lower price because of their larger volume purchases. She said the Shell's Puerto Rico operations were separate from Shell's other operations and were essentially local and thus at a disadvantage vis-a-vis its competitors. Because of this situation, Battle said the Company was going to make two kinds of proposals, one for the airport and another for the Catano plant operation. Maldonado stopped her and said for them to leave the details of negotiations for the bargaining sessions. Battle then passed an envelope to him and said that they were opening the contract now.

In the envelope was a letter addressed to Maldonado. It is signed by Battle and states:

As you had informed Mr. Pedro R. Vazquez, Operations Manager, that you were not going to be available until January 17, 1990, because of your annual vacation, by this means I hereby inform you of the intention of the Shell Company (Puerto Rico) Limited, to end the Collective Bargaining Agreement and make changes thereof, which expires on March 16 of the current year. We will submit at a later date, the changes or amendments that we intend [to do]. As soon as you receive the company's proposal, I will appreciate that you con-

²Many of the letters quoted herein were originally written in Spanish, and the translations into English in some cases result in some unusual, but understandable, phrasings.

tact me to coordinate, at your convenience, the date of the first negotiation meeting.

Maldonado objected to the letter because it said he would be on vacation and unavailable for bargaining. He then became upset and told them he did not like the way the meeting was conducted, pointing out the meeting was supposed to be only with Vazquez. Reyes-Gilestra tried to calm him, but Maldonado said the way they were treating him was not proper. He indicated he may withdraw his offer of help, and left.

Battle testified that she told Maldonado at this meeting that the Company was going to try to survive at the airport and had to become very competitive at the Catano plant. She denied using the word "critical" to describe the situation, but was equivocal on whether the Company's situation was described as such in other words.

Vazquez testified that in preparation for negotiations for the contract to succeed the one expiring March 16, he and other supervisors met beginning in November 1990 to discuss the Company's present financial situation and compared Shell to its main competitors. The result of these discussions was the formulation of a goal to become more like its competitors, and eliminate compensation for unproductive time. As will be shown in more detail later, Vazquez also participated in the preparation of some comparative wage studies beginning about this time. These studies showed Shell's best estimate of the various wage and benefit costs of its competitors, Texaco and Esso, and compared them with Shell's existing costs and some proposed costs.

With respect to the January 3 meeting, Vazquez testified that he, Battle, and Reyes-Gilestra conveyed to Maldonado the Company's objective of eliminating compensation for unproductive work that was built into the existing collective-bargaining agreement. He indicated that eliminating the leadworker and janitorial positions was mentioned. I do not credit this testimony. No one else testified that these specific employee positions were targeted in this meeting and Vazquez' memory of the meeting was shown to be less than complete. Additionally, his affidavit given to the Board during the investigation of the case makes no mention of these topics arising during the January 3 meeting.

With respect to the airport, Vazquez testified that the Company had to try to survive because the industry was shrinking and the Company had lost some business at the facility. With respect to Catano, it was mentioned that the Company wanted to be competitive with Esso. According to Vazquez, Maldonado indicated that he would listen to what the Company had to say and then meet for negotiations. Vazquez denies that any company official at this meeting stated that Shell was in bad financial condition. Again, I do not credit Vazquez' testimony to the extent that it is different from Maldonado's testimony on this point.

I believe it is clear that coming out of this meeting, Maldonado was left with the desired impression that the Company's financial situation was critical. The continued operation of the airport facility was couched in terms of its survival, and the need to become more competitive at Catano was given in the context of the adverse Consumer Affairs Department ruling, which affected the oil companies' profit margins on product sold. Having told Maldonado that in effect its two main competitors can purchase product more

cheaply, and implying that their employee costs are lower, the only conclusion anyone can come to is that Texaco and Esso were at a substantial competitive advantage that would lead to the ultimate demise of Shell in Puerto Rico, unless there are changes (employee concessions) made. Much is made of some statements by Shell in letters to the Union that it is not unable to pay the current contract wages and benefits, but that it only wants to become more competitive. I believe that Shell was playing semantical games in these letters. Such statements are not coming from an employer who is clearly enjoying substantial profits and just wants more because it believes it can force concessions on employees, it is coming from a company which set the stage for negotiations by explaining in broad strokes just what bad shape it was in. The fact that it did not say that it was losing money hand over fist and was in imminent danger of going out of business did not lessen the impression given by what was said that this was the case. As I state in the conclusion section of this decision, I believe it is clear that Shell was very aware of Board decisions that deal with the different consequences of claiming current inability to pay existing wages versus claiming the need to become more competitive to survive in the future. By its actions, it gave Maldonado the reasonable impression that it was in current dire straits, then it wrote letters saying that it just needs to be more competitive, building, in my opinion, a defense for its intention of substantially changing its labor cost structure whether the Union agreed or not. I also believe that the Company misled Maldonado in the January 3 meeting by asking for his help and receiving his word that he would help, subject to the Company justifying its position. It is difficult to find that the Company was bargaining in good faith when it refuses to cooperate the first time Maldonado requested information to establish such justification.³

³Jt. Exh. 9 is a memorandum sent by Vazquez to Shell employees on March 22, 1991. In pertinent part it states:

The Company did not open the Collective Bargaining Agreement with the purpose of reducing benefits and wages. At the meeting of January 3, Mr. Maldonado was informed that the situation at the Airport was critical and of survival, a situation that is known by a large majority of you; while in Catano we have to look for ways on how to place ourselves in a similar or better position than our competitors. On March 1, 1991, we submitted our first economic proposal to Mr. Maldonado, which contains some reductions in benefits and wages to the employees covered by the Collective Bargaining Agreement, with the purpose of placing Shell in a better competitive position.

It is the responsibility of the Union committees and Shell to discuss at the negotiation table the proposals made by the Company. It will suffice to point out that although the Company's goals during these negotiations are to trim down the wages and benefits to lower levels than the present ones, we want to reach that goal mainly through the adjustment of provisions in the Agreement, whereby the Company pays for nonproductive time. That is, to pay for time actually worked by the employee. Although these are drastic measures, the Company has to act in a responsible manner to assure itself a competitive position in the market and be able to continue being a source of employment for all of those who work here.

This memorandum is a good example of the Company's mixed message to the Union and its employees. It characterizes the situation at the Airport as one that is critical and "of survival." It then retracts somewhat and expresses its need to become more competitive, and follows that with a thinly veiled threat that failure to give

Between the January 3 meeting and January 15, Maldonado did not hear further from the Company. So he sent the Company his own letter reopening the agreement for negotiations and invited negotiations beginning January 26, advising he would make a proposal on behalf of the Union at that time.

At an arbitration proceeding involving Shell and the Union held on January 18, the Company handed Maldonado a letter agreeing to meet on January 26 to begin negotiations.

Before the negotiations got underway, the Company gave Maldonado another indication that it was in a bad way financially. On January 19, Maldonado was again at the arbitration proceeding in the company of two employee stewards who were aiding in the proceeding. According to the terms of the existing contract, these stewards were entitled to doubletime after 8 hours in addition to 8 hours' regular pay. At least some of the time that they had spent at the arbitration was overtime under the existing contract. According to Maldonado, at the conclusion of the meeting that day, Reyes-Gilestra approached him and the two were within 2 or 3 feet of Battle, and told him that for the reasons the Company gave on January 3, it could not pay the overtime to the two stewards, asking that the Union release the Company from this commitment. Maldonado said he could not give such a release because of the contract, but because of the Company's condition, he would contact the two stewards and ask them for their view. As the stewards had just left, he rushed out to see if he could catch them. He found one of the stewards, Jorge Lopez De Victoria, and explained the situation to him. The steward agreed to accept just straight time and forgo overtime pay. He then found Battle and Reyes-Gilestra and informed them of Lopez De Victoria's decision, but telling them he could not speak for the other steward. He indicated that Lopez De Victoria was going to try to reach the other steward, Jorge Negron, and get a similar agreement from him. On the following Monday or Tuesday, Maldonado heard from Negron, who was unwilling to forego his overtime pay. He did not relay this information to the Company and learned later that the Company had paid both stewards straight time, and no overtime.

Jorge Lopez Negron testified that he was notified of the Company's decision not to pay overtime to the two stewards by Lopez De Victoria on January 21. As he was unhappy with this, he called Maldonado who told him that Battle had indicated that the Company was having financial difficulties. Negron indicated that he really did not care and wanted overtime as called for by the collective-bargaining agreement. On January 24, he attended the first negotiating session and at its close, Reyes-Gilestra asked him if he was accepting the regular pay for the arbitration. Negron indicated he was not. According to Negron, Reyes-Gilestra said that Lopez De

Victoria had accepted the pay because of Shell's financial difficulties. Negron decided to accept the Company's offer of regular pay at that time because it did not look to him as if he had a choice.

Reyes-Gilestra testified and denied ever telling Negron that the Company was in bad financial condition. However, he did not deny telling Maldonado virtually the same thing on January 19.

On this subject Battle testified that the parties agreed to continue the arbitration to another date before another arbitrator because of their mutual dissatisfaction with the arbitrator then involved. She testified that under these circumstances, as the collective-bargaining agreement called for all costs of arbitration being shared by the Union and Company, she proposed only straight time pay for the stewards as the time spent thus far on the arbitration was a waste of time. She testified that Maldonado agreed. She denied telling Maldonado that the Company's economic condition was the reason for proposing regular rather than overtime pay.

I credit Maldonado's version of the incident insofar as it is relevant on the issue of whether the Company was continuing to stress its financial plight. The Company was obligated to pay overtime to the stewards under the existing contract, and there is no showing of a past practice to forgo paying overtime in arbitration hearings because the contract called for the sharing of expenses. As the financial reason attributed for this request by Maldonado appears far more reasonable given the timing and circumstances than the reason offered by Battle, I accept Maldonado's testimony. Attorney Reyes-Gilestra offered no explanation of why the request was made though he testified on this point and he did not deny Maldonado's assertion that he told Maldonado that the Company could not pay the overtime. Moreover, the first negotiating session began with Battle stating that the Company would not pay overtime for the employee members of the Union bargaining committee. This break from past practice is consistent only with the position that the Company could not afford the overtime.

C. The Negotiations Between January and the Expiration of the Existing Contract on March 16

The parties stipulated into the record notes made during the bargaining sessions by various persons in attendance. Part of the stipulation was to the effect that the notes of Jorge Padilla, a representative of management, are the most accurate. I have reviewed these notes carefully and find that they do not contain any startling revelations, but instead show negotiations which are going nowhere. Reference is here made to Appendix A to this decision, which is a brief narrative comparison of the provisions of the expiring contract, the proposals made by Shell up to the expiration of that contract (the pre-June 24 proposals) and the contract proposed by Shell on June 24 and implemented on July 1. Reference to this appendix will reveal that Shell proposed a large number of employee contract concessions, some of which were so severe that they were bound to take the Union aback. For example, Shell proposed cutting wages by about \$4.60, or 40 percent per hour. It proposed cutting vacation days by 1 to 10 days. Though nothing is mentioned in the bargaining notes about this, it also proposes by deletion of certain language to eliminate the employee classifications and thus the jobs of janitors and leadworkers. In the same manner, it pro-

the concessions sought will result in the Company's failure. The message is further mixed because as Battle noted to Maldonado on January 3, the Company said it was approaching the airport differently from Catano in the negotiations, thus creating the impression that the two were in different situations. Yet, with the exception of the recognition clauses proposed, employees at both the airport and Catano were asked to make the same severe sacrifices. For reasons that are set out in more detail in the conclusion section of this decision, I do not believe an employer can have it both ways and still claim the rights afforded employers under such cases as *Neilson Lithographing Co.*, 305 NLRB 697 (1991).

poses to eliminate a job function of plantworkers called P.P.A., which resulted in the elimination of some employees in this position. Benefits covered by the contract were severely cut back, including any mention of pension or life insurance. The grievance and arbitration procedures were changed significantly and for the worse for employees. Sick leave, funeral leave, and leave for jury, duty and court appearances were adversely changed from the employees' point of view. Even the recognition clause was changed to eliminate the laborer classification and the locations of San Juan and Guayanilla. These are not all of the changes proposed, but they should give a good idea of the magnitude of the concessions being sought.

Negotiations began on January 24 pursuant to a request from Reyes-Gilestra and Battle. At the outset of the meeting, Battle stated, "The Airport is for survival and Catano for keeping it as it is, but avoiding that it falls into the conditions that the Airport is in." The meeting began with the Union giving the Employer some written proposals. Maldonado explained to the Company that because of its financial situation, he understood that they were going to say they could not pay increases in wages and benefits. He said he was leaving it up to the Company to show to the Union its financial position. For this reason, the Union did not submit a wage and benefit proposal at that time. The parties set up the rules for negotiations and for the first time, management, through Battle, announced that employee representatives for the Union would only be paid for time in negotiations at straight time rates. In past negotiations they received overtime. To me this has nothing to do with being more competitive, but much to do with conveying the impression that the Company was indeed in bad financial condition and unable to pay existing contract wages.

On January 31, pursuant to Maldonado's request, Vazquez met with him at an Argentine restaurant in Hato Rey, meeting from about 4:30 p.m. until 6 or 7 p.m. Maldonado expressed his concern to Vazquez that he could not communicate properly with Battle. He also told Vazquez that in past negotiations, the parties had negotiated long after the expiration of the involved contract. In the negotiations before the current ones, the parties negotiated for about 6 months after that contract expired before they agreed to a new one. This had not been a problem in the past. However, Maldonado was worried that because of the way he was being treated, that he may be in for a surprise and asked Vazquez about this. Vazquez assured him he had nothing to worry about, not to worry about the expiration date and the Company will continue bargaining as in the past.

On February 25, the Union sent the Company a letter request for information. This request sought a number of things, including the Company's operating and financial statements for the past 3 years. Maldonado sought this information because of the representations made to him during the January 3 meeting that the Company was in bad financial condition. Such information would verify the Company's financial situation and give a basis for finding ways out of the situation. Also the Company had distributed a handbill to employees in November 1989, that indicated that because of the Consumer Affairs decision, the Company was not making a profit.⁴ The Union also requested copies of any studies,

⁴In pertinent part, this handbill stated:

surveys, whether by outside consultants or within the Company which form the basis for the position that by not getting a higher margin of profit it is necessary for the Company's survival to cut bargaining unit wages, benefits and to reduce terms and conditions of employment. This was sought for the same reasons as the other information. Neither of these two requests were ever honored by the Company before it implemented its proposals on July 1. The financial information sought was given on or about July 26, but the comparative study was not made available until the hearing herein. In this regard, reference is made to Appendix B to this decision which is the final version of such a study made by Shell in April 1991. The testimony of Vazquez reveal that this was the last in a series of such studies which had been made for months preceding April 1991, and which were used as a basis for the Company's bargaining goals.

The Company responded to the February 25 request by letter dated March 1 (Jt. Exh. 7), providing all the information sought except the two items discussed above. In its response to the information request, the Company mentioned the meeting of January 3 and stated:

The purpose of the meeting was to advise you that the Company considered that the upcoming negotiations would be of a different nature, in view of certain developments which had occurred during the past recent years. We mentioned DACO's (Consumer Affairs Department) refusal to review the amount of gross margin per gallon allowed to the oil companies operating in Puerto Rico. We also indicated the steps the Company had taken so far to address this situation, including the establishing of a window in the Pension Plan. The Union's assistance and understanding during the upcoming negotiations was specifically requested. Also, at the meeting, you were handed an envelope containing a reopening letter and cancellation of the labor contract at the expiration date, which is, 11:59 p.m. on March 16, 1991.

In connection with the information you request and which you allege is necessary for the Union to continue conducting negotiations properly on behalf of the workers you represent, we have to clarify certain points. In the first place, at the bargaining table, the Company has never assumed the position of inability to pay. We have informed you and the Union's bargaining committee

We wish to inform you about the last happenings of the Interim Order of Prices and Interest Rates (Profit Margin) issued by the Consumer Affairs Department on June 27, 1989, and the different articles that have appeared in the newspapers during the last days about this same matter. The order issued in advance continues in force, for which reason it is in a corporate sense that it is an untenable situation, since we need a higher margin to cover the operational costs and also obtain a return (yield) over the invested capital agreeable to our stockholders. At this time this return is practically zero percent with a margin of eleven cents per gallon. In addition to this situation, on October 31, 1989, the contract for the provision of fuel between this enterprise and American Airlines expired, this being the reason for which twenty employees of our Plant at the Airport were laid off. In view of this situation, it is necessary that we evaluate our work plans and design our strategies with greater aggressiveness to assure the stability and continuity of our business undertakings in the Island.

that the Company's goal in this negotiation is to eliminate compensation for unproductive time and improve our competitive position. We have also indicated that in the case of the Airport, this is a matter of survival, and in the case of the Catano plant, it is a matter of putting ourselves in a better position than our competition. These are the Company goals in these negotiations.

In regard to the specific items the Company refused to comply with, it said "The operating and financial statements of the Company are confidential. The Company does not disclose these documents and, in addition, these documents are totally unrelated to the negotiations. As we have indicated to you, the Company is not assuming the position of inability to pay. The Company is establishing its bargaining goal." On the matter of studies or surveys, the Company responded, "Said information is irrelevant for you to continue conducting negotiations, in view that, as we have indicated and now reiterate, the Company has not assumed the position of inability to pay. If the Company determines that it should provide you with any studies, surveys or analyses, it will do so at the bargaining table."

Puerto Rico Corporation Laws, Title 14, Sections 2301 and 2303, require that every corporation doing business in Puerto Rico, including Shell, must file a financial statement with the Puerto Rico Department of State each year. Section 2501, part C7 states that any person desiring a copy of these statements can obtain a copy of them from the Department of State. Vazquez vaguely testified that Shell's local financial officer was reluctant to make this financial information available to the Union and wanted to keep it confidential. In view of the statute noted, I find this explanation far less than convincing. There was no showing that the Union was aware of this required statutory filing or at any time before July 26, 1991, had access to the financial statements of Respondent. On the other hand, as Shell had to make the filings, it was certainly aware that its financial statements were public information in Puerto Rico and thus had no legitimate business reason for refusing to supply them to the Union on request.⁵

On the matter of why the Company did not supply the financial records sought by the Union, Vazquez testified:

Well, the company position was that, first, that these documents were available to the negotiations and we had never said that we could not pay, that we were not willing to continue paying for those conditions of work that were unproductive so that was our position, and they said, well, you don't need financial statements for that and I think one of the letters mentioned that we don't even give this to financial institutions so if people want to give credit to us.

I believe this garbled reasoning does contain at least one element of truth. The financial statements were not necessary for bargaining from the Company's point of view as it had

⁵The financial statements show the following with respect to Shell's profitability for the years covered by the financial statements provided:

1987—Profit of \$4,908,826
 1988—Profit of \$4,441,618
 1989—Profit of \$2,519,358
 1990—Loss of \$1,062,999

no intention on bargaining over its goals, that is, to stop paying for what it considered unproductive work. Indeed, Vazquez later indicated in his testimony that the Company's position on the elimination of the leadworker, janitorial, and P.P.A. positions was firm and not amenable to bargaining.

The Company's reasons for refusing to supply the comparative studies are equally suspect. Not only did they have such studies, but one of the primary goals of the negotiations from Shell's standpoint was to become competitive on wages and benefits vis-a-vis Texaco and Esso. As it was basing its proposals in this regard on a study of its perception of Texaco and Esso's benefits and wages, such information would be of obvious use to the Union in bargaining, and could have formed the basis for some meaningful negotiations as the Company's study revealed that its competitors did have lower costs in many respects. Even if one accepts the Company's rhetoric about its situation being one of unwillingness to pay rather than inability to pay, and I do not, the information contained in the comparative study is clearly relevant to its position that it needs to be more competitive. Giving the Company the benefit of every doubt on this subject, though it is not raised as a defense in letters to the Union, it could have assumed that the Union had the information with respect to Esso as the Union was also in negotiations with that company. However, there is no reason to believe that the Union had the corresponding information about Texaco. Vazquez admitted as much in his testimony. Moreover, even if the Union were able to secure labor cost data about Esso and Texaco from other sources, it could not be sure that the information it thus secured was the information being used by Shell or what part of the cost data was being used by Shell. The manner of Shell's use and reliance on the data is probably as important as having the raw data itself.

Vazquez was also asked in his testimony why this information was not supplied and could not give a intelligible answer. (See Tr. 229.) The fact that he could not think of a reason is understandable given the position he took before the Board in this case at an earlier date. Respondent's Exhibit 6 is a statement given by Vazquez to the Board during the investigation of this case. It is dated May 13, 1991. Inter alia, in the affidavit, he explains that it was the Company's goal at Catano to become competitive with similar operations by Texaco and Esso, from the standpoint of numbers of employees and wages paid. He then cites as an example the wages paid plant employees at Texaco and Esso and compares them with those paid Shell plant workers at Catano. He then states: "I haven't yet had the opportunity to discuss these costs and numbers [figures] with Juan Maldonado because he hasn't given us the opportunity to present these figures and to discuss the matters in detail." It appears that on May 13, Vazquez clearly understood the importance of the comparative studies to negotiations, though he steadfastly refused to provide the studies.

On March 8, the Union sent the Company another information request (Jt. Exh. 10) wherein it stated, inter alia:

In our collective-bargaining agreement negotiations meeting on 3/7/91 you presented to the Union some proposals and stated that you have provided the Union with all the company language on noneconomic and economic items. In view of the content of the proposals, the amount of work involved and the responsibility

of the Union to properly represent the interest of the workers, I requested to postpone the 3/8/91 meeting, to excuse from work the two committee persons to work with the Union on matters dealing with the negotiation. I also indicated that I was planning to meet on Monday, 3/11/91, as scheduled, subject to my readiness for such meeting, including that I have to discuss some matters with proper officials of my organization if I were able to get in touch with them. All these matters were agreed by the company.

Specifically the Union again asked for the information requested in the February 25 letter and not provided and further sought:

(1) Most recent available balance sheet with details normally prepared by the Company.

(2) Revenue and cost breakdowns as follows in the last 4 years:

A. Revenues: actual sales separated from any other income such as sales of assets, investment income, etc. When feasible, include data on the number of different products.

B. Costs: This should include a detailed breakdown (such is normally contained in an auditor's supplementary report) of all costs of products sold, including administrative and selling expenses. This data should include wages, together with all fringe benefits costs (including pensions, insurance and payroll taxes) paid to members of I.A.M. Similar data should be provided for all nonrepresented employees.

(4) Any available operating and financial projections for the the year 1991-92.

The Union wanted the information as supplementary information to the earlier request to get a better picture of the Company's bad financial condition.

The Company replied to this request in a letter of March 8 (Jt. Exh. 17), wherein it states:

1. Regarding your request that we provide copy or make available operating and financial statements of the Company in the last three years; balance sheet; revenue and cost breakdowns for the last four years; corporate income tax returns and any available operating and financial projections for the year 1991-1992, we reiterate our statement that all this information is not relevant to the position assumed by the Company in these negotiations and that all or part is confidential.

We have not provided financial statements in the past, even to suppliers and financial institutions who have requested the same to grant us credit. Such is the interest of the company in maintaining these documents undisclosed.

We once again repeat that the Company is not assuming the position of inability to pay. As we indicated in our letter of March 1, 1991, the Company is establishing a bargaining goal during these negotiations. Specifically, the Company is aiming at eliminating compensation for unproductive time and improving our competitive position. In the case of the Airport, this is a matter of survival, and in the case of Catano Plant,

it is a matter of putting ourselves in a better position than [our] competition.

The Company did provide some of the other information requested.

As noted in the overview section of this decision, there is an issue presented as to when the Union received notice that the Company wanted to eliminate the jobs of janitors and leadworkers and take away from the plantworkers the so-called P.P.A. functions. At the airport, there were three classifications of employees, airport attendants, leadworkers, and janitors. Maldonado testified that the employer had two employee classifications at the Catano plant, "plantman" and "janitor." The plantmen's duties involved receiving the barge (carrying fuel), transferring fuel to Company tanks and receiving all merchandise to be stored at the warehouse. They also checked fuel levels in the storage tanks on a regular basis. Plantmen made deliveries, operating a filling station where trucks that distribute fuel are given fuel and paperwork completed. They also placed a seal over the delivery trucks' outlets to comply with environmental directives. This sealing work, known as the P.P.A. duties, had been subcontracted until it was made a part of the plantmen's duties in negotiations around 1985. The making of this duty part of plantworkers' duties was accomplished by a letter of understanding attached to the old contract.

As shown in detail in Appendix A hereto and by a comparison of the expiring contract with Shell's pre-June 24 proposals, the elimination of the janitor and leadworker positions and the elimination of the P.P.A. duties from plantworkers is shown only by the deletion of any mention of janitors and leadworkers in the salary section of the proposal and the deletion of the old letter of understanding about the P.P.A. duties. I cannot find that these matters were mentioned in the bargaining notes, though there is evidence that at least in general they were discussed at a private meeting between Maldonado and Vazquez on April 10. I believe that Maldonado knew that at least the janitor and leadworker positions were being eliminated as his notes on his copy of the pre-June 24 proposals so indicate. A report that Maldonado sent to the International on March 22 seeking advice indicates that on that date he knew Shell was proposing to eliminate jobs and job classifications. On the other hand, there is nothing to indicate that these jobs or the P.P.A. function were to be subcontracted until Respondent's letter of June 24.

March 12 was the last formal negotiation session between the parties. There was one meeting between Maldonado and Vazquez on April 10, discussed below, and other than that there was no attempt at negotiating made, though the Company did often make requests for negotiations to resume.

D. The Period Between March 12 and June 24

On March 7, the Company presented its final offer, and on March 12, the Union presented a response. The Company proposed meetings on several dates and they agreed to meet on March 19 for the Company to respond to the Union's proposal of March 12. Maldonado canceled. A review of the correspondence between the parties between March 8 and June 24 gives a clear picture of what transpired in that period.

Joint Exhibit 12 is a letter from Vazquez to Maldonado dated March 13, 1991, which states:

Your letter dated March 8, 1991, was received on Wednesday, March 13, 1991. We will review the same and submit our answer at the meeting we have scheduled for Tuesday, March 19, 1991. At said meeting we will give you an answer to the positions you expressed at the meeting of March 12, 1991. We reiterate that the Company's Bargaining Committee has been and continues to be available to negotiate. We suggest the Union's Committee also assume this position to expedite this negotiation.

Joint Exhibit 14 is a letter from Maldonado to Vazquez dated March 15, which states:

By expressing that the Company's bargaining committee has been and continues to be available to negotiate is not enough to show it has been bargaining in good faith. In view of the way the employer has been negotiating and the cancellation of the agreement as of March 16, 1991, I hereby request that the pending meetings of March 19 and 25, 1991, be postponed until further union advise since I have to make a study of the whole process in this negotiation to file a complete report to our organization for their analysis and advise under the present situation. I will appreciate receiving the information requested in my letter of March 8, 1991, which will be part of this report and will assist the Union in understanding your position.

Joint Exhibit 15 is a response to Joint Exhibit 14 from Vazquez, dated March 15, which states:

We acknowledge receipt of your letter dated March 15, 1991, where you unilaterally postpone, "until further Union advise," the agreed scheduled meetings of March 19 and 25, 1991. We reiterate what we indicated in our letter of March 13, 1991. Therefore, we will be present at the Negociado de Conciliacion y Arbitraje next Tuesday, March 19, 1991, at 9:30 A.M.

There is no reason to postpone said meetings. In the same, you will receive the Company answer to the position that was expressed by the Union's committee at the meeting of March 12, 1991, regarding various sections and/or articles, both economic and non-economic, which are presently open. In addition, at said meeting you will receive the Company position concerning your letter of March 8, 1991.

We are certain you agree that your cancellation of these meetings can only further protract the negotiations we consider that the meetings scheduled for March 19 and 25 can, and should be, utilized by the parties to expedite the same.

Joint Exhibit 16 is a letter to Vazquez from Maldonado, dated March 15, and which states:

In the meeting of March 12, 1991, on or about 3:10 P.M. you advised the Union that effective March 16, 1991, the contract between the parties will be left with-

out effect; that the Company will honor economic items and will pay the Medical Plan.

For the Union's bargaining committee and the unit employees to know exactly what you are expressly covering, please identify all the economic items you mean to honor or the employees to continue to enjoy. Please provide this information within five days from receiving this letter.

Joint Exhibit 18 is a letter dated March 19, 1991, from Vazquez to Maldonado, which states:

In relation to your letter on March 15, 1991, where you requested that the Company identify the economic items that it will maintain similar to the collective-bargaining agreement, which terminated last Saturday, March 16, until further notice:

1. Article XVII "Hours Work Schedule Overtime"
2. Article XVIII "Salaries"
3. Article XIX "Vacations"
4. Article X "Holidays"
5. Article XI "Leave of Absence"
6. Article XIV "Union Representative"
7. Article XVII "Existing Policies"
8. Article XVIII "Bonus"
9. Article XXIX "Benefit Plans"

We take the opportunity to confirm the Union Bargaining Committee did not make itself available for the scheduled meeting of today.

The Company Committee waited at the 'Negociado' in excess of one and one half hour. We left after it was obvious that no representative of the Union's Committee will be present and neither a message was received.

As indicated in my letter on March 15, 1991, we insist on the meeting of March 25, 1991, as scheduled. We will again be present at the 'Negociado' at 9:30 AM prepared to continue these negotiations. Once again, we urge the Union Committee to make itself available and avoid unnecessary additional delays.

Joint Exhibit 19 is a letter dated March 19, 1991, from Maldonado to Vazquez, which states:

Please refer to my letter dated March 15, 1991. I have nothing further to add at the present time. I will not enter into discussion whether you consider we have reasons or not for the postponement. I made an invitation to you that if there was anything to clarify to feel free to contact me. You did not do it. In the near future, I will contact you as expressed in my previous letter.

Joint Exhibit 20 is a letter dated March 26, 1991, from Vazquez to Maldonado, which states:

The Company's Bargaining Committee waited for you today in excess of one and one half hours at the "Negociado de Conciliacion y Arbitraje" to continue negotiations. The only manner to accomplish our mutual goal of negotiating is by sitting at the negotiating table. We consider that the parties should utilize your suggested open date of April 3, 1991, with the purpose of discussing the open articles and sections, instead of discussing the few pending grievances. Also we con-

sider that the negotiations have priority at this time. Therefore we confirm that we will be available at the "Negociado" on April 3, 1991, at 9:30 AM, where room reservations have already been made.

Joint Exhibit 21 is a letter dated April 1, 1991, from Vazquez to Maldonado, which states:

We make reference to our letter of March 26, 1991, where we reiterate that we will be available at the "Negociado" on April 3, 1991, at 9:30 AM, where room reservations have already been made. At that time and place, we will be prepared to continue the negotiations related to the Collective Bargaining Agreement. However, if you refuse to do so, and instead insist on utilizing said time to discuss pending grievances, we will not refuse to do so. In connection with your invitation to contact you to clarify anything, we consider that we have made ourselves available at all times to discuss and negotiate, and through that process, clarify anything relevant which needs to be clarified. Feel free to contact me however, if you have alternative which you consider may make the present situation more fluid.

Joint Exhibit 22 is a letter dated April 1, 1991, from Maldonado to Vazquez, which states:

Reference is made to your letter dated March 26, 1991, in which you stated that the Company's bargaining committee waited at the P.R. Labor Department for the Union committee to show up. Please be advised that we consider this company position to be frivolous since the Union canceled the meeting and explained the reasons for. Please be advised that the Union and the shop stewards will be at Catano Plant for the purpose of discussing pending grievances and related information on April 3, 1991, at 9:30 AM as previously suggested. May I use this opportunity to bring to your attention that you have not responded to the Union question on separate letter to be informed if the Company does not want the Union to conduct meetings with management or to check the employees time cards at Company's meeting rooms within the certified unit premises as it has been done in the past.

Joint Exhibit 23 is a letter dated April 3, 1991, from Vazquez to Maldonado, which states:

I am surprised to have received your letter dated April 1, 1991, at 12:55 PM on April 2, delivered by your shop steward at the Airport Plant. All the issues brought up in such letter were discussed in my two letters dated April 1, and received at your home at 4:51 PM on April 1, 1991. In those letters I expressed the availability of the Company's Bargaining Committee at the "Negociado" to continue negotiations at the "Negociado." However, if you insist in your refusal, then I'll still be available to discuss the few pending grievances. The "Negociado" has been a mutually agreeable place to meet, not only for the negotiations, but also for our last three meetings were pending grievances were discussed on August 28, September 19 and

November 28, 1990. At this moment I am waiting for you at the "Negociado."

On April 10, Maldonado proposed that the expired contract be extended for a year. This offer was made at a restaurant to Vazquez who was meeting with Maldonado to discuss a grievance. Maldonado testified that he proposed three conditions: "(1) I would be willing to amend the payment to the stewards and that's the issued created by Mrs. Battle on January 19; (2) I'd be willing to negotiate a cut in pay which was the matter of the grievance, of the arbitration, and many meetings before arbitration between the parties, and (3) a condition that the company would provide the necessary information to justify their bad financial condition." According to Maldonado, Vazquez said he would take this proposal to highest management. Maldonado denied that Vazquez asked whether Maldonado was willing to consider the elimination of seven employee positions as a condition to his giving consideration to Maldonado's extension proposal.

Vazquez remembers the meeting differently. He remembers in a vague sort of way going over all the contract proposals which were still outstanding and discussing them. Vazquez testified that the only negotiation topic he did not discuss in this meeting was the matter of the Christmas bonus and the amount of the medical plan contribution by the Company. He reiterated the Company's position and Maldonado reiterated that he wanted the information requested but not supplied. He agreed that at one point Maldonado proposed extending the existing contract for a year. He also testified that he responded by telling Maldonado that to consider this proposal, would the Union be willing to eliminate seven positions, two lead persons, two janitors, and the function of the P.P.A.s. Maldonado said the Union would not be so willing. Vazquez said that if the seven positions were eliminated, then Shell would be in the same manpower position as its competitors.

With respect to specific provisions discussed, Vazquez could not remember exactly what was said. He did remember mentioning salaries in the range of \$9.50 per hour. He characterized his statements at this meeting as being in the nature of a response to the Union's March 12 position. He said Maldonado generally just listened to what he proposed. This description of what happened at the meeting is not supported by Vazquez's notes of the meeting, Respondent's Exhibit 5 nor is it mentioned in any detail in any of the letters that followed April 10. The matter of eliminating seven unidentified positions is mentioned in Vazquez's notes and I credit him for mentioning this as a condition to extending the contract. I do not credit his testimony that he added detail about the seven positions or gave detailed counterproposals to the Union's position as of March 12. His memory on these points is hazy, his notes mention no such detail, nor do follow up letters document any new position of the Company on any proposal. I instead credit Maldonado's version of the testimony except for the matter of conditioning consideration of the contract extension on the agreement to eliminate seven unit positions.

Joint Exhibit 24 is a letter from Vazquez to Maldonado dated April 11, which states:

As you know, since March 12, 1991, you have not made yourself available to continue the negotiations.

This notwithstanding the fact that we have made ourselves available at all times to discuss all the non-economic and economic articles which are pending. On various occasions, and for more than one month, you have indicated that you cannot meet to negotiate because you are waiting for the advise from the International Union. In view of the above, we suggest that the International representative in charge of this matter coordinate through you a meeting, which can be in Puerto Rico or the United States, at your convenience, to discuss this matter and reach a mutually satisfactory agreement. Please advise us as to the dates you and the International representative have available and where you would like the meeting to be held, in order that I may confirm back to you as soon as possible.⁶

Joint Exhibit 27 is a letter from Maldonado to Vazquez dated April 17, which states:

My letter of March 15, 1991, requesting postponement of negotiations until further advise is clear in its intent and purpose. You have questioned my right as Representative of the IAM&AW to get advise under the NLRA at the Board thru Case 24-CB-1575. In a [sic] future the Board will express itself if under the present situation the postponement and the reason for it is proper under the NLRA. On the other hand, we had a meeting of almost 4 hours on April 10, 1991; we both went over several matters dealing with the labor contract. I requested to be advised of the company's reaction to our discussion at this meeting, you did not do so, but instead you sent the letter of reference. Since in our meeting you never expressed the company or you wanted another representative of the IAM involved in our affair, I was not able at this meeting to request explanation of the reason or reasons for. Therefore, in a way to properly understand the request, please advise what is the specific matter or matters you want the so called International representative to discuss.

Joint Exhibit 28 is a letter from Vazquez to Maldonado dated May 6, which states:

The clearness of your letter requesting postponement of the negotiations will not be argued against in this letter. Such event will be solved in another forum. There are two other issues in your letter that require clarification.

⁶This letter does not mention the seven positions to be eliminated. It does make reference to a report which Maldonado sent to the International Union with respect to the negotiations. This report, dated March 22, 1991, generally affirms Maldonado's testimony regarding events taking place up to the date of the report. It also indicates that he recognizes based on Shell's proposals that some employees will lose their jobs and that some classifications of employees will be eliminated. Maldonado also sent in some of the letters that had passed back and forth and other information and asked advice on how to proceed. He stated:

The postponement of the meetings was done to evaluate and file this report to get advise. I believe . . . our obligation at one point to return to the bargaining table will depend on the Union having the information needed to bargain intelligently and the company has taken the position to deny because it is confidential or considers it irrelevant to the negotiations.

In our informal meeting of April 10, many matters were mentioned and some positions modified as I'm sure you remember. However, the main Company objectives were reaffirmed and your only answer was that you must wait for the advise from your International Headquarters. In fact you refused to ever discuss non-economic items which still remain open. We analyzed such position vis-a-vis the situation that the negotiations are postponed. We reacted by offering our availability and willingness to meet with the person who provides you with advise, through your coordination. We consider that such a meeting, coordinated thru you could expedite these negotiations. Once again, I invite you to confirm a date to negotiate.

Joint Exhibit 29 is a letter from Vazquez to Maldonado dated May 15, which states:

This will confirm our telephone conversation of Monday May 13, 1991. As you know, it was not possible to coordinate a meeting to discuss pending grievances because I'll be leaving Puerto Rico today and you were not able to meet yesterday, as I suggested. You also indicated that you will not be available the week of May 27, when I'll be in Puerto Rico, unless one of your engagements was canceled. If in fact this occurs, please call my secretary who has instructions to give you first priority on my calendar for that week. Once again I urge you that we meet to continue negotiations and that we use any available time for this purpose, instead of utilizing said time to discuss the few pending grievances. In fact, Mrs. Ana T. Battle can act as spokesperson for the Company at any meeting you can coordinate during the time I'll be outside Puerto Rico (May 15 thru May 27). The only way we can negotiate is to meet for that purpose. The very least you can do is to meet with Mrs. Battle, attorney Reyes Gilestra and myself, to discuss open articles and sections at a time and place you deemed appropriate.

Joint Exhibit 30 is a letter dated May 17, 1991, from Vazquez to Maldonado, which states:

Reference is made to your letters dated May 3, May 6, and May 15, 1991. Please let the record show that the company suggested dates to meet to discuss Catano pending grievances in response to my request were frivolous in view that the company had knowledge that I was not available before the letter was prepared.

On the matter of the Airport pending grievances I confirmed twice to the company your suggest date of May 15, 1991. To my surprise, when you returned my call you expressed that could not meet because in the morning you will have a meeting with Ports Authority and in the afternoon you were going to Houston. I requested new dates and we were unable to select one due to professional commitments. I informed you that on the week of June 3, 1991, I was scheduled to go to the USA to be hospitalized and I indicated I will contact you upon my return to schedule the grievance meeting. Please let the record show that prior to our conversation in return to my call your secretary neither you had advised that your suggested date to meet on

May 15, 1991, was no longer available. Mr. Vazquez, to process employee's grievances is an important process that we must do on behalf of the workers. Please clarify if the company position is not to discuss the pending grievances and other contract related problems but only to negotiate on a new agreement. In our telephone conversation you never mentioned the subject of bargaining on the new contract. I am sorry I lost the opportunity while we were on the phone to remind you that on our meeting of April 10, 1991, I made the proposal to have one year of contact extension under some conditions. I requested and you agreed to take this proposal back to the highest level of management and to call me back about their evaluation but so far no information has been provided.

Ruben, you indicated that the only way we can negotiate is to meet for that purpose. I must assume that you mean to say to negotiate in good faith with the purpose of reaching an agreement; being that the case, please submit the information requested by the Union on February 25, March 8, and March 15, which is needed to properly and intelligently represent the workers. I hope you will provide the information which will help the Union to understand the bad financial condition of the company and the request to assist the company that was made; matter we committed ourselves subject to the company justification. Upon my return, I will study the information to get ready to coordinate a meeting to bargain on the open articles and sections at a mutually agreeable date, time and place.

Joint Exhibit 31 is a letter from Vazquez to Maldonado dated May 30, 1991, which states:

This will acknowledge receipt of your letter of May 17, and read yesterday upon my return to San Juan. My letter of Friday, May 3rd, regarding open dates to discuss grievances was sent to you by hand that date. Unable to find you, it was left by the messenger on the mailbox and then sent by Certified Mail the next Monday.

The dates were a proposal of the availability, at the time, of the Plant Superintendent and myself. I received no answer from you until your call to my secretary, May 13, at 9:15 AM and again at 12:12. By that time, The Ports Authority of Puerto Rico had requested my presence at a meeting at 9:00 May 15, which I had to accept, specially not hearing from you. This was informed to you on the afternoon of May 13 on the phone. The afternoon of May 15 was never offered as an alternative because of my trip to Houston.

We agree that the discussion of grievances is as important as discussing a new agreement. That is why we fail to understand your total unavailability to meet to continue negotiations while you are readily available to discuss grievances. Your proposal on April 10, to extend the contract for one year was rejected there, since you clearly rejected the minimum conditions required to consider your offer.

We have provided you with all the relevant information necessary to negotiate. It seems incongruent that you allege you need information to negotiate a new

contract, but, on the other hand, you don't need any information to propose an extension for one year of the contract that expired on March 16, 1991.

The Company has demonstrated good faith throughout these negotiations as for example, when it informed you that we would maintain, for the time being, the economic conditions of the terminated contract. This has been to no avail since you have continuously refused to sit at the table since March 12, 1991.

After we started negotiations, our spokesperson, Mrs. Ana T. Battle, was hospitalized and in recuperation for almost seven weeks. All this time the company's committee made itself available to negotiate, and in fact negotiated without any interruptions. Moreover, on my last letter dated May 15, 1991, I mentioned to you that, if you could find an available date for negotiations during my absence, Mrs. Battel and the rest of the committee would be available to do so.

This attitude of the Company greatly differs from your position, confirmed in our telephone conversation of today, that you will not designate a substitute during your absence. This is even more dramatic since you indicated that you had no idea as to the length of your absence. We understood that the spokesperson the Union would be Mr. Lou Brogna, but your position was adamant that there would be no substitute for the union's spokesman.

Joint Exhibit 32 is a letter dated May 31 from Maldonado to Vazquez, which states:

This is to confirm our yesterday, May 30, 1991, conversation by telephone whereby you requested to know who is my replacement during the time I will be out of Puerto Rico from June 3, 1991, on for reasons previously explained to you. I told you that no one will be replacing me—you insisted and took the position to assume that Brother Lou Brogna was my replacement during this period of time because it was not proper not to have a replacement. Once again I responded that you could assume whatever you wanted but he was not my replacement. Finally you indicated you will write him a response to my letter dated May 17, 1991.

I made an invitation for the company to review its position of trying to destroy the Union and to bust it from the company in view of the company's conduct during this negotiation. You replied that was not the case but it was a matter of company survival, a matter where all were trying to survive, but anyway you were to think about my invitation, which I hope you do, Ruben, and I will add, think about of over 23 years of good labor relationship where we used to deal in a positive environment; not always it went the company way but neither the union way. We dealt in a mutual respect environment—no one ever showed or tried to show any muscle.

May I use this opportunity to request the company to provide copy of the Economic Study on Competitiveness in the Market, needed by the union to properly and intelligently represent the workers.

E. The June 24 Letter Announcing Implementation of Respondent's Final Offer and Implementation

In a letter dated June 24 (Jt. Exh. 33), the Company notified the Union that it planned to subcontract not only the sealing (P.P.A.) function, but all the so-called filling station duties of the plantmen. It also gave similar information about the janitors. This letter states:

On January 3, 1991, we met with you to anticipate the Company bargaining position for the upcoming negotiations with your Union. At that time, we expressed that Shell had determined it was of the utmost importance that the salaries and other working conditions of the Collective Bargaining Agreement be reviewed to bring them to a level where Shell would be competitive in the industry.

During the negotiations, Shell has maintained the same goals it had anticipated to you. At the time of the expiration of the Collective Bargaining Agreement, March 16, 1991, we informed you that the Company would maintain, for the time being, the economic conditions of the agreement with the hope that this would facilitate the conclusion of the negotiations. However, more than three months have passed since the agreement expired and our last negotiation meeting.

You had hinted, and on April 10, 1991, you expressed, that the Union would accept an extension of one year of the Agreement under the same conditions. This was rejected at the time by me and was reconfirmed by our letter of May 30, 1991. However, your total unavailability to meet is producing the result that in effect the contract is being extended indefinitely. Through your attitude, you have created a deadlock in the negotiations and have left the Company with no other alternative but to submit its final economic offer, which will be implemented on July 1, 1991.

Enclosed there is a copy of our final offer, including the articles which have already been agreed to, and the rest of the articles as will be implemented by the Company on July 1, 1991. In addition, I am enclosing the Work Schedule for the Catano and the Airport plants, which will be in effect immediately. You will note that Shell has retained only the positions that are necessary to perform its work at both sites at the present time. In addition, the position of janitor and the functions of the P.P.A.s will be subcontracted, while the functions of the leadworker will be eliminated as I advanced to you. These changes are consistent with the situation applicable to our main competitors.

If you have any question or doubt concerning what is expressed in this letter or in the documents that are being enclosed, please contact the undersigned at your convenience.

Implementation began immediately. The janitorial and P.P.A. functions were turned over to subcontractors on June 25. Subcontractors had been contacted some time in advance of the June 24 letter for bids on the work involved. For example, the Company that was awarded the P.P.A. function submitted its bid as early as March. On June 24, the Company met with employees working that day and told them personally that it was going to implement its final offer. On

this date, it also sent letters to those employees who were being discharged pursuant to the implementation, notifying that they no longer needed to report to work and offering to pay them for the remaining portion of their work week. An outline of what the Company considered the major points of its final offer was sent to unit employees on June 27, noting the substantial changes in their pay, benefits, vacations, overtime, and other matters, and pointing out these changes would be effective on July 1. As noted earlier, an item by item comparison of the relevant provisions of the expired contract, the pre-June 24 proposals and the implemented final offer is set forth in Appendix A to this decision.

On July 1, the Union sent the Company a letter (Jt. Exh. 39), its first response to the June 24 announcement, which states:

Reference is made to your letter dated June 24, 1991. Please be advised that this organization thru the undersigned takes the position that your statements in the first, second, and third paragraphs do not represent the facts as we have had talked. In reference to your fourth paragraph, this organization will review that and will take whatever steps we have under the law to protect rights and benefits of the employees.

The letter then requests, inter alia, the following information:

(5) Provide copy of the contract between Shell Company and the subcontractor company. If no contract exists, explain in detail the specific condition in which the subcontract of work will be performed.

(6) Provide the names, address, rate of pay and benefits that the employees performing the subcontracted work receive, and what rules of conduct they will be guided from.

(1) Is it true or not that the Shell Company will provide petroleum products to the customers in the East and South side of the Island from Guayanilla? If the answer is yes, provide the effective date and copy of any contract. Did Shell purchase any equipment for the purpose? When was the equipment purchased and when was it received?

(2) Provide the number of employees that will be used by the subcontractor company to perform unit work.

Maldonado testified that this information was necessary for the Union to bargain over the subcontracting of the involved work.

Joint Exhibit 40 is a letter from Vazquez to Maldonado dated July 15, which states:

This is to acknowledge receipt of your letter dated July 1, 1991. We are in the process of analyzing your request and will give you an answer as to our position with the course of next week.

Joint Exhibit 41 is a letter from Vazquez to Maldonado dated July 26, and states:

The Company has provided the Union with all the information that it has sought and to which it is entitled

under the National Labor Relations Act. There is certain information which we maintain we are not under the legal obligation to submit to your organization in connection with the collective-bargaining process.

Nevertheless, since you have used this as an excuse, highly untenable, to refuse to negotiate with the Company, we voluntarily submit the following so that you will not have a reason to continue refusing to negotiate. Enclosed you will find the Financial Statements from years 1987 thru 1990 duly audited and endorsed by Price Waterhouse, the external auditors. As expressed by you in your letter of March 8, 1991, we expect extreme confidentiality with these documents from you and your organization.

. . . .

The information provided covers your requests for information in your letters dated February 25, 1991, and March 8, 1991.⁷

Joint Exhibit 42 is a letter to Maldonado from Vasquez dated August 6, 1991, which states:

Reference is made to your letter dated July 1, 1991. Your remarks referring to our letter of June 24, 1991, regarding the first three paragraphs surprised us. The statements on those three paragraphs are absolute facts. No comment will be made at this time regarding your review of our final offer.

However, you have requested some information, that we will provide:

P.P.A.—This function has been contracted with Caribbean Petroleum Inspectors, Inc. which were contacted by phone on June 24, 1991, and started performing the job the next day. The charge is \$4.50 per truck including all materials, and are covered by a purchase order. This is similar to what our main competitors do.

Janitor—Catano Plant is using contractor Ismael Vizcarrondo, an average of two man hours per day intermittently and as necessary since June 25. The Airport Plant is likewise using contractor Lee Nadal an average of three hours per day to perform the minimum tasks the job requires intermittently since June 25.

These are temporary arrangements until contracts with janitorial services type contractors are completed. This is now in the bid stage. Until then, these services are covered by purchase orders. Both Plants are paying approximately \$10.00 per hour for the hours effectively worked.

With this information and one previously provided, we expect that you are now in a position to meet with us concerning the Collective Bargaining Agreement, and to this effect we invite you to a meeting on Wednesday, August 14, 1991, at the “Negociado” at 2:00 p.m. to restart negotiations. However, if this date is not convenient to you, let me know when you can meet.

Joint Exhibit 43 is a letter from Maldonado to Vasquez dated August 15, 1991, which states:

⁷It did not include the comparative study appended to this decision as Appendix B.

In reference to your July 26, 1991 letter, please be advised of the following:

The company, by its own admission in this letter, has not fully complied with its obligation as per Case 24-CA- 6335. Furthermore, since it is not up to the Union to determine the confidentiality of the received financial statement, please inform if the company per se considers this document to be confidential and the reason for. In addition, inform the people, agencies, offices, etc., which have been exposed to this document. In our last telephone conversation I informed you that the Union was planning to submit these documents to a financial expert in the matter for study, analysis and guidance so that we can intelligently represent the best interests of the workers. Arguendo that finally these documents are considered confidential, the question is: Will the company consider the Union breaking the confidentiality by providing copy to a financial expert as explained above?

On August 15, the Union sent a letter (Jt. Exh. 44) to the Company requesting certain additional information relating to Respondent’s admission that it was subcontracting the work formally performed by its janitors and P.P.A.s, including:

(1) Who supervises the employees and the operation, or from whom they receive their orders or instructions on a daily basis.

P.P.A.

(1) How many trucks at \$4.50 are serviced daily and weekly? If the amount varies on a weekly basis, then also provide the information by month.

(2) How many employees does Caribbean Petroleum have, their shift of work, amount of hours, working—daily and weekly?

(3) Please respond to my question on No. 6 of my letter of July 1. If you are not going to respond, explain why. Who supervises the employees or from whom they receive orders or instructions on a daily basis?

(4) Please explain if you have a written contract with Caribbean Petroleum; and if your main competition has a written contract, and if you have a copy of them.

(5) Provide copies of purchasing orders since June 25 on.

(6) Please inform if they bill you on a weekly or monthly basis, and provide copies including copy of the payments made.

Janitor

(1) Please respond to my question No. 6 of my letter of July 1. If you are not going to respond, explain why.

(2) Provide copies of the service purchase orders covering the periods since June 25 on.

The August 15 request also requested Respondent to furnish the Union with, inter alia, the following additional information relating to Respondent’s operations in Guayanilla, Puerto Rico:

(1) Inform all the charges made by the subcontractor, if any. Copy of the service purchase orders; if it does

not cover all charges, provide additional documents to cover all charges.

(2) Provide the name of the subcontractor.

(3) How many trucks are serviced from that area daily and weekly? If the weekly amount fluctuates, then by month.

(4) Name the different towns that are serviced from the South operation.

Joint Exhibit 45 is a letter from Vazquez to Maldonado dated September 4, which states:

In reference to your letter of August 15, 1991, regarding the PPA's and the Janitors, this is part of the issues in the complaints in the NLRB, Cases 24-CA-6335 and 24-CA-6364. Therefore, since you have chosen said course of action, answering you these points serve no purpose.

However, if what you pretend is to resolve these matters at the bargaining table, which has been the Company's position throughout this period, please contact the undersigned to schedule a meeting.

Joint Exhibit 46 is a letter from Vazquez to Maldonado dated September 4, which states:

In reference to your letter of August 15, 1991, please be advised that the Union may submit the Financial Statements provided by the Company to a financial expert for study, analysis and guidance. As to your comments regarding the Company's admission, this is your subjective and biased opinion and we stand by our statements in the letter of July 26, 1991.

Joint Exhibit 47 is a letter from Maldonado to Vazquez dated September 20, 1991, which states:

Acknowledge receipt of your letter dated September 4, 1991. Please be informed that your letter has no reference at all to the following language in my letter of August 15, 1991, and I quote:

Furthermore, since it is not up to the Union to determine the confidentiality of the received financial statement, please inform if the company per se considers this document to be confidential and the reason for. In addition, inform the people, agencies, offices, etc., which have been exposed to this document.

I will appreciate your response to these questions. If you are not going to respond, please explain why.

Joint Exhibit 50 is a letter from Maldonado to Battle, dated October 1, 1991, which states:

Acknowledge receipt of your letter dated October 1, 1991 on the above referenced matter (the closing of the Airport operation). Please provide the following information necessary for the Union to fulfill its bargaining obligation.

1. When the decision to close the airport operation was made and by whom?

2. What is the reason or reasons for closing the operation?

3. Did the company think about any alternatives? What were they, if any?

4. What future plans does the company have for this airport operation, if any?

5. Is the company planning to subcontract this facility? If yes, to whom and when?

Please provide this information within 5 days from receiving this communication. Upon receiving your response the Union reserves the right to request further information, if needed.

Vazquez sent Maldonado a letter dated October 7 (Jt. Exh. 51), which states:

I make reference to your letter of September 20, 1991, regarding the financial statements. In our letter of March 1, 1991, we argued that the statements were confidential, the reason being the obvious value that our competitors have for this document. Therefore, since you requested the same, it is your responsibility personally and of your union, to guarantee the confidentiality of this document. Specifically, since you represent the employees of one of our main competitors with whom you are presently negotiating.

According to my information, besides the Management of Shell Puerto Rico, the following persons have also been exposed to this document: Price Waterhouse (external auditors), our Shareholders, The State Department and the IAM Union.

Again, Mr. Maldonado, this document is confidential for us and has been provided to you upon your insistence that they were necessary for negotiations, even though we have recently indicated that Shell has not alleged inability to pay. Notwithstanding that the financial statements have been provided since July 26, 1991, three months have elapsed and you still have made no genuine effort to properly address the pending issues.

Joint Exhibit 52 is a letter from Battle to Maldonado, dated October 9, 1991, which states:

We refer to your letter of October 4, 1991, related to the above subject. As undoubtedly is of your knowledge, presently SPR (Shell Puerto Rico) has lost just about all of its aviation business. The reasons are varied as mentioned to you in various occasions in which SPR have been obliged to lay-off personnel. However, for your quick reference, this includes the loss of business to competitors (American Airlines, U.S. Air, BWIA) and cessation of operations by the airlines themselves (Eastern Airlines and Mexicana). The recently unsuccessful bid for all or part of American Airlines business was the latest setback. In view of the well known situation affecting SPR aviation business, the painful decision to withdraw from that market was taken by SPR Management Team presided over by its Managing Director.

Again, well known to your SPR tried in every imaginable way to continue its presence in the aviation business. The above position has been conveyed to you personally, officially during bargaining agreement meetings and informally during personal meetings. Needless to say, we were all surprised at the apparent indifference

shown by you at getting to the core of the situation. Your diligence was only evidenced in constant requests for massive information related SPR overall operations, and the activities related to the petition to the general public to boycott SPR products, an action that if it had been a success could have had negative results for all SPR employees including those that the Union represents. However, for the good of all, your attempt failed.

In view of the eminent cessation of operations at the airport, SPR is in the process of returning the fixed facilities to its owner, the Puerto Rico Ports Authority. As we are well aware of Shell Puerto Rico's responsibility towards affected employees, we await your response to coordinate an appropriate time and date to meet as previously requested.

Joint Exhibit 54 is a letter dated October 12, 1991, from Maldonado to Vazquez, which states:

Reference is made to your letter dated October 7 1991 and delivered by hand on October 10, 1991. You indicated that notwithstanding that financial statements have been provided since July 26, 1991, three months have elapsed and I still have made no genuine effort to properly address the pending issues. As stated to you before your position to request the Union or to expect the Union to return to the bargaining table is frivolous and I will add superficial since the company has refused to properly comply with the NLRB findings in the charges for refusal to provide the Union will all relevant and necessary information for the Union to properly bargain. Furthermore, your company had unilaterally and illegally implemented a contract on July 1, 1991. You must first comply with legal obligations before questioning the Union.

F. Did the Respondent Lawfully Refuse to Comply with the Union's Information Requests, and Was Its Declaration of Impasse Lawful?

As noted above, on June 24, the Company announced that it considered the negotiations deadlocked by the Union's continuing refusal to meet and further announced that because of the deadlock, it was implementing the terms and conditions of its so-called final offer on July 1.⁸ The letter, though not saying so explicitly, declares an impasse in negotiations, caused by the Union's actions. The Union refused to meet after March 12 primarily because of its position that it could not bargain intelligently absent the financial information and comparative study information it had sought since early in negotiations. As Respondent continuously contended that it had no legal obligation to supply such information, a determination must be made on that issue before one can decide whether impasse was properly declared.

Respondent relies on the Board's decision in *Neilson Lithographing Co.*, 305 NLRB 697 (1991), and cases cited therein in support of its refusal to supply the information re-

quested by the Union, and its subsequent implementation of what it terms its final offer.⁹ I believe that it is wrong on both counts.

In *Neilson Lithographing*, the Board was faced with a situation similar on its face with the instant case. An employer was alleged to have violated the Act by refusing to supply financial information to the involved union during negotiations, and then implemented its last offer. The union claimed that the implementation was unlawful, inter alia, because the employer had refused to provide the information which it asserted was relevant to its role as bargaining representative. As stated by the Board in *Neilson Lithographing*:

In this connection, *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956), holds that "a refusal to attempt to substantiate a claim of inability to pay increased wages may support a finding of a failure to bargain in good faith." 351 U.S. at 153. The Court cautioned:

We do not hold, however, that in every case in which economic inability is raised as an argument against increased wages it automatically follows that the employees are entitled to substantiating evidence. Each case must turn upon its particular facts.

Thus, not every claim of inability to pay will result in an obligation to supply substantiating information. In the instant case, as shown below, the Respondent was not even making a claim of inability to pay.

We find that the Respondent's claim of competitive disadvantage is not the same as a claim of financial inability to pay. Thus, the claim does not raise any obligation under *Truitt* to turn over the requested information.

We agree with the court's observation in *Harvstone* that an employer's expressed view that its current economic position vis-a-vis competitors would lead to an eventual inability to pay beyond the intended contract term is quite different from an employer's insistence that a union's current bargaining demands are precluded by its condition at the present time or within the intended contract. 785 F.2d at 577 fn. 6. Analogously, the Board in *Buffalo Concrete*, 276 NLRB 839 (1985), enfd. 803 F.2d 1333 (4th Cir 1986), found no duty by the employers to disclose financial information where their claim that they were not competitive amounted to an unwillingness, rather than an inability, to accept the union's bargaining proposals. The lesson of both *Harvstone* and *Buffalo Concrete* is that an employer's obligation to open its books does not arise unless the employer had predicated its bargaining stance on assertions about its inability to pay during the term of the bargaining agreement under negotiation.

The difference between the two types of claims is critical. The employer who claims a present inability to pay, or a prospective inability to pay during the life of the contract being negotiated, is claiming essentially that it *cannot* pay. By contrast, the employer who

⁸As will be discussed in another section of this decision, this offer differed significantly from the last offer on the table, and further, no notice and opportunity to bargain was given of the "offer" as it was implemented simultaneously with its announcement.

⁹See also *Concrete Pipe & Products Corp.*, 305 NLRB 152 (1991); *Ameron Bike Products*, 305 NLRB 105 (1991); *Georgia-Pacific Corp.*, 305 NLRB 112 (1991); *Burruss Transfer*, 307 NLRB 226 (1992).

claims only economic difficulties or business losses or the prospect of layoffs is simply saying that it does not want to pay.

We do not say that claims of economic hardship or business losses or the prospect of layoffs can never amount to a claim of inability to pay. Depending on the facts and circumstances of a particular case, the evidence may establish that the employer is asserting that the economic problems have led to an inability to pay or will do so during the life of the contract being negotiated.

. . . .

The distinction has always been between claims of "can not" and "will not." We would not abandon that distinction in favor of a new distinction.

. . . .

We therefore conclude that an employer's obligation under *Truitt* to provide a union with information by which it may fulfill its representative function in bargaining does not extend to information concerning the employer's projections of its future ability to compete. We consider that obligation to arise only when the employer has signified that it is at present unable to pay proposed wages and benefits. We do not equate "inability to compete" whether or not linked to job loss, with a present "inability to pay." [305 NLRB at 699-701.]

Looking at the facts of this case with the Board's direction in mind, I believe that at least part of Respondent's proposals were predicated on a present inability to pay and that message was clearly given to the Union. The Company first made the point that it was presenting its proposals in two parts, one relating to the airport operation and one for the Catano plant. It then proceeded to give different justifications for its proposals depending on whether it was speaking about the airport or Catano. I will agree that Respondent's statements with respect to Catano do not meet the Board's test as enunciated in *Neilson Lithographing*. Although Respondent clearly gave the impression that it would not survive at Catano unless it became more competitive with Esso and Texaco, there is no clear indication that this end would be reached during the duration of the contract under consideration. However the situation is far different at the airport.

The Company's situation at the airport was continually described as "critical" and a matter of "survival." Critical certainly denotes a degree of urgency or crisis, and when used with survival, denotes a situation in medical terms that would indicate the patient is in imminent danger of dying, or in the case of the airport operation, closing down. I do not think a reasonable person could hear Respondent's representatives describe the airport situation as critical and one of survival, and believe that they were speaking of some event that might occur at some point 3 years or more in the future. Therefore, I find that at least with respect to the airport, the Company was not saying that it *would not* pay the existing contract wages and benefits and live with the existing working conditions; but rather, that it *could not* pay them and live with them and survive, even in the immediate future. And of course, history proved that they were correct as the airport facility was closed in October 1991.

That the Respondent may have had the resources to continue the airport operation at a loss for an indefinite period of time if it chose to squander its resources in this way is not a valid argument that it was thus able to live with the existing contract at the airport. It chose in negotiations to ask that the two be treated differently, and I believe they should. At least in this regard, this case is similar to one in which a company seeks wage concessions at a plant which is at least marginally profitable and at which it seeks to become more competitive, and attempts to secure such concessions by pointing to the consequences of not making concessions, noting another of its plants that is failing and closing. See *Facet Industries*, 290 NLRB 152 (1988), a case in which such a point was made and the Board held the employer was obligated to supply financial information to a union to justify its bargaining position of wanting to become more competitive.

Under the circumstances here presented, I find that under *Truitt*, and under *Neilson Lithographing*, Respondent had a duty to supply the financial information requested, to support its position with respect to the airport facility. Such information may have provided several fertile grounds for *collective* bargaining. First, it may have justified the Company's claims with respect to the airport, and the Union would have been forced to recognize that the "well had run dry" at that facility. It may have offered insights as to other savings that might be made at the facility, lessening the degree to which the Union would be forced to make concessions. It may have impacted the Union's willingness to make the concessions sought at Catano, in order to share the misery and save union jobs at the airport. In short, it would have better enabled the Union to bargain intelligently on behalf of the employees and not from a totally unnecessary state of darkness.

With respect to Catano though, I would not find that the financial information requested was required by law to be furnished to the Union, certainly the law required Respondent to furnish the comparative study or survey it was using to justify its bargaining proposals. In a case also similar to the one here under consideration, the Board found a duty to supply such information in cases where the employer seeks wage and other concessions in order to become competitive, without pleading poverty. In *A.M.F. Bowling Co.*, 303 NLRB 167 (1991), the employer had prepared a wage survey of competitors and other companies in its geographic area and internally relied on that survey to justify its proposals to substantially cut wages. Though requested to do so by the union involved, the employer refused to supply this information to the union, saying only that it needed the concessions to be more more competitive. In finding such a refusal to be unlawful and a subsequent declaration of impasse unlawful, the Board held:

Rather, based on the Union's continuing request for substantiation and documentation regarding the Respondent's economic proposals, it is clear that the Respondent had an obligation to furnish that information in its possession which was relevant to and supportive of the Respondent's asserted need for concessions. We emphasize, in this regard, that the Board has consistently required employers to provide any wage surveys on which they have relied in the formulation of their bargaining proposals when the Union requests such in-

formation. [*Mobil Exploration & Production U.S.*, 295 NLRB 1179 (1989).] The record establishes that the Respondent conducted surveys comparing Lowville wage rates to increases in the cost of living, and increases received by employees performing similar work, and relied on those surveys in formulating economic proposals based on its conclusion that Lowville wages and benefits were too high. Yet the Respondent never disclosed to the Union that it had such data in its possession. Further, when the Union requested any substantiation or documentation for the Respondent's economic proposals, the Respondent failed to provide this information. Although this case does not present the issue raised in the inability to pay cases, the Supreme Court's observation in *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152-153 (1956), is applicable:

Good-faith bargaining necessarily requires that claims made by either bargainer should be honest claims If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of accuracy.

Thus, the Respondent has obstructed the bargaining process by making bargaining demands certain to ensure difficult negotiations and then concealing from the Union information which at least in part constituted the basis for the Respondent's proposals." Id at 169-170.

For the reasons set forth above, the Board concluded that

the Respondent violated Section 8(a)(5) of the Act by failing to provide the Union with the wage surveys it conducted to justify the necessity for the substantial economic reductions contained in its bargaining proposals. Because the Respondent's unlawful conduct prevented a valid bargaining impasse from occurring as the Respondent claimed, we adopt the Judge's findings that the Respondent also violated Section 8(a)(5) by . . . making unilateral changes and by refusing to provide certain requested information to the Union. Id at 167.

I find that the Board's holding in *A.M.F. Bowling Co.*, is controlling under the facts of this case with respect to the Respondent's duty to supply the comparative study it prepared and relied on. I would further note that there is nothing inherently wrong with seeking employee concessions, even major concessions, if they are necessary and are bargained for in good faith. I do not for a moment question the necessity of Respondent's management to respond to the worsening situation it faced in its airport operation or to respond to the economic setbacks represented by the DACO and Environmental Agency decisions by seeking employee concessions. What I question from a legal standpoint is the manner in which it went about securing these concessions, which were major concessions by any yardstick.

I believe that the bargaining which took place in this case was a not in good faith, and that the lack of good faith was on the part of the Company, not on the part of the Union as asserted by the Respondent. It appears to me that Respondent had set goals it was intent on achieving and achieving an agreement through collective bargaining was of secondary importance at best. The stances it took before nego-

tiations and during negotiations seem to me to be aimed at inducing or forcing impasse so its contract goals could be implemented as formulated. At the January 3 meeting, the Company painted a bleak picture for Maldonado and secured his pledge that the Union would help if the Company justified its condition. Yet during negotiations, the Company introduced its proposals, calling for major changes, in a piecemeal fashion, and without any justification whatsoever. Although in its communications to employees (see Jt. Exh. 9), it speaks of survival and of changes necessary to ensure the future of employment with the Company, it repeatedly said during negotiations that it simply sought concessions to become more competitive. This position seems to me to be more a legal one, based on a reading of the Board's holding in *Neilson Lithographing* and similar cases, than one designed to gain union cooperation in securing concessions.

Where is good faith to be found in the refusal to supply the information which could justify the concessions, that is, the financial information and comparative studies sought by the Union? The information sought was readily available to the Company and at least the comparative study was heavily relied on by it to formulate its proposals. During negotiations, Maldonado to no avail repeatedly asked for the Company to put its cards on the table, seeking in part the justification he was promised in the January 3 meeting. The pieces of information sought were vital cards for meaningful negotiations and refusal to show them bespeaks bad faith, not a desire to reach a negotiated agreement. No reasonable business reason was advanced to justify the refusal to supply the financial information, which in passing I note would have tended to support the position of the Company.¹⁰ No reason whatsoever was given for refusing to supply the comparative study.

The Company makes much of its continued offers to negotiate and of the Union's virtual refusal to meet. The Union's refusal to meet was conditioned on the Company supplying the information requested, primarily the financial information and comparative studies. I believe it is disingenuous for the Company to claim the Union was not bargaining in good faith by refusing to meet when it knew that to hold the Union's feet to the fire all it had to do was supply the information requested by the Union. Its actions in refusing to supply the information under the circumstances indicates to me that the Company was perfectly happy with the Union's continuing refusal, a refusal it obviously believed would give it an excuse to implement the changes it sought in the contract between the parties. When one abandons the precepts of good-faith bargaining, it appears to cause one to lose sight of what can be obtained by engaging in good-faith negotiations. Had the Company simply provided the information sought in a timely fashion, the Union would have been in position to negotiate and would have had to negotiate. An agreement containing concessions may have been obtained through mutual consent. If the company and the Union bargained in good faith, as Maldonado put it, "with all the cards

¹⁰ As I have found earlier, this information was required by Puerto Rico's corporation laws to be filed with its Secretary of State and made available to the public on demand. Thus, Respondent's stated confidentiality concerns do not hold up. Moreover, this information was placed in this public record without requests for confidentiality, further undermining the confidentiality assertion.

on the table,” and an impasse was reached, the Company could have lawfully implemented its final offer.

However, it did not bargain in good faith by refusing to supply the Union with the financial information and comparative studies sought by the Union, and thus engaged in conduct in violation of Section 8(a)(5) and (1) of the Act. As I have found it engaged in such unlawful conduct, Respondent’s declaration of impasse on June 24 was similarly unlawful.

G. Did Respondent Give the Union Notice and an Opportunity to Bargain Over Its “Final Offer” Before Implementation?

Although I have found that Respondent unlawfully declared impasse on June 24, and therefore could not unilaterally implement its “final offer” or otherwise unilaterally implement changes in wages, benefits, and other matters affecting terms and conditions of employment of its unit employees, I believe the implementation would be unlawful even if impasse had been properly declared.

I believe that the letter of June 24 did not give proper notice of the final offer and afford the Union an opportunity to bargain before implementation. I view it as a simple announcement of a fait accompli. There was no time afforded to the Union to study the “final offer” and bargain over it, nor from the wording of the June 24 letter and its announcement to employees on that date, was there any intention on the part of Respondent to bargain over its terms. The employees who would lose their jobs pursuant to the implemented offer lost them on June 24. The subcontractors took over the work of the bargaining unit on the June 25. The letter itself is not couched in terms of an offer to negotiate, but rather, in terms of the announcement of a done deal.

Moreover, the implemented offer varies significantly from the terms of the last offer made by the Company in March, and not just for the better as urged by Vazquez in his testimony. Reference to Appendix A will reveal that, from the Union’s viewpoint, it is significantly worse than the March proposals. For example, there is a cap on the Company’s contribution to the medical plan that was not proposed before implementation. There is the removal of all safeguards regarding the subcontracting of unit work, which existed in the earlier proposals. This is truly significant as the absence of such safeguards would allow the Company to subcontract any bargaining unit work it wished. Absolutely no advance notice was given to the Union with respect to the implemented subcontracting provision, or lack of one as is the case here, or the narrower matter of the subcontracting of the P.P.A. function and the janitorial positions. No advance notice was given to the Union about the elimination of the lead person position nor the cap placed on the Company’s contribution to the medical plan under the implemented final offer.

Clearly the matter of eliminating restrictions on subcontracting, subcontracting the P.P.A. function and the janitorial positions, eliminating the leadperson position(s), discharging the employees affected by the subcontracting changes and the elimination of the leadperson and janitorial positions and P.P.A. functions, and imposing a cap on the Employer’s contribution to the medical plan, all significant changes, were not encompassed by any proposal made by Respondent prior to June 24. These were all new proposals

and thus could not be lawfully implemented even if a lawful impasse had occurred. *Storer Communications*, 294 NLRB 1056 (1989). Most of the other implemented proposals changed in one way or the other the pre-March 12 proposals, in some cases in favor of the employees and in others against their interest. But the significant matter is that they did change the previous proposals and therefore were not the previous offer. Under Board law, Respondent, if it could have lawfully implemented anything, could have only implemented its last offer. Thus, even as to those items which it implemented which were more favorable to employees, I find that its implementation was unlawful and violated Section 8(a)(5) and (1) of the Act. The implementation was also unlawful as it was accomplished without proper notice to the Union and without affording the Union an opportunity to bargain over the implemented changes. *Chas. P. Young Houston*, 299 NLRB 958 (1990); *Storer Communications*, supra.

H. Did Respondent Unlawfully Insist to Impasse and Implement Changes in the Scope of the Bargaining Unit?

It is well-settled law that the scope of the bargaining unit is a permissible subject of bargaining and cannot be insisted upon to impasse or unilaterally changed by an employer absent union consent. Here Respondent, in part, insisted to impasse on its proposal to delete from the scope of the unit and thus from union representation, the San Juan office and Guayanilla plant, and the employee classifications of laborer, leadworker, and janitor. It implemented this proposal in part on June 24 and in full on July 1. Its actions in this regard constitute a refusal to bargain in violation of Section 8(a)(5) and (1) of the Act. *Boise Cascade Corp.*, 283 NLRB 462 (1987); *Facet Enterprises*, supra; *Bozzuto’s Inc.*, 277 NLRB 977 (1985).

I. Did the Respondent Unlawfully Refuse to Provide Information Requested by the Union After July 1?

On July 1 and August 15, the Union requested certain information from Respondent relating to the subcontracting notice in Respondent’s June 24 letter. By letter dated August 6, Respondent provided some of the information requested in the July 1 letter. The August 15 request reiterated the need for the information not supplied but requested on July 1, and some additional information prompted by the information that was supplied. By letter dated September 4, Respondent refused to furnish further information in response to the July 1 and August 15 requests, stating:

In reference to your letter of August 15, 1991, regarding the PPA’s and the Janitors, this is part of the issues in the complaints in the NLRB, Cases 24-CA-6335 and 24-CA-6364. Therefore, since you have chosen said course of action, answering you these points serve no purpose.

However, if what you pretend is to resolve these matters at the bargaining table, which has been the Company’s position throughout this period, please contact the undersigned to schedule a meeting.

The Company has an obligation to bargain over the involved subcontracting as it turns entirely on the matter of

labor costs, and has nothing whatsoever to do with a change in the direction of the business. Thus the Union's requests are necessary and relevant to its function as the bargaining representative. The Respondent's only reason for its refusal to supply the remaining information is that the matter is before the Board and it is thus somehow relieved of its duty to supply the information. It is before the Board because it, inter alia, unlawfully implemented changes with respect to subcontracting and unlawfully refused to supply the Union with information necessary for bargaining pursuant to earlier requests. It cannot use its unfair labor practices as an excuse to commit further unfair labor practices and I find that Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to supply the involved information.

CONCLUSIONS OF LAW

1. The Shell Company (Puerto Rico) Limited is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Association of Machinists and Aerospace Workers, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times since October 18, 1967, the Union has been the certified representative of Respondent's employees in the following appropriate unit:

All production and maintenance employees employed by the Respondent at its Catano and Guayanilla plants, at the International airport at Isla Verde and its office in San Juan, Puerto Rico, as airport attendants, plant workers and laborers, but excluding office clerical employees, salesmen, professional personnel, watchmen, guards and supervisors, as defined in the Act.

4. At all times material to this decision, the classifications of leadworker and janitor have been included within the scope of the above described unit.

5. The Respondent has engaged in conduct which violates Section 8(a)(1) and (5) of the Act by:

(a) Failing and refusing to supply the Union with necessary and relevant information since its requests made February 25 and March 1, 1991, relating to certain specific financial data of Respondent and studies or surveys used by Respondent as a basis for its proposals made in negotiations for a collective-bargaining agreement to replace the one that expired on March 16, 1991.

(b) Failing and refusing to supply the Union with necessary and relevant information since its requests made July 1 and August 15, 1991, relating to specific information about the subcontracting of work formerly performed by unit employees.

(c) Since on or about June 25, 1991, declaring impasse in negotiations with the Union and on that date and thereafter on July 1, 1991, unilaterally implementing changes in the wages, hours and other terms and conditions of employment of the employees in the unit described above, by among other things, permanently laying off or terminating the employment of certain employees in the bargaining unit, by eliminating the classifications and functions of leadworkers, by changing working conditions of its unit employees and by reducing and/or changing the wages and fringe benefits of unit employees, without first negotiating such changes with

the Union. Those employees who were laid off or terminated include:

| | |
|------------------|-------------------|
| Luis M. Diaz | Victor L. Cruz |
| Juan A. Ortiz | Carlos I. Perez |
| Carmelo Pimental | Eduardo Rodriguez |
| Hector Hernandez | |

(d) Since on or about July 1, 1991, unilaterally altering the certified bargaining unit by excluding from its scope the Guayanilla plant and San Juan office and by eliminating existing job classifications of janitor, laborer, and leadworkers.

(e) Since on or about June 24, 1991, unilaterally subcontracting out bargaining unit work formerly performed by the P.P.A.s and janitors at Respondent's facilities.

6. The unfair labor practices Respondent has engaged in and is engaging in are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent is engaging in certain conduct in violation of Section 8(a)(1) and (5) of the Act, it is recommended that it be ordered to cease and desist therefrom, and to take certain affirmative action necessary to effectuate the policies of the Act.

Having found that Respondent has unlawfully refused to supply certain information set forth in the complaint, it is recommended that Respondent be ordered to furnish such information to the Union.

Having found that Respondent unlawfully changed the wages, benefits, and other terms and conditions of employment of the employees in the unit on or about July 1, 1991, it is recommended that Respondent be ordered to rescind all of the changes in existing wages, benefits, and other terms and conditions of employment and restore the status quo ante. Included in such remedy it is recommended that Respondent make whole its employees for any loss of pay or other employment benefits that they may have suffered commencing on July 1, 1991, by reason of Respondent's unilateral changes in its employees' terms and conditions of employment, as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found Respondent unlawfully laid off or discharged certain employees on or about June 24, 1991, I will recommend that Respondent be ordered to offer them immediate reinstatement to their former or equivalent positions, making them whole for wages and other benefits measured under the status quo ante conditions, lost by virtue of Respondent's unlawful conduct. Backpay to these discriminatees shall be computed from June 24 to the date they are offered reinstatement, with one proviso. Certain of these employees may have been again laid off or discharged because of the closing of the airport facility in October 1991. As Respondent's actions in closing the airport facility are not alleged to have been unlawful, reinstatement of these employees may not be possible and the backpay due to those of the involved discriminatees who would have been laid off or discharged by virtue of this closing will cease as of the date of the closing of the airport facility. Backpay to these employees is to be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in accordance with *New Horizons for the Retarded*, supra.

It is further recommended that Respondent be ordered, on request, to bargain in good faith with the Union over wages, hours, and other terms and conditions of employment to be embodied in a new collective-bargaining agreement to replace the one that expired on March 16, 1991.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹¹

ORDER

The Respondent, the Shell Company (Puerto Rico) Limited, San Juan, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to supply the Union with necessary and relevant information since its requests made February 25 and March 1, 1991, relating to certain specific financial data of Respondent and studies or surveys used by Respondent as a basis for its proposals made in negotiations for a collective-bargaining agreement to replace the one that expired on March 16, 1991.

(b) Failing and refusing to supply the Union with necessary and relevant information since its requests made July 1 and August 15, 1991, relating to specific information about the subcontracting of work formerly performed by unit employees.

(c) Since on or about June 24, declaring impasse in negotiations with the Union and on that date and thereafter on July 1, 1991, unilaterally implementing changes in the wages, hours and other terms and conditions of employment of the employees in the bargaining unit, by among other things, permanently laying off or terminating the employment of certain employees in the bargaining unit, by eliminating the classifications and functions of leadworkers, and by reducing and/or changing the wages and fringe benefits of unit employees, and making changes in employee's working conditions, without first negotiating such changes with the Union.

(d) Since on or about July 1, 1991, unilaterally altering the certified bargaining unit by excluding from its scope the Guayanilla plant and San Juan office and by eliminating existing job classifications of janitor, laborer and leadworkers.

(e) Since on or about June 24, 1991, unilaterally subcontracting out bargaining unit work formerly performed by the P.P.A.s and janitors at Respondent's facilities.

(f) Failing and refusing to bargain in good faith with the Union over wages, hours, and other terms and conditions of employment.

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

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

(a) Furnish to the Union information it requested in its letters of February 25, March 1, July 1, and August 15, 1991.

(b) Rescind all of the changes in existing wages, benefits and other terms and conditions of employment and restore

¹¹ 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.

the status quo ante that existed on and before June 24, 1991, and make whole its employees for any loss of pay or other employment benefits that they may have suffered commencing on July 1, 1991, by reason of Respondent's unilateral changes of its employees' terms and conditions of employment, in the manner described in the remedy section of this decision.

(c) Offer Luis M. Diaz, Victor L. Cruz, Juan A. Ortiz, Carlos I. Perez, Carmelo Pimental, Eduardo Rodriguez, and Hector Hernandez immediate reinstatement to their former or equivalent positions, making them whole for wages and other benefits measured under the status quo ante conditions, lost by virtue of Respondent's unlawful conduct in laying off or discharging them, in the manner described in the remedy section of this decision. In the event any or all of these employees would have been laid off by virtue of the closing of Respondent's airport facility, reinstatement of such employees shall not be required. Backpay for such employees, if any, will cease as of the date of closing of the airport facility.

(d) On request, bargain in good faith with the Union over wages, hours, and other terms and conditions of employment to be embodied in a new collective-bargaining agreement to replace the one that expired on March 16, 1991.

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

(f) Post at its facilities in Puerto Rico, copies of the attached notice marked "Appendix."¹² Copies of the notice, on forms provided by the Regional Director for Region 24, 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.

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

¹² 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."

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to supply the Union with necessary and relevant information in compliance with its requests made February 25 and March 1, 1991, relating to certain specific financial data of the Shell Company (Puerto Rico) Limited and studies or surveys used by us as a basis for our proposals made in negotiations for a collective-bargaining agreement to replace the one that expired on March 16, 1991.

WE WILL NOT fail or refuse to supply the Union with necessary and relevant information in compliance with its requests made July 1 and August 15, 1991, relating to specific information about the subcontracting of work formerly performed by unit employees.

WE WILL NOT declare impasse in negotiations with the Union and thereafter unilaterally implement changes in the wages, hours, and other terms and conditions of employment of our employees in the bargaining unit, by among other things, permanently laying off or terminating the employment of certain employees in the bargaining unit, by eliminating the classifications and functions of leadworkers, and by reducing and/or changing the wages and fringe benefits of unit employees, and making changes in employee's working conditions, without first negotiating such changes with the Union.

WE WILL NOT unilaterally alter the certified bargaining unit by excluding from its scope the Guayanilla plant and San Juan of office and by eliminating existing job classifications of janitor, laborer, and leadworkers.

WE WILL NOT unilaterally subcontract bargaining unit work formerly performed by the P.P.A.s and janitors at our facilities.

WE WILL NOT fail or refuse to bargain in good faith with the Union over wages, hours, and other terms and conditions of employment.

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

WE WILL furnish to the Union information it requested in its letters of February 25, March 1, July 1, and August 15, 1991.

WE WILL rescind all of the unilateral changes we made on and after June 24, 1991, in existing wages, benefits, and other terms and conditions of employment and restore the status quo ante that existed on and before June 24, 1991, and make whole our employees for any loss of pay or other employment benefits that they may have suffered commencing on July 1, 1991, by reason of our unilateral changes in our employees' terms and conditions of employment.

WE WILL offer Luis M. Diaz, Victor L. Cruz, Juan A. Ortiz, Carlos I. Perez, Carmelo Pimental, Eduardo Rodriguez, and Hector Hernandez immediate reinstatement to their former or equivalent positions, making them whole for wages and other benefits lost by virtue of our unlawful conduct in laying off or discharging them. In the event any or all of these employees would have been laid off by virtue of the closing of our airport facility, reinstatement of such employ-

ees shall not be made. Backpay for such employees, if any, will cease as of the date of closing of the airport facility.

WE WILL, on request, bargain in good faith with the Union over wages, hours, and other terms and conditions of employment to be embodied in a new collective-bargaining agreement to replace the one that expired on March 16, 1991.

THE SHELL COMPANY (PUERTO RICO) LIMITED

APPENDIX A

Exhibit 2 is a study prepared by Respondent comparing the wages and benefits of Shell with its two main competitors, Esso and Texaco. It shows selected 1991 wages and benefits offered by these two companies, as well as corresponding figures under the expiring Shell contract and three possible proposals by Shell for a new agreement. The figures for Esso are Shell's best estimate as that company was in negotiations for a new contract when the study was made. The wage figures for Texaco are an average of salaries paid to its employees who are grouped into tiers, each making different wages for the same work. The particular version of this comparative study was prepared in April 1991, but other versions were prepared months earlier.

Summary Comparison of Contract Provisions Under the Contract Expiring March 16, 1991, Comparable Company Proposals Made Prior to June 24, 1991, and Comparable Provisions Implemented by the Company on June 2 and July 1, 1991

As pertinent, Article I of the expired contract, Recognition, recognized the Union as the representative of all production and maintenance employees employed by the Company at its Catano and Guayanilla Plants, at the International airport at Isla Verde and its office at San Juan, Puerto Rico as airport Attendants, Plantworker and Laborers. It proposed to change the scope of the bargaining unit, leaving out the Quayanilla Plant and San Juan office entirely, as well as the classification of laborer. It also split the recognition article into two parts, one for the airport and the other for the Catano plant. The portion dealing with the airport excluded the laborer classification. This section was never the subject of agreement. The implemented contract brings the Article back together, but still deletes the San Juan office and the classification of laborer entirely. It adds a section indicating that if the Guayanilla plant is reopened, the Company will recognize the Union as the representative of all production and maintenance workers.

Article II, Maintenance of Membership and Agency Shop, and Article III, Check-Off, and Article IV Non-Discrimination were agreed to by the parties with some changes at a time before Respondent implemented its last offer.

Article V, New Employees, had two parts, A and B. Part A was agreed to, but Part B remained an open issue at the time of implementation. The implemented contract shortens part B and seems to eliminate most of the language found objectionable by the Union.

Article VI, Seniority, involved a number of matters including the principle of seniority, the filling of vacancies, lay-offs and recall rights, and loss of seniority. Though much of this section was agreed to by the parties, portions of the Article

dealing with layoffs, recall, and loss of seniority were still open at implementation. The layoff section proposed and implemented in its most significant change eliminated from the expired contract the necessity of giving two weeks notice of layoff or in lieu thereof, two weeks pay to the laid off employee(s). With respect to recall, the proposal cut down the time that an employee given notice of recall could respond and report for work. The implemented proposal restores the old time to respond, but cut from 10 days to 5 the time in which the employee recalled had to report for work. The Loss of Seniority section as proposed reduced the time a laid off employee forfeits seniority from 4 years to nine months. The implemented contract calls for forfeiture of seniority after twelve months in layoff status.

Article VII, Hours, Work Schedules, Overtime and Call-In involved nine different sections. Sections 2, Posting Work Schedules; Section 3, Overtime pay; Section 4, Overtime Work Section 5, Call-in Pay Guarantee; Section 6, Overtime Meal Allowance; and Section 7, Payment of Overtime, were all still open issues at time of implementation. The old Posting Work Schedules section required 15 days advance notice before changes in work schedules could be effected. The proposed and implemented section eliminates that requirement. The proposed and implemented section on Overtime Pay deletes the phrase "in each classification" from the portion of the section dealing with attempting to equalize overtime and changes the necessity for posting a chart listing overtime worked and refused by employee from current or daily to weekly. Section 4, Overtime Work, as proposed and implemented eliminated the right of an employee to escape a request to work overtime if he had a justifiable excuse. Section 5, Call In Pay Guarantee, as proposed and implemented eliminated overtime pay for an employee called in to work on a day off or a holiday. Section 6, Overtime Meal Allowance, as proposed and implemented called for the elimination of overtime pay for employees who were required to work all or part of their lunch period. This was a change from the old contract. Section 7, Payment of Overtime, as proposed and implemented simply eliminated Thursdays as the required day for pay.

Article VIII, Salaries, was open in all material respects at the time of implementation. The expired contract called for the following employee classifications and top pay for each as follows: Plantworker (\$11.61 per hour), Janitor (\$11.49 per hour), Leadworker (\$11.89 per hour) and airport Attendant (\$11.64 per hour). Respondent proposed paying Plantworkers and airport Attendants \$7.00, \$7.10 and \$7.20 an hour in the 1st, 2nd and 3rd years of the contract respectively. New hires were to be paid \$6.00 an hour and would get the 10 cent annual increase proposed for existing workers. The Company proposed a night shift premium of 30 cents per hour, whereas the old contract paid 40 cents per hour. The proposal dropped the employee classifications of Leadworker and Janitor. The implemented contract continued the elimination of the plantworker and janitor classifications and paid plantworkers and airport attendants \$9.50, \$9.80 and \$10.10 per hour in the 1st, 2nd and 3rd, years of the contract. New employees would receive \$7.10 an hour and the night shift premium was set at 35 cents per hour. It appears to change the old agreement also by cutting out holidays, vacations, jury service and sick leave as categories of time receiving premium pay.

Article IX, Vacations, remained open at implementation. As proposed, an employee could earn a maximum of 15 days of vacation per year and accrue vacation for over two years only with the agreement of the employer. Under the old contract, based upon years of service employees got from 16 to 25 days vacation a year with no limitation on accrual. The proposal made some other minor, but less favorable changes from an employee point of view from the old contract. The implemented contract employed a different vacation formula, which cut the number of days employees received for vacation under the old contract, but only by about 13 a year based upon years worked and eliminated restrictions on accrual.

Article X, Holidays, was open at implementation. The old contract called for 18 annual holidays, including one floating holiday. The proposal called for 11 holidays, of which 2 were half day holidays and included no floating holiday. The implemented contract provided for 15 holidays, of which 2 were half days and included no floating holiday. Both the proposal and the implemented contract added new provisions to the Vacation proposal making it clear that if an employee is paid for his holiday, it will be straight time, not overtime.

Article XI, Leave of Absence was in part agreed to, but a section dealing with leaves of absence because of the illness of a spouse or child remained open. In essence the proposal cut out paid leave of up to six days a year for such absences. The implemented contract restored three days of paid leave. Remaining open were the portion of the Article dealing with jury duty, funeral leave, and the responsibility of an employee to notify the Company no later than two hours before the commencement of his shift that he will be absent. The proposed jury duty and court appearance section eliminated paid leave for jury duty and court appearances, which was included in the old contract. The implemented agreement reinstates paid leave for these purposes. The proposed and implemented Funeral Leave section added a time frame for taking such leave which was not included in the old contract. The proposed contract in Section 7, Absences, added a two hour minimum advance notice to be given to supervisors by employees if the employee is going to be absent. This proposed change was dropped in the implemented contract, which used the old contract language in this regard.

Article XIII, Bulletin Boards, was open because the proposal eliminated Guayanilla from the places where bulletin boards would be maintained. The implemented contract also eliminates Guayanilla.

Article XIV, Union Representatives, was open. The proposal changed the old contract in two ways, it changed the right of the Union to send more than one representative at a time to a Company facility to enforce the contract, and removed the provision for pay for employee/stewards for time spent in Union activities called for by the contract. The implemented contract carried forward the single representative proposal, but called for pay for stewards performing contract authorized union duties, but at straight time, with no overtime as allowed by the old contract.

Articles XV, Method of Work, and Article XVI, Adherence to Company Rules, were agreed to.

Article XVII, Existing Policies, was open. The proposed contract called for the elimination of a \$25.00 monthly allowance to airport employees, free provision of pocket calculators, 2-15 minute paid wash up periods daily and 2-15

minute break periods daily. The implemented contract restored the calculators and the break period, but continued the elimination of paid wash up breaks and the \$25.00 airport allowance.

Article XVIII, Prior Agreements, and Article XIX, No Interruption, Slowdown or Cessation of Work, were agreed to.

Article XX, Administering Performance Standards, had three parts, A, B, and C. Part A was agreed to but B and C were still open. Part B proposed a slight wording change, and Part C proposed enlarging the time that disciplinary records could be used against an employee from 1 year to 3 years. The implemented contract appears to adhere to the old contract in all significant ways.

Article XXI, Grievances, was open with respect to two substantive parts. Shell proposed with regard to Step 1 procedures to shorten the time in which a grievant may file a grievance from 30 days to 5 days after the act complained of and shortened the time Shell had to respond from 10 days to 5. The implemented Step 1 changed these time requirements to 10 day for each. In Step 2, the old contract provided that the Company will submit or make available Company records, witness or other necessary information related and pertinent to substantiate an action taken by the Company. The proposal in this regard changed the operative verb "will" to "could." The implemented contract uses the proposed language, but puts it in a separate section. In Section 2 of the Grievance Article, the old contract allowed 30 days to appeal a dismissal. The proposal calls for 5 days, and the implemented contract allows 10 days for such appeal.

Article XXII of the old contract, numbered as Article XXI in the proposal and implemented contract, Arbitration, contained four parts, only two of which, parts 1 and 3, were agreed to at the time of implementation. Significantly, the old contract called for binding arbitration whereas the proposal and the implemented contract call for an appeal of the arbitrator's award to the courts in the event the losing party does not like the arbitrator's decision. The other open section deals with, inter alia, the payment for a transcript of the arbitration proceeding. The proposal called for language somewhat similar to the old contract, but the implemented contract deletes the language altogether.

Article XXIII, Contractor's Rate of Pay, deals with subcontracting and was open. The old contract provided that if a subcontractor performs any work performed by leadworkers, airport attendants, janitors or plantworkers, the subcontractor must pay its employees the rate of pay contained in the old contract. It also generally prohibited directly or indirectly laying off, any Shell bargaining unit employees because of subcontracting or in any way curtailing the bargaining unit work. As proposed, the provision deletes any

mention of the employee classification and the language requiring a subcontractor to pay contract wages. The implemented contract deletes this Article altogether, therefore removing any restriction on the use of subcontractors. The implemented change could result in the subcontracting of all bargaining unit work.

Because of the deletion of the subcontracting Article, the remaining contract provisions were renumbered from the old contract and proposal. Therefore, the next three Articles will be referred to only by their title. The Article dealing with Non-Bargaining Unit Performing Work, the Savings Clause, and the Article dealing with Distribution of Agreement were agreed to.

Article XXVII, Bonus, was open. This Article is renumbered as XXV in the implemented contract. The old contract provided for a Christmas bonus of 5% of \$17,000, \$17,500 and \$18,000 for the years 1988, 1989 and 1990, respectively. The proposal called for a bonus of 2% of \$10,000 for each of the three years of the proposed contract's life. The implemented contract provided for a bonus of 4% of \$15,500, \$16,500 and \$17,500 for 1991, 1992, and 1993 respectively. The proposal and the implemented contract also added some language to the Attendance Bonus section of this Article, but it is questionable whether this language change anything or merely memorialized an existing policy.

Article XXIX, of the old contract dealt with Benefit Plans. The comparable proposal made during negotiations mentions only the Medical Plan. Under the old contract, the Company had five benefit plans, (1) Shell (Puerto Rico) Employee Savings Plan, (2) Shell (Puerto Rico) Employee Pension Plan, (3) Group Life Insurance Plan, (4) Hospitalization Plan and (5) Shell Disability Plan. The Company paid for all costs associated with the Hospitalization, Medicine and Dental Plan. Under the proposal, all mention of plans other than the hospitalization plan are deleted. It also provides that the plan will be paid for by the Employer, with the proviso that any increase in the dental plan will be paid for by the employee. The implemented plan also covers only hospitalization and provides a cap of \$165 per month per employee on the Employer's contribution to the plan.

Letter of Understanding—the old contract had appended to it and incorporated therein 5 Letters of Understanding and two Stipulations. Neither the proposal nor the implemented contract incorporates any of these Letters of Understanding or Stipulations. Importantly, Letter of Understanding No. 2 called for Shell's plantworkers to perform the licensed P.P.A. work mandated by Puerto Rico's Department of Consumer Affairs. Shell contends that by not including this Letter in its proposals, it put the Union on notice that it intended to remove the P.P.A function from the duties of the plantworkers.

APPENDIX B
CBM—1991
SPR/COMPETITORS
WAGES/BENEFITS

| | <i>Esso</i> | <i>Texaco</i> | <i>Shell</i> <u>1990</u> | <i>Shell</i> <u>1st</u> | <i>Shell</i> <u>2d</u> | <i>Shell</i> <u>5th</u> |
|-----------------------------|----------------|----------------|-----------------------------|----------------------------|---------------------------|----------------------------|
| Base Salary | \$10.30 | \$10.74 | \$11.89 | \$10.64 | \$10.44 | \$10.64 |
| Extra Vacation (over 15) | 0 | 0 | 1 | 0 | 0 | 0 |
| Staggered Vacations | Max of 10 | Max of 10 | Max of 10 | 8 | 8 | 8 |
| Holidays (Total) | 16 | 16 | 16 | 13 | 13 | 13 |
| Birthday | 0 | 1 | 1 | 1 | 1 | 1 |
| Floating | 0 | 0 | 1 | 0 | 1 | 0 |
| Personal Days | 3 | 3 | 6 | 3 | 3 | 4 |
| Xmas Bonus | 900.00 | 500.00 | 900.00 | 600.00 | 600.00 | \$600.00 |
| Assistance Bonus | 0 | 0 | 7.5 days | 7.5 days | 7.5 days | 0 |
| Medical Plan | 115.00 | 145.00 | 234.00 | 165.00 | 237.00 | 165.00 |
| Average Base | 10.30 | 10.74 | 11.76 | 10.64 | 10.44 | 10.64 |
| Required | 1.12 | 1.15 | 1.23 | 1.14 | 1.12 | 1.14 |
| Market | 3.02 | 3.37 | 4.72 | 3.75 | 4.27 | 3.44 |
| TOTAL | \$14.44 | \$15.26 | \$17.71 | \$15.53 | \$15.83 | \$15.22 |