

**Allison Corporation and Furniture Workers Division,
I.U.E. Local 282.** Cases 26–CA–16943, 26–CA–
16986, and 26–CA–17259

April 28, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND
HURTGEN

On April 8, 1997, Administrative Law Judge Robert C. Batson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions, only to the extent consistent with this Decision and Order.

The Respondent excepts to the judge's findings and conclusions that it: (1) violated Section 8(a)(5) and (1) of the Act by unilaterally subcontracting unit work which resulted in the layoff of unit employees, without giving the Union prior notice and affording it an opportunity to bargain with respect to the decision to subcontract and its effects on unit employees; and (2) violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with certain information requested by the Union on May 18, 1995, regarding the subcontracting.²

As discussed more fully below, we reverse the judge's conclusion that the Respondent violated Section 8(a)(5) and (1) by subcontracting unit work without providing the Union with prior notice and an opportunity to bargain about the decision to subcontract. We nevertheless conclude, for reasons discussed below, that the Respondent violated Section 8(a)(5) and (1) by failing to give the Union notice and affording it an opportunity to bargain with respect to the effects of the subcontracting on bargaining unit employees. Finally, for reasons set forth below, we agree with the judge that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² The judge also found that the following conduct by the Respondent violated Sec. 8(a)(5): (1) conditioning contract negotiations on the Union agreeing to the following proposals: (a) no negotiations regarding piecework rates or the arbitrability of piecework rates; (b) loser pays all arbitration costs; and (c) increasing the probationary period for employees; (2) failing to furnish the Union with requested information regarding piecework rates; (3) withdrawing recognition from the Union; and (4) implementing a unilateral wage increase. There were no exceptions to these findings.

supply the Union with requested relevant information regarding the effects of such subcontracting.³

I. FACTS

The Respondent manufactures and imports a wide range of automobile accessory items. In October 1990, the Respondent purchased a competitor located in Somerville, Tennessee. The Somerville facility, which manufactured seat covers and cushions for automobiles, is the subject of this litigation.

The Respondent recognized the Union as the representative of its production, shipping, and janitorial employees, at the Somerville facility in early 1991. Also in early 1991 the parties entered into a collective-bargaining agreement. That agreement was due to expire in September 1995.⁴ In June 1994, the parties had agreed to early contract negotiations, and in the following year, between January and August, the parties met for four bargaining sessions.⁵ In late 1994 the Respondent began to import products from Italy and on May 5 and 12 the Respondent laid off a number of employees without notifying the Union.⁶

By letter to the Respondent's Manager Tommy Williams, dated May 8, the Union's Vice President Ida Leachman noted that the Union had learned of the layoff which occurred on May 5. The letter requested information regarding the reason for the layoff and information regarding affected employees. By letter dated May 10, the Respondent, through Plant Manager Frank Dolan, responded to Leachman's request. Dolan stated that the layoff was due to business conditions and provided the requested information.

At the parties' bargaining session on May 16, regarding a new contract, the Union's president, William Rudd, inquired about the layoffs of May 5 and 12. Gregory Ball, the Respondent's director of corporate development, stated that the Respondent had to be competitive. Ball also stated that the Respondent had to import because its customers wanted the fabric from Italy and the Respondent's competitors were importing. Ball stated that business was down for the retailers and that they had a "terrible last three months." Ball also noted that the Respondent's employees had the skills and ability to make the products at the Somerville plant but that the Respondent could not afford to make them there. Ball

³ As noted above, there is no exception to the judge's conclusion that the Respondent violated Sec. 8(a)(5) and (1) by withdrawing recognition from the Union. Nor is there any exception to the judge's Remedy which requires the Respondent to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the appropriate bargaining unit. We find the record insufficient to support the judge's finding that the Respondent violated Sec. 8(a)(1) by the participation of its supervisors in the circulation of a petition to decertify the Union. Accordingly, we shall dismiss that allegation.

⁴ All dates hereafter are 1995 unless otherwise specified.

⁵ The Respondent withdrew recognition from the Union in August.

⁶ This importation is the subcontracting involved herein.

refused to give the Union specific information regarding the Italian imports.⁷

On May 18 Leachman again wrote to Ball. Leachman noted that Ball had informed the Union that one reason for the layoff was importing products and that the decision to import was based on the cost of producing the product at Somerville. Leachman requested a meeting on May 24, "due to the seriousness of this matter and jeopardy it is placing on the jobs of the bargaining unit" Leachman wished to "discuss the effects of these imports on the jobs of Somerville employees." Leachman also requested that the Respondent provide enumerated information so that the Union could be prepared "to discuss this matter intelligently and in good faith."⁸ On May 23, Ball, by letter, responded to Leachman's requests. He stated that he would not be available to meet with her at the date and time stated in her letter. Ball also provided answers to items 1 and 2 of the request for information. Ball concluded by noting that the other items requested had been "referred to counsel and a response will be forthcoming." By "fax," dated May 25 and addressed to Ball, Rudd noted that the Union was "available to meet and resume contract negotiations on July 20, and 21, 1995, as you suggested." Rudd also stated that the Union requested to meet with a representative from the Respondent "to discuss the effects of importing finished products at the Somerville Plant" and the layoffs. In another letter to Leachman dated May 24, Ball referred Leachman to Dolan's May 10 letter citing

⁷ In his statement of the facts regarding the above discussion, the judge implicitly credited the testimony of Rudd and that of the Union's Vice President Leachman. Thus, in support of his statement of the facts regarding this discussion, the judge cited certain transcript pages and certain pages of GC Exh. 5. We note that the transcript pages which the judge cited contain Rudd's and Leachman's testimony regarding this discussion and that GC Exh. 5 includes the Union's bargaining notes taken on May 16 by Leachman. The evidence cited supports the judge's statement of the facts. Thus, the judge implicitly discredited Ball's testimony denying that he had indicated that the importing of products was related to the layoffs. Further, the judge explicitly credited Rudd where Ball's and Rudd's testimony conflicted.

⁸ The information requested included: (1) Names, addresses, job titles, departments, and seniority dates of all employees laid off on or about May 12, 1995, and the same information for those retained; (2) list of all jobs being performed and products that were being produced at the Somerville Plant on May 12, 1994, and the same information for May 15, 1995, and thereafter; and (3) copies of all orders, invoices, etc., placed with companies outside of America, for products which were, still are produced, or could have been produced, at the Somerville plant; (4) the quantity of each product being ordered and the amount paid for each piece; (5) names and addresses of all companies that Allison imports products from that were, still are produced or could be produced in Somerville; (6) detailed comparison and breakdown of the cost of producing each imported item in Somerville versus producing them overseas; (7) copies of shipping invoices, records, etc., that show total cost of shipping each order to America; (8) copies of shipping invoices, records, etc., that show total cost of transporting each order by truck and rail from the location it is docked from overseas, to the Somerville plant; and (9) a list of all steps taken by Allison to reduce its operating and production cost at the Somerville plant, prior to deciding to import the volume of products now being imported.

business conditions as the reason for the layoffs. Ball noted that some "Fabulamb" covers are made at Somerville and others are procured from the Italian supplier. Ball concluded his letter by stating:

As the premise for your request for information is based on your incorrect belief that there would be no layoffs at the Somerville, TN. factory if Allison was not importing products from Italy, I fail to see the relevance of your request to collective bargaining.

In view of the above, I see no reason to meet regarding this subject on May 31, 1995, as requested by Mr. Rudd in his letter of May 25, 1995.⁹

Leachman, on June 2, sent a "fax" to Ball renewing the Union request to meet with the Respondent "regarding the effects of the company's imports on the Somerville bargaining unit and the recent major layoff at the Somerville Plant." Leachman also advised Ball that the Union was renewing its requests of May 18 "for information relative to imports and its effects thereof [sic]." There is no evidence that the Respondent responded to Leachman's June 2 "fax."

II. ANALYSIS

A. *The Respondent's Alleged Obligation to Bargain Regarding the Decision to Subcontract*

The judge found, inter alia, that the language contained in the collective-bargaining agreement's management-rights clause was not sufficient to waive the Union's right to bargain over the Respondent's decision to subcontract. He therefore found that the Respondent violated Section 8(a)(5) by failing to provide the Union with notice and an opportunity to bargain about the decision to subcontract. We do not agree.

The management-rights clause in the parties' contract reads as follows:

SECTION 13. MANAGEMENT RIGHTS

A. The Company has, retains, and shall possess and exercise all management rights, functions, powers, privileges and authority inherent in the Company as owner and operator of the business, excepting only such rights that are specifically and expressly relinquished or restricted by a specific Article or Section of this Agreement.

B. *The Company shall have the exclusive right to manage the business and operation of its facilities; to schedule and require the performance of overtime work; to discipline or discharge employees for just cause; to adopt, modify or rescind reasonable work rules, quality and production standards and to discipline or discharge employees for violation of such*

⁹ We note the discrepancies in dates as this letter from Ball, dated May 24, referred to Rudd's request, which was dated May 25.

rules and standards; to determine, implement, modify or eliminate techniques, methods, processes, means of production; to subcontract; to transfer work or materials from one Company operation to another, as now may exist or as may hereafter be established; to utilize labor saving devices; to determine the location of the business, including the establishment of new facilities and the relocation, closing, selling, merging or liquidating of any facility, department, division or subdivision thereof either permanently or temporarily; and generally to control and direct the Company in all of its operations and affairs. [Emphasis added.]

Under the standard set forth in *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983), a waiver of statutory rights must be clear and unmistakable. To meet the “clear and unmistakable” standard, the contract language must be specific, or it must be shown that the matter claimed to have been waived was fully discussed by the parties and that the party alleged to have waived its rights consciously yielded its interest in the matter. See *Trojan Yacht*, 319 NLRB 741, 742 (1995).

The Board finds a waiver of the statutory right to bargain based on language contained in the contract if the contract language is specific regarding the waiver of the right to bargain regarding the particular subject at issue. Thus, the Board looks to the precise wording of the relevant contract provisions in determining whether there has been a clear and unmistakable waiver.¹⁰ See *Kiro, Inc.* 317 NLRB 1325, 1327 (1995).

Here, the cases relied upon by the judge in finding that the language in the management-rights clause was insufficient to waive the Union’s right to bargain over the decision to subcontract unit work are distinguishable. In *Public Service Co.*, 312 NLRB 459 (1993), the Board found that a contractual provision regarding certain conditions to be met in all instances of subcontracting did not relieve the respondent of its statutory obligation to bargain regarding specific instances of subcontracting.¹¹ In *Reece Corp.*, 294 NLRB 448 (1989), the Board found that the management-rights clause and the severance

¹⁰ For example, in *Johnson-Bateman Co.*, 295 NLRB 180 (1989), the Board held that the management-rights clause which permitted the issuance of “company rules” was too general to constitute a waiver of the union’s right to bargain regarding the respondent’s implementing a drug and alcohol testing requirement, because there was no specific reference to drug/alcohol testing. On the other hand, in *United Technologies Corp.*, 287 NLRB 198 (1987), supplemental decision and order 292 NLRB 249 (1989), enfd. 884 F.2d 1569 (2d Cir. 1989), the Board held that a management-rights clause permitting the respondent to “make and apply rules and regulations for production, discipline, efficiency and safety” was specific enough to constitute a waiver of the right to bargain over the elimination of a step in the progressive discipline procedures for absenteeism.

¹¹ Specially the provision provided that subcontracting would not be for the purpose of laying off or demoting regular employees and that the respondent would require that certain conditions be met by the subcontractor.

allowance clause did not specifically give the respondent the right to transfer bargaining unit work from one of its plants to another. The Board in each of these cases found that the contractual language was insufficiently specific to constitute a clear and unmistakable waiver of a bargaining right. Therefore, as the union had not waived its right to bargain regarding the matter at issue, the employer had violated Section 8(a)(5) by failing to bargain regarding the matter.

Here, on the other hand, the management-rights clause specifically, precisely, and plainly grants the Respondent the right “to subcontract” without restriction. We therefore find a “clear and unmistakable waiver” by the Union of its statutory right to bargain regarding the Respondent’s decision to subcontract.¹² We therefore conclude that the Respondent did not violate Section 8(a)(5) by unilaterally subcontracting unit work.¹³

B. Effects Bargaining

While a contract clause may constitute a waiver of a bargaining right, it does not automatically follow that the same contract clause waives a party’s right to bargain over the effects of the matter in issue. As the Board has stated:

An employer has an obligation to give a union notice and an opportunity to bargain about the effects on unit employees of a managerial decision even if it has no obligation to bargain about the decision itself.

Kiro, Inc., supra (citing *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681–682).¹⁴

The Respondent contends that its subcontracting “did not result in a layoff or have a substantial adverse impact on the bargaining unit.” However, as noted earlier, the judge credited testimony of the Union’s representatives that Respondent’s Director of Corporate Development Ball had made statements linking the layoffs to the subcontracting during contract negotiations on May 16.¹⁵

¹² We also note that in each of its three bargaining requests the Union did not request bargaining regarding the subcontracting itself—only bargaining regarding the effects of the subcontracting on the bargaining unit. Further the Union knew, by January 11, that the Respondent had begun to import product but did not request bargaining until there was an effect from such subcontracting—i.e., the layoffs. (See fn. 15, infra.) Thus, it appears that, the Union did not request bargaining regarding the decision to subcontract. At the very least, this evidence indicates that the Union was aware of the waiver.

¹³ Member Hurtgen reaches the same result via his “contract coverage” analysis. See *Dorsey Trailers, Inc.*, 327 NLRB 835 (1999).

¹⁴ Effects bargaining can include such topics as layoffs, severance pay, health insurance coverage and conversion rights, preferential hiring at other of the employer’s operations, and reference letters for jobs with other employers. See *Los Angeles Soap Co.*, 300 NLRB 289, 295 (1990).

¹⁵ Further, Ball testified that in the January 11 negotiation session, he had indicated to the Union that there was an increased demand for Italian product, that the Company had begun to import Italian products and that the Respondent’s competitors were selling many Italian products and that there was pressure in the marketplace. Ball also stated that he told the Union that the Company was trying very hard to protect

To the extent that the Respondent argues that the Union waived its right to bargain regarding the effects of the decision to subcontract bargaining unit work,¹⁶ we disagree. First, as noted above, in determining whether or not the Union waived its right to bargain by agreeing to certain contractual language the Board looks to the precise wording of the relevant contractual provisions. See *Kiro*, supra. Here, the contractual language does not address the effects of any subcontracting. Thus, the language is insufficient to waive the Union's right to bargain over the effects of subcontracting. Second, we note that a waiver may be inferred from extrinsic evidence of contract negotiations and/or past practice.¹⁷ The record here contains no evidence regarding contractual negotiations pertaining to the subject of effects bargaining in general, or bargaining regarding the effects of subcontracting specifically. Further, while Ball testified that the Respondent had subcontracted in the past, his testimony does not establish that the Union had waived its right to bargain about the effects of subcontracting. The testimony does not establish that past subcontracting had any effect on the bargaining unit or that the parties understood that the Respondent had a right to make unilateral changes without bargaining about the effects. Accordingly, we do not find any past practice of the parties that might constitute a "clear and unmistakable" waiver by the Union of its statutory right to bargain regarding the effects on the bargaining unit of the decision to subcontract.¹⁸ We therefore find that the Union has not waived its statutory right to bargain regarding the effects on the bargaining unit of the decision to subcontract.

Thus, once the Respondent had made the decision to lay off unit employees, the time was ripe for effects bargaining. The Respondent then had a "duty to give preimplementation notice to the union" to allow for meaningful effects bargaining. See *Los Angeles Soap Co.*, 300 NLRB 289, 295 fn. 1 (1990); *Willamette Tug & Barge*, 300 NLRB 282, 282-283 (1990). The Respondent failed to meet its obligations. Thus, by failing to give the Union prior notice and an opportunity to engage in meaningful negotiations regarding the effects of its lawful decision to subcontract unit work, the Respondent violated Section 8(a)(5) and (1) of the Act. See *East Coast*

the bargaining unit's jobs and a very austere budget was needed—that he "hoped that the [Union's] proposals would take that into consideration and we could have a fair, but restrain, economic package." Thus, Ball in January, prior to the layoffs, had acknowledged a connection between the importing of products from Italy, the cost of wages and benefits, and the protection of bargaining unit jobs.

¹⁶ On brief, the Respondent does not separately address the issue of effects bargaining.

¹⁷ See *Kiro*, supra at 1328.

¹⁸ Chairman Truesdale and Member Fox note, in any event, that a union's failure to demand bargaining on a particular subject on past occasions when the employer had acted unilaterally would not necessarily establish that the union had waived bargaining rights on that subject in the future. *Johnson-Bateman Co.*, supra, 295 NLRB at 188, and cases there cited.

Steel Inc., 317 NLRB 842, 846 (1995).¹⁹ Further, as noted above, on May 18 the Union's Vice President Leachman wrote to Respondent's Director of Corporate Development Ball and requested, inter alia, a meeting to "discuss the effects of these imports on the jobs of Somerville employees." On May 23 Ball, by letter, responded to Leachman's letter. He stated, inter alia, that he would not be available to meet with her at the date and time stated in her letter. The Union's president, Rudd sent a "fax" dated May 25 to Ball requesting, among other things, to meet with the Respondent "to discuss the effects of importing finished products at the Somerville Plant" and the layoffs. In another letter addressed to Leachman, dated May 24, Ball referred to Dolan's May 10 letter which had cited business conditions as the reason for the layoffs. Ball further stated that "plant layoffs are totally unrelated to products imported from Italy" and that he therefore failed to see how the imports placed the bargaining unit jobs in jeopardy. Ball concluded his letter by stating that "[i]n view of the above, I see no reason to meet regarding this subject on May 31, 1995, as requested by Mr. Rudd in his letter of May 25, 1995."²⁰ Leachman, on June 2, sent a "fax" to Ball renewing the Union request to meet with the Respondent regarding the effects of the imports on the bargaining unit and the layoffs. As noted earlier there is no evidence that the Respondent ever responded to the June 2 "fax."

Despite the Union's repeated requests to meet and discuss the effects of the subcontracting, the Respondent never met with the Union to discuss this matter. We therefore conclude that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain about the effects of its subcontracting unit work.²¹

C. Information Request

The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by not providing certain information that the Union requested in its letter of May 18.

¹⁹ We note that the contract contained a provision regarding seniority which provided: that in the event of layoffs that the layoffs would be by departments and that "the employee having the longest service, provided he has the skill and ability of performing the work, in the opinion of the Company, shall be the last to be laid off and the first to be rehired." This appears to be the only benefit granted in the seniority provision of the contract.

²⁰ We again note the discrepancies in the date of this letter. See fn. 9, supra.

²¹ In regard to the Respondent's obligation to bargain about the effects of its subcontracting, Member Hurtgen concurs in the result. However, in doing so, he applies a "contract coverage" analysis, rather than a "waiver" analysis. The contract requires Respondent, in the event of a layoff, to follow certain criteria in determining which employees should be laid off. See fn. 19, supra. Implicitly, this provision gives Respondent the right to lay off, provided that those criteria are met. However, the contract is silent with respect to other matters that may be attendant to a layoff. See fn. 14, supra. Member Hurtgen agrees that Respondent refused to bargain with respect to these other matters.

The Respondent excepts. The Respondent's argument in support of its exception is two-fold. First, the Respondent essentially argues that the information was not relevant. Thus, the Respondent repeats the assertion that Ball made in his response to Leachman's initial request for information. The Respondent asserts that the importing of products from Italy was not the cause of the layoffs, and thus the requested information was not relevant to collective bargaining. Further, the Respondent notes that Ball testified that he did not receive a response to this letter and thus assumed that the Union had accepted that there was no connection between the layoffs and the importation of products.²² Second, the Respondent also asserts that even relevant information does not have to be furnished if a union's predominant purpose in making a request is to force the employer to give up its right to subcontract to nonunion companies, citing, *NLRB v. Watcher Construction, Inc.*, 23 F.3d 1378 (8th Cir. 1994). For the reasons discussed below, we agree with the judge that the Respondent violated Section 8(a)(5) and (1) by failing to provide the requested information.

An employer's duty to bargain includes the duty to provide requested information that is needed by the bargaining representative for the proper performance of its statutory duties and responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). Information pertaining to bargaining unit employees is deemed to be presumptively relevant and necessary and must be produced. But where the requested information involves matters outside the bargaining unit the union has the burden of establishing the relevancy of and necessity for such information. The burden consists of a showing of a probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities. See *Shoppers Food Warehouse*, 315 NLRB 258, 258–259 (1994), and cases cited therein.²³

In this case, most of those items of information requested by the Union, which information the Respondent made no attempt to provide, related to the relationship between the Respondent and its subcontractors. Therefore, the information was not presumptively relevant.²⁴

²² As noted, however, in his discussion of the facts of this case, the judge found that a "fax" from the Union, addressed to Ball, and dated June 2, renewed the Union's request to meet with the Respondent regarding the effects of the imports and "for information relative to imports and its effects thereof [sic]."

²³ We also note that an employer is obligated to furnish requested information where the circumstances should put the employer on notice of a relevant purpose which the union has not specifically spelled out. *Brazos Electric Power*, 241 NLRB 1016, 1018 (1979), enfd. in relevant part 615 F.2d 1100 (5th Cir. 1980). See also *Beverly Enterprises*, 310 NLRB 222, 227 (1993), enfd. in relevant part sub nom. *Torrington Employees Assn. v. NLRB*, 17 F.3d 580 (2d Cir. 1994).

²⁴ As stated earlier the Respondent provided information regarding items 1 and 2 of the information request. (Rudd testified that the Respondent provided the information requested in item 1 of the request.) It is not clear from the evidence in the record, however, whether the

Thus, the General Counsel was required to show that when the Union made its request it had a reasonable basis for believing that the information would be necessary to it in carrying out its statutory obligations.²⁵ See *Providence Hospital*, 320 NLRB 790, 793–794 (1996), enfd. 93 F.3d 101 (1st Cir. 1996), and cases cited therein.

Here, the Respondent, in negotiations for a new contract, made statements that linked labor costs to its decision to subcontract, and linked the subcontracting to the two recent layoffs. In addition to the statements made during contract negotiations on May 16, the Union's minutes for the contract negotiation session on January 11 reflect that Ball connected labor costs to importing activities. Further, this statement was supported by Ball's own testimony. Thus, according to Ball, he told the Union that the Company had begun to import Italian products. He also told the Union that the Company was trying to protect the jobs in Somerville and that it needed to have a very austere budget and that he hoped that the Union's proposals would take that into consideration.²⁶

The May 18, 1995 letter to Ball from Leachman—requesting information—noted that Ball had informed the Union that one of the main reasons for the layoffs was the importing of products from Italy and that the decision to import the products was due, in part, to the cost of producing them in Somerville. Leachman therefore wrote:

[D]ue to the seriousness of this matter and jeopardy it is placing on the jobs of the bargaining unit represented by this Union, we are requesting to meet with you or your designee on May 24, 1995 at 3:00 p.m. to discuss the effects of these imports on the jobs of Somerville employees.

Please provide the information requested . . . so the Union can be prepared to discuss this matter intelligently and in good faith.

In this letter, the Union suggested to the Respondent a concern not just with the two layoffs that had already occurred but also a concern that the subcontracting was placing the jobs of the bargaining unit in "jeopardy." Subsequent communications to the Respondent from the Union also expressed concern regarding the role of subcontracting in both the recent layoffs and the future job security of bargaining unit employees. Both Union President Rudd's fax to Ball on May 25, and Leachman's fax to Ball dated June 2 requested a meeting to discuss

information provided regarding item 2 of the request was fully responsive to the request. As the information requested in item 2 pertains to the bargaining unit, it is presumptively relevant. We therefore leave to compliance the determination as to whether the information provided in response to item 2 of the request was adequate.

²⁵ Leachman testified that the purpose of requesting the information was so that the Union "could be prepared, better prepared, to intelligently discuss and negotiate the effects and possibly the cause of importing this product."

²⁶ See fn. 15, supra.

both the effects of the imports on the bargaining unit *and* the layoffs. As noted, the communications took place in a context on ongoing negotiations for a new contract. Thus, the Union explained—and reasonably conveyed to the Respondent—two separate and legitimate reasons why the nonunit information was relevant and necessary to the Union to carry out its duties as bargaining representative. First, it needed the information so it could effectively administer the existing contract and engage in meaningful effects bargaining regarding the recent layoffs. Second, it needed the information to formulate proposals to protect jobs in the ongoing negotiations for a successor contract.

As noted, much of the information that the Union requested, but did not receive, involved the Respondent's practice of subcontracting. The Union had multiple duties to fulfill as collective-bargaining representative for the unit. It needed to determine to what extent the Respondent's practice of subcontracting had had an impact on the bargaining unit, what future effects upon the bargaining unit could be anticipated, whether, in the ongoing contract negotiations, the Union should negotiate over the terms of subcontracting or retain a right to negotiate over that issue. Some of the information requested would show the comparative cost of importing products versus producing them at the Somerville plant.²⁷ The information requested regarding the cost cutting measures the Respondent had already implemented at the plant would help the Union in determining whether the Respondent had options to cut costs other than labor costs at its Somerville plant.²⁸ Thus, the Union requested information that would be useful for two purposes. It would help the Union in administering the current contract. It would also help the Union to formulate new contract proposals that would be the most beneficial to the bargaining unit employees while also providing the Respondent with economic incentive not to subcontract the unit work. Although the Union had waived its right to bargain regarding a decision to subcontract under the existing contract, the parties were in the process of negotiating a new contract. Therefore, the Union could use the requested information to propose changes for the successor agreement.

As noted, the Respondent contends that even relevant information does not have to be furnished to the Union if the Union's "predominant purpose in making the request is to force the employer to give up its right to subcontract to nonunion-companies." In *Wachter*, supra, the case cited by the Respondent here, the court found that the union's purpose in requesting voluminous amount of information was to force the employer to stop subcon-

tracting. The court ultimately concluded that the union's information requests were made in bad faith. Here, we have not found, and the Respondent has not pointed to, any evidence that the information requested in the instant case was for any improper purpose. To the contrary, we note that the Union here made numerous requests to bargain regarding the effects of the subcontracting²⁹ but never demanded that the Respondent halt the subcontracting. There is no basis for concluding that the Union's information requests were made in bad faith. As the requested information was necessary and relevant to the Union fulfilling its role as collective-bargaining representative, the Respondent's refusal and failure to provide the requested information violated Section 8(a)(5) and (1) of the Act.³⁰

AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act, including the posting of an appropriate notice to employees. As a result of the Respondent's unlawful failure to bargain in good faith with the Union about the effects of its decision to subcontract bargaining unit work on the terms and conditions of employment of unit employees—including the layoffs of May 5 and 12, 1995—the bargaining unit employees have been denied an opportunity to bargain through their collective-bargaining representative. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of subcon-

²⁹ We reject the Respondent's argument that it did not have to provide the requested information because it reasonably believed that the Union accepted the Respondent's position that there was no connection between the layoffs and the importing of seat covers. After the Respondent's May 24 letter setting forth its position, the Union renewed its information request in its subsequent June 2 "fax." Though Ball denied receiving the "fax," the judge, in his statement of facts, found that the "fax" was sent and received. Even if Ball did not receive the Union's "fax," we could not conclude in these circumstances that "silence was acceptance." In any event, to the extent that the Union explained that the information would be useful in the ongoing negotiations for a successor agreement, the Respondent was obligated to provide the information. The Respondent's May 24 letter did not address the point that the information might be useful in the ongoing negotiations for a new contract.

³⁰ Member Hurtgen notes that the requested information related principally to the relationship between the Respondent and its subcontractors. Inasmuch as the instant decision to subcontract was not bargainable, Member Hurtgen concludes that the requested information need not be supplied on the basis of its relationship to that decision. However, Member Hurtgen agrees that the information was relevant to the negotiation for a new contract. For example, based on information regarding the nature, frequency and extent of subcontracting the Union may wish to propose modifications to the management-rights clause as it relates to subcontracting.

²⁷ See items lists in numbers 6–8 of the information request in fn. 8, supra.

²⁸ See *Pratt & Lambert, Inc.*, 319 NLRB 529, 533 (1995), and *Somerville Mills*, 308 NLRB 425, 441 (1992), enf. sub. nom *NLRB v. I. Appel Corp.*, 19 F.3d 1433 (6th Cir. 1994).

tracting bargaining unit work, including the layoffs of May 5 and 12, 1995, on its employees, and shall accompany our order with a limited backpay requirement designed both to make whole the laid-off employees for losses suffered as a result of the violation and to recreate in some practical manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the laid-off employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay the laid-off employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the subcontracting of bargaining unit work on the bargaining unit employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union;³¹ (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have received as wages from the date on which they were laid off or terminated, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated or laid-off employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Allison Corporation, Somerville, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unlawfully withdrawing recognition from, and refusing to bargain in good faith with Furniture Workers Division, I.U.E. Local 282 as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

INCLUDING: All production employees, shipping employees and janitorial employees employed at the Respondent's Somerville, Tennessee location.

EXCLUDING: All clerical and office employees, executives, maintenance employees, chauffeurs, engineers, quality control supervisors, professionals, foremen, supervisory employees, watchmen, salesmen and guards.

(b) Conditioning contract negotiations on the Union agreeing that the following items are not negotiable: piecework rates and the arbitrability of piecework rates; requirement that the loser pay all costs of arbitration; and increasing the probationary period for employees.

(c) Failing or refusing to give timely notice to and an opportunity to bargain to the Furniture Workers Division, I.U.E. Local 282 as the exclusive collective-bargaining representative of the employees in the appropriate unit set forth above, with respects to the effects on its unit employees of its decision to subcontract bargaining unit work.

(d) Failing or refusing to furnish the Union with information it requests which is necessary and relevant to the Union in the performance of its duties as the exclusive collective-bargaining representative of the employees in the appropriate unit.

(e) Unilaterally granting wage increases to its employees without prior notice to the Union and affording the Union an opportunity to bargain.

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

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

(a) Recognize and bargain in good faith with, Furniture Workers Division, I.U.E. Local 282 as the exclusive collective-bargaining representative of the employees in the appropriate unit and, if an understanding is reached, reduce the agreement to writing and execute it.

(b) Bargain with the Union over the effects on unit employees of its decisions to subcontract bargaining unit work and to lay off unit employees; and pay the laid-off employees their normal wages for the period set forth in the remedy portion of the Decision and Order.

(c) Preserve and, within 14 days of a 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.

(d) Furnish the Union with the information it requested on March 2 and 18, 1995.³²

³¹ *Melody Toyota*, 325 NLRB 846 (1998).

³² To the extent that the Respondent has since furnished information, that information need not be refurnished. Those matters can be determined in the compliance stage.

(e) Within 14 days after service by the Region, post at its facility in Somerville, Tennessee, copies of the attached notice marked "Appendix."³³ Copies of the notice, on forms provided by the Regional Director for Region 26, 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 places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at any time since January 11, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that all other allegations pertaining to this case are dismissed.

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 unlawfully withdraw recognition from, and refuse to bargain in good faith with Furniture Workers Division, I.U.E. Local 282 as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

INCLUDING: All production employees, shipping employees and janitorial employees employed at the Respondent's Somerville, Tennessee location.

EXCLUDING: All clerical and office employees, executives, maintenance employees, chauffeurs, engineers, quality control supervisors, professionals, foremen, supervisory employees, watchmen, salesmen and guards.

WE WILL NOT condition contract negotiations on the Union agreeing that the following items are not negotiable: piecework rates and the arbitrability of piecework rates; requirement that the loser pay all costs of arbitration; and increasing the probationary period for employees.

WE WILL NOT fail or refuse to give timely notice to and bargain with the Union with respects to the effects on employees of our decision to subcontract bargaining unit work.

WE WILL NOT fail or refuse to furnish the Union with information it requests which is necessary and relevant to the Union in the performance of its duties as the exclusive collective-bargaining representative of the employees and the appropriate unit.

WE WILL NOT unilaterally grant wage increases to employees in the appropriate bargaining unit without giving prior notice to the Union and without affording the Union an opportunity to bargain regarding such increases.

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

WE WILL recognize and, on request, bargain in good faith with Furniture Workers Division, I.U.E. Local 282 as the exclusive collective-bargaining representative of the employees in the appropriate unit and, if an understanding is reached, reduced the agreement to writing and execute it.

WE WILL bargain with the Union regarding the effects on unit employees of our decisions to subcontract bargaining unit work including the layoffs of May 5 and 12, 1995.

WE WILL pay the laid-off employees their normal wages for the period set forth in the remedy portion of the Board's Decision and Order.

WE WILL furnish the Union with the information it requested on March 2 and 18, 1995.

ALLISON CORPORATION

Jack L. Berger, Esq., for the General Counsel.

John P. Scruggs and Heather C. Webb, Esqs. (Allen, Scruggs, Sossman & Thompson, P.C.), of Memphis, Tennessee, for the Respondent.

Willie Rudd, Esq., of Memphis, Tennessee, for the Charging Party.

³³ 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."

DECISION

STATEMENT OF THE CASE

ROBERT C. BATSON, Administrative Law Judge. The allegations of unlawful conduct by Allison Corporation (Respondent or Employer) are its failure to bargain in good faith with Furniture Workers Division, I.U.E. Local 282 (the Union or the Charging Party), the duly designated and recognized collective-bargaining representative under Section 9(b) of the Act of the employees in the following appropriate unit:

INCLUDING: All production employees, shipping employees and janitorial employees employed at the Employer's Somerville, Tennessee, location.

EXCLUDING: All clerical and office employees, executives, maintenance employees, chauffeurs, engineers, quality control supervisors, professionals, foremen, supervisory employees, watchmen, salesmen and guards.

The complaint alleges and I find that Respondent violated Section 8(a)(5) and (1) of the Act by: informing the Union that it was no longer interested in negotiations because the Union had filed grievances on behalf of employees, this allegation is barred by Section 10(b) of the Act; by conditioning bargaining on the Union's not insisting on negotiating regarding piece work rates; the arbitrability of piece work rates; the Union's agreement that the loser pay all costs of arbitration and the Union agreeing to increase the probationary period for some employees from 60 to 90 days.

It is further alleged and found that the Respondent violated Section 8(a)(5) and (1) by refusing the Union's request for; copies of all piece work rates that were in effect at the beginning of the contract and all rates that had been changed since the effective date and the reasons therefor, and further, the annual gross earnings of all current employees for the past 5 years. Such information is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representatives of the unit. Furthermore about May 1, 1995, Respondent subcontracted unit work which resulted the layoff of unit employees without notifying the Union and affording it as opportunity to bargain with Respondent with respect to such subcontract.

Additional request were made about May 18, 1995, the Union, by letter, requested that Respondent furnish the Union with the following information: Copies of all orders, invoices, et cetera, that have been placed with companies outside America, for products which was, still is, or could have been produced at the Somerville Plant. If not stated on the form, the Union would request that the Company attach to each order, the number of each product being ordered and the amount paid by Allison for each piece. Names and addresses of all companies, businesses, et cetera, that Allison import products from that once was, still is or could be produced in Somerville. Copies of shipping invoices, records, et cetera, that show total cost of transporting each order by truck and rail from the location it is docked from overseas, to the Somerville Plant. List in details all steps taken by Allison to reduce its operating and production cost at the Somerville Plant, prior to deciding to import the volume of products now being imported.

The information requested above is necessary and relevant to the performance of its duties as the exclusive collective-

bargaining representative of the employees in the unit and Respondent's failure to provide it violates the Act.

Further violations alleged includes the participation of admitted Supervisor Nancy Avent in July in the circulation of a decertification petition. In January 1996, Respondent implemented a wage increase to its employees without giving the Union an opportunity to bargain. Wages, hours, and other terms and conditions of employment are mandatory subjects of collective bargaining.

The charge in Case 26-CA-16943 was filed on July 27, 1995,¹ in Case 26-CA-16986 on August 16, and in Case 26-CA-17259 on January 29, 1996. All charges were filed by the Union and timely served on the Respondent. On February 14, 1996, the Acting Regional Director for Region 26 issued a second order consolidating cases, consolidated complaint and notice of hearing alleging the above-mentioned violations of the National Labor Relations Act, 29 U.S.C. § 151, et. seq. (the Act).

All parties were afforded full opportunity to examine and cross-examine witnesses and present all relevant evidence and to file posttrial briefs. Briefs were filed by the General Counsel and Respondent and have been duly considered.

FINDINGS OF FACT

I. BACKGROUND

Allison Corporation was founded about 1960 by Sam Seltzer and a partner in Newark, New Jersey, in a factory making wire spring cushions for automobiles. After some years the Company expanded to include a wide range of automobile accessory items most of which were imported from foreign sources. At the time of the hearing, Director of Corporate Development Gregory Ball testified some 900 accessory items such as tissue dispensers, makeup mirrors, blind spot mirrors, tire pressure gages, et cetera. The Company moved to Garwood, New Jersey, for a few years and about 1970 moved to Livingston, New Jersey, where its main factory is still located.

According to Ball, about 1960, shortly after founding the Company, Local 76-B of the Furniture Workers was recognized as the exclusive collective-bargaining representative of its employees in Livingston and have negotiated successive collective bargaining contracts, the most recent of which, expires in 1998. Ball testified they had always had an excellent relationship with Local 76-B and during more than 30 years had only one arbitration.

In October 1990, Allison purchased a competitor, Farber Brothers, located at Somerville, Tennessee, which manufactured seat covers and cushions. The Somerville facility is the subject of this litigation.

As noted above, it appears that the Respondent and Local 76-B of The Furniture Workers Division had an amicable and successful working relationship. With each other for more than 30 years at the Livingston, New Jersey facility. Sam Seltzer, one of the founders of the Company, became a trustee of the United Furniture Workers Pension Fund and was appointed to the Finance Committee and also held the position of secretary/treasurer of the fund. Later Greg Ball, Seltzer's son-in-law, replaced Seltzer in those positions.

It appears that Willie Rudd the current president of the Union and his predecessor, Carl Scarbrough had an excellent relationship with Seltzer. At a meeting of pension fund trustees, in

¹ All dates are 1995 unless otherwise indicated.

June 1990, Rudd asked Seltzer if he would consider voluntarily recognizing the Union at the Somerville Plant upon proof of their majority status. Seltzer said he would give it some thought and let Rudd know. Apparently nothing else with respect to recognition occurred until another Trustee's meeting in January 1991 at Biloxi, Mississippi. Seltzer and Rudd arranged a meeting in New Jersey where they worked out a collective-bargaining agreement, which brought about recognition and was ratified by the employees at Somerville in March 1991. It appears the parties had a good relationship until March or April of 1994.

In March or April 1994, the Union found that it had apparently made an error in its calculations of the multiplies and the insurance benefits provided to the employees of Respondent were increasing.

The Union felt the Respondent was, at least, partially responsible because it had not provided the information the actuaries needed to make the proper calculations. Rudd contacted Seltzer about increasing the companies' contributions by \$5 per month per employee to offset the increased benefits. Seltzer appeared not to have a problem with that but said he would prefer to reopen the entire contract early for negotiations of the entire contract. Rudd did not have a problem with that and Seltzer suggested that since a trustees meeting was coming up in June, that the matter he discussed with Greg Ball, Seltzer's son-in-law, who had replaced him on the pension fund board.

In June at the pension fund trustees' meeting, Rudd and Ida Leachman, union vice president discussed with Greg Ball early reopening of negotiation. Ball agreed and stated that he would like a new contract by September 1994. When Rudd returned to his office he wrote a memo to Leachman outlining plans to begin early negotiations.

II. UNFAIR LABOR PRACTICES

During late June and July, Respondent contacted the Union concerning various problems such as vacations, work reprimands, and probation period. As a result Leachman filed about eight grievances. As a result of filing these grievances, Ball called Rudd and stated he was no longer interested in early negotiations for a new contract if Leachman was going to continue to file grievances. According to Rudd's credible testimony Ball was adamant about this position. However, in mid-December 1994, Rudd and Leachman met with Ball and Frank Dolan, general operations manager on the pending grievances which were set for arbitration. During this meeting all but two of the grievances were settled and Ball agreed to go forward with early negotiations for a new contract. The parties agreed to meet, and did so, on January 11, 1995, some 6 months after first agreeing to early bargaining.

This 6-month delay in commencing early negotiations because the Union was fulfilling its duty as the exclusive collective-bargaining representative of the unit employees by giving what it considered to breach the contract. This incident is barred by Section 10(b) of the Act.

Between January 11, 1995, and August the parties met for four bargaining sessions to no avail since the Respondent withdrew recognition of the Union in August 1995, prior to the expiration of the current agreement.

At the first January meeting, the Union was represented by Rudd and International Representative Aletha Johnson and a five-member negotiating committee of unit employees. The Respondent was represented by Ball, Frank Dolan, and Human Resources Manager Gloria Kelley. The Union gave Respon-

dent a comprehensive proposal. After caucusing, the Respondent's representative returned and Ball expressed surprise and disappointment that the Union wanted so many changes and stated that he had expected only a few economic changes.

Rudd testified, and the Union's contemporaneously made notes of the meeting reflect that, among other things, Ball stated that there were four areas or items about which Respondent would not negotiate and conditioned further negotiation on the union's agreeing to those items. These conditions were that Respondent would not negotiate regarding piece work rates for the unit; it would not negotiate regarding the arbitration of piece work rates, the Union must agree that any contract agreed upon would provide that the loser pay all costs for arbitration including all travel and other expenses for the arbitration, and that the probationary period for some new employees be increased from 60 calendar days to 90 working days. Rudd testified that these were "musts" and that Respondent would not negotiate with respect to these proposals.

Where Ball and Rudd's testimony is in conflict, I credit Rudd. Based not only on demeanor and consistency, but upon Ball's testimony to the effect that the Respondent welcomed the Union, pointing out that it had voluntarily recognized the Union. While it is true that Sam Seltzer, cofounder of the Company had voluntarily recognized the Union about 1991, as found and more fully discussed below Respondent's agents participated in obtaining employee support for a decertification petition and unlawfully withdrew recognition prior to the expiration of the collective-bargaining agreement.

General Counsel's Exhibit 9, a notice posted in the plant to all employees, demonstrates that Respondent supported decertification of the Union and urged the employees to win a victory by a big "NO UNION" vote.

I find the General Counsel has sustained his burden of proof that the Respondent refused to bargain in good faith about the four items set forth above, which are mandatory subject of bargaining and maintained that position throughout bargaining in violation of Section 8(a)(5) and (1) of the Act.

The parties next met for bargaining on March 1, with the same negotiators except Ida Leachman who replaced Althea Johnson. On January 12, the Union had mailed Respondent a revised proposal. (Jt. Exh. 3.) According to the testimony of Rudd and Leachman and the contemporaneous notes made by the Union [GC Exh. 4(a) and (b)]² the meeting began with Ball's asking the Union's position on the items Respondent had stated it must have, and were not negotiable before an agreement could be consummated. The Union's position was the same as at the first meeting, insisting it could not waive bargaining over these mandatory bargaining items. Rudd questioned the legality of Ball's insistence that piece rates were not subject to grievance and arbitration. Ball responded that he did not see anything illegal since they had never negotiated piece rates at the Livingston, New Jersey plant and that Respondent had the right to control its costs. Rudd responded that he was not trying to take away Respondent's right to set or change piece work rates, but was merely seeking the right to challenge such acts through the grievance-and-arbitration provision if it believed such rates to be unfair or wrong.

² It appears that Respondent did not make notes of what transpired at the bargaining sessions. If it did they were not offered into evidence or referred to in any manner.

They discussed insurance and apparently compared the Union's plan which was then in effect, and near the end of the meeting, the Respondent gave the Union some private insurance proposals that it had obtained. It appears there was some discussion and comparison of these proposals. No agreement was reached on any contract provision. There was an agreement that the parties would meet again on May 16, 1995.

On March 2, 1995, the Union, by letter, requested that Respondent furnish it with information regarding piece work rates. Specifically, piece work rates in effect at the beginning of the contract; rates that had been changed since that time and the reasons therefore; and the annual gross earnings of current employees for the years 1990 through 1994. On May 16, the parties met for negotiation where this issue was discussed but no agreement. The following sequence of events occurred with respect to the request. On April 18, more than 6 weeks later, the Respondent requested assurances of confidentiality stating "as soon as I receive this assurance I will be able to reply to your request." On May 1, the Union provided a letter of assurance that the information would be confidential.

On May 2, 1995: Company writes to describe the voluminous nature of documents comprising the requested piecework data and that only the originals are available, maintained in NJ office. Company offers to permit inspection at the New Jersey office, or copying by the Union at \$12.50/hr. plus 10 cents per page [J-19].

On May 18, 1995: Union writes to request Company ship the requested documents to the Somerville plant for the Union's review and copying [J-23].

On May 24, 1995: The Company writes to state it "is now and always was prepared to make this information available to the union" and only asks the Union to reimburse the expenses for labor and copying, or, as an alternative, the Union can review the documents in the New Jersey headquarters where they are maintained. The Company states the requested documents are irreplaceable and the Company cannot allow them to leave the New Jersey office without a backup copy having been made. The Company invites the Union to submit alternative suggestions to address these concerns [J-29].

On June 2, 1995: The Union writes to renew its request for piecework rates, stating it is willing to review the data at the Somerville plant [J-36].

On June 30, 1995: The Company responds to Union's June 2 letter by referring the Union back to Exhibit J-29, the Company's letter of May 24 [J-43].

On July 6, 1995: The Union writes and requests that the Company pay the Union's travel expenses to New Jersey, or furnish the documents for review at the Somerville plant [J-46].

On July 11, 1995: The Company writes to say the Union's July 6 proposal [J-46] would increase, not decrease, the Company's costs, and does not address the Company's concern about maintaining a copy of its original documents in its New Jersey headquarters office [J-50].

On July 26, 1995: The Company offers to provide a copy of the year end piecework rates (800-1000 pp.) at the Somerville plant, and the Union can copy whatever it wants on the Company copy machine at 10 cents per page [J-57].

On July 28, 1995: The Union requests "at least 6 copies" of the documents offered by the Company in J-57 [J-61].

On August 10, 1995: The Company writes to again offer the Union the opportunity to review the 800-1000 pages of documents at the Somerville plant, at which time the Union could make however many copies they wished at 10 cents per page [J-63].

On August 16, 1995: The Union writes and states "As you suggested in your letter of August 10, 1995, the Union review the time studies . . . at the Somerville Plant." [J-66.] The Company letter of August 10 [J-63] referred to the data originally offered by the Company in Exhibit J-57, which pertained to piece work rates, not timestudies.

On August 21, 1995: After withdrawal of recognition the Company writes that it is preparing the piece work incentive rates described in J-57, and would advise the Union when it was available [J-69]. Ball testified "We were relieved that he finally accepted our offer and we decided to send the documents directly to his office" [Ball at Tr. 286].

On August 1995: The Company sends the Union one copy of the year-end piecework rates for each year of the contract [J-70].

As discussed below, on August 14, 1995, the Respondent withdrew recognition of the Union. It was not until August 25, almost 2 weeks after it withdrew recognition that Respondent supplied some of the information requested and it was not nearly as voluminous as Respondent had represented it to be, why? The General Counsel argues that Respondent was trying to remedy its failure to do so earlier. It is still perplexing that Respondent would wait until after it withdraws recognition to supply the information.

It is clear that Respondent violated Section 8(a)(5) and (1) of the Act by failing to timely supply the information sought. The Supreme Court has long held that an Employer has the obligation to provide the Union all information for collective bargaining that is relevant and necessary. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967). The information sought by the Union was clearly information that has a direct bearing on wages and is, therefore, a mandatory subject of bargaining. *Antelope Valley Press*, 311 NLRB 459, 460 (1993); *Dynamic Machine Co.*, 221 NLRB 1140, 1142 (1975); *Food Employer Council, Inc.*, 197 NLRB 651 (1972).

The next issue in sequence is that the Respondent subcontracted unit work which resulted in the layoff of Somerville employees. On May 5 and 12, Respondent laid off a number of employees. The Respondent, in the past, has seasonal layoffs of two or three people for a week or so, but had never laid off as many as this time since the Union had represented the employees at the Somerville plant. They had never requested Respondent bargain over these layoffs because of an in balance in the production line.

The parties came to the May 16, 1995 bargaining session and the Union was concerned over the May 5, 1995 layoff as well as the layoff of May 12, 1995, of which the Union was again not advised of prior to the event. Rudd inquired about the layoffs and Ball said that they have to be competitive and they have to import because the customers want the fabric from Italy and their competitors are importing (GC Exh. 5, p. 1, 10, pp. 1-2; Tr. 35-36, 103-104). He said that business was down for the retailers and that they had a terrible last three months therefore they had to have a layoff and Frank Dolan said that they were down from about 72 employees to about 40 employees (GC Exh. 5). Ball also said that they have the skill and ability

to make them here but it is too costly and he is in business to make a profit. Rudd requested information on the specifics of the Italian imports and Ball refused to disclose that information. Ball replied in addition to denying the information that they would import more because the Union antagonized him (GC Exh. 5). The parties then discussed 16 proposals that the Respondent had put on the table and they were not accepted by the Union. The Respondent maintained its position on the must items for they were contained in the proposal presented by the Respondent (Jt. Exh. 12; GC Exh. 5, pp. 6–7; Tr. 34, 104). In discussing insurance the Respondent wanted to know the rates for insurance and Rudd tried to explain that due to so much downsizing in the industry the percentage of payroll was no longer being accepted by the insurance fund. Ball wanted the insurance rates and stated unless he had the information he could not give a raise (GC Exh. 5, pp. 15–16; Tr. 35). Rudd suggested that Ball tell the Union what they could afford for insurance and a pay raise and Ball rejected that idea (GC Exh. 5, p. 16; Tr. 35). There was not any agreement reached by the parties at this meeting.

On May 18, 1995, the Union requested, from the Respondent, information on the piece work rates and information about the imports the Respondent disclosed at the January 11 and May 16 negotiating sessions (Jt. Exhs. 23 and 24). There was another plethora of correspondence between the parties from this session until the next negotiating session (Jt. Exhs. 25–55). Of importance among these letters is the May 24, 1995 letter from the Respondent saying that the layoffs were not due to the imports; the May 24, 1995 letter from the Respondent to the Union making another excuse for not providing the information requested by the Union on March 2, 1995; the June 2, 1995 letter from the Union requesting again the information on imports and how it affected the employees originally requested on May 18, 1995; the June 2, 1995 letter from the Union renewing its request for timestudies and piece work rates; the July 6, 1995 letter from the Union confronting Respondent's new excuse for not providing the information requested; and the July 11, 1995 letter from the Respondent with another excuse for not providing the Union with the material it is entitled to in order to represent its members (Jt. Exhs. 29, 30, 35, 36, 46, and 50).

The collective-bargaining contract provides that the Respondent shall have the right to subcontract (Jt. Exh. 1, pp. 17, sec. 138). The Respondent relies on this provision and its past practice of importing to refuse to notify the Union that it was importing seat covers from Italy. As noted above, Respondent has a history through most of its existence of importing up to 900 types of automobile accessory products.

However it appears that these were items which it did not produce in its plants in the United States and did not result in loss of work for any Somerville employees. However, the importation of seat covers sewn in Italy bears a direct relationship to loss of work at the Somerville plant and thus contributed to the layoff of employees.

The Respondent contends that the importation of finished seat covers from Italy was not the cause of the layoffs here. Rather it contends a slump in orders was the reason. This position is not tenable as Respondent was filling the orders it had with the imported seat covers.

The Respondent's position that it has an unrestricted right to subcontract based on its contract is misplaced (Tr. 292). The minimal language in the collective-bargaining agreement's management-rights clause is not sufficient to waive the Union's

right to bargain over this mandatory subject of bargaining. Accordingly, the Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally subcontracting bargaining unit work which led to the layoff of unit employees. *Reece Corp.*, 294 NLRB 448 (1989), and *Public Service Co.*, 312 NLRB 459 (1993).

What turned out to be the last negotiating session took place on July 20, 1995 (GC Exh. 6; Tr. 54, 109). Rudd was not present for the Union nor was Alma Logan, who resigned from the Union and therefore was no longer a member of the bargaining committee (GC Exh. 7; Tr. 118–119). The Union had sent a letter to Respondent after the March 1, 1995 negotiating session regarding confusion at the meeting and suggested that to alleviate that problem in the future the negotiating sessions be tape recorded (GC Exh. 9; Tr. 32). The Respondent rejected that proposal (Tr. 32). A large part of the negotiating session of July 20, 1995, was taken up with the Respondent questioning of Leachman if she or any member of her committee were secretly tape recording the session (GC Exh. 6). The Union rejected the Respondent's economic proposal and the Respondent continued to say that it could not make any wage proposals until the insurance issue was resolved and Ball repeated his position that the Respondent was considering replacing the union's insurance program with another plan (GC Exh. 6, p. 3; Tr. 113). Also Respondent in this session withdrew a proposal it had made in its March 15, 1995 proposal and took the position that the employees be allowed to get out of the Union anytime (GC Exh. 6, p. 5; Tr. 112–113). This was a regressive proposal and further showed the bad faith of the Respondent as well as showed that the Respondent wanted to make it easier for the members to get out of the Union. Ball said that the employees would have to be a Philadelphia lawyer to understand how to get out of the Union as provided in the check-off authorization card (GC Exh. 6, p. 5).

There were no agreements reached at the July 20, 1995 negotiating session (Tr. 113). It is patently clear that the Respondent has been engaging in bad-faith bargaining in these few bargaining sessions from January 11 to July 20, 1995. While the Respondent did not have to begin these early negotiating sessions but it thought it provided an opportunity and would be to its advantage to do so (Tr. 303). However, once it had agreed to enter into early negotiations normal bargaining obligations attached to these negotiations. The first evidence of the Respondent's bad faith was when Ball refused to begin early negotiations in 1994 after it proposed them because the Union was filing and processing grievances. This conduct cannot be alleged as an unfair labor practice because it is 10(b), but is evidence of the thought process of Ball and evidence of the unlawful mind set of the Respondent as the parties prepared to enter into negotiations.

On May 18, the Union requested information relating to the Respondent's subcontracting such as copies of Orders, invoices, et cetera, it had placed with companies outside America for products that could have been produced at the Somerville plant. Names and addresses of companies that Allison had imported goods that could have been produced in this plant as well as comparison and breakdown of costs of producing them in Somerville and overseas. The Union also requested much other data about to products relating to imports. The Respondent has refused to timely supply this information which is necessary and relevant to the Union performance of its duties as the exclusive collective-bargaining representatives of the Unit.

For the reasons set forth above with respect to Respondent's refusal to supply information relating to its piece work rates. Respondent had a duty to supply this information and its failure to do so violates Section 8(a)(5) and (1) of the Act.

The complaint alleges that Respondent through its supervisor and agent participated in the circulation of a petition to decertify the Union. The General Counsel concedes that the events set forth below might not establish conclusively Respondent's involvement with the decertification petition but that the accumulation of the events is sufficient to find that Respondent was involved in the solicitation of the decertification petition.

Former employee Timmy Worles who was not a member of the Union testified that on July 28, 1995, Paula Logan, a sister of Alma Jan Logan, who works there thought was still chief union steward and a member of the bargaining committee, brought a petition to him and asked him to sign it to get a vacation and a raise. He signed the petition which was in a red spiral notebook. Worler later learned that what he had signed was a petition to get a vote to vote the Union out. Worles further testified that the following Monday while at work, he saw Cushion Department Supervisor Nancy Avent get a red spiral notebook from Alma Jane Logan, the former union chief steward, in the sewing department and carry it toward the warehouse. A few minutes later she returned without the notebook and talked with Logan a while. She then went back to the warehouse and returned with the notebook which she gave back to Logan. Worles was adamant that it was the same notebook Paula Logan had which contained the petition to vote to get the Union out. Avent denied that she ever got a red spiral notebook from Alma Jane Logan.

Maxine Whitaker testified that prior to July 20, 1995 she saw Plant Manager Tommy Williams talking to Alma Jane Logan at Logan's work station. Logan then left her work station and went into Williams office where she remained for about an hour. Logan denied that she was ever in Williams office during that period of time.

Another incident the General Counsel would argue in support of his theory that the chain of circumstantial evidence linking the Respondent to the decertification petition was testimony given by former employee Donell Whitley. Whitley testified that in late July Paula Logan talked to her about getting out of the Union. Whitley further testified that about the same time Human Resources Manager Gloria Kelley asked if he had any problems and if so to let her know. Whitley further testified that Kelley asked him if he wanted to get out of the Union and if so to come to her and let her know. Whitley further testified that Kelly asked him if he wanted to get out of the Union and if so to come to her and let her know. This incident was not alleged in the complaint. However, Kelley testified and denied the incident.

I find that the totality of this conduct by Respondent's supervisor and agents is sufficient to find Respondent was aware of the Petition and actively supported it.

Withdrawal of Recognition

Alma Jane Logan testified that she initiated the drive to obtain a sufficient number of signatures on a petition to have an election to vote on whether the Union represented a majority of the employees. She testified that her sister, Linda, who worked at another company instructed her on how to do this. She and another sister who worked at Allison along with a couple of other employees obtained the signatures of employees in a couple of days during lunch and break periods. She then took the

petition to the Labor Board in Memphis where a Board agent told her she needed six more signatures to file a petition. She apparently obtained these and filed a petition.

On receipt of the petition by Respondent, it wrote a letter to the Union stating that it was withdrawing recognition of the Union. Logan admitted being in Plant Manager Tommy Williams office on a number of occasions, but denies she was ever there for an hour or that Williams had anything to do with the petition. William did not testify.

The General Counsel argues that the letter withdrawing recognition of the Union dated August 14, 1995, is a violation of the Act because it occurred during the life of the current collective-bargaining agreement (Jt. Exhs. 1, 65). *BASF-Wyandotte Corp.*, 276 NLRB 498 (1985); *Burger Pitts, Inc.*, 273 NLRB 100 (1984). The collective-bargaining agreement was not to expire until the first Monday in September 1995 (Jt. Exh. 1, p. 21, sec. 16). The withdrawal of recognition is illegal because the agreement is still in effect but also because it took place in the face of unremedied unfair labor practices, e.g., the bad-faith bargaining, not to mention the tainted petition on which Respondent relied.

The Respondent contends that a withdrawal of recognition is lawful if supported by a majority of bargaining unit employees, or if an employer has a reasonably grounded good-faith doubt concerning the Union's majority status. *Atwood & Morrill Cork, A. W. Schlesinger Geriatric Center*, 304 NLRB 296 (1991).

Contracts with fixed terms of more than 3 years will act as bars to election petitions only during the first 3 years of the contract. *General Cable Corp.*, 139 NLRB 1123 (1962); *Vanity Fair Mills*, 256 NLRB 1104 (1981). In this case, the contract, Exhibit J-2, had a 4-year term and the Company withdrew recognition after 3 years had expired.

I find the withdrawal of recognition here to violate Section 8(a)(5) and (1) of the Act since it occurred in an atmosphere of unremedied unfair labor practices and is tainted by supervisory participation and assistance.

The pay raise

Respondent admits that in January it granted a pay raise to all its unit employees. The Respondent never made an economic proposal to the Union during negotiations. It argues that it did not make such a proposal during negotiations because the Union refused to give it cost proposals for its pension and insurance plans and it therefore could not determine the total cost of an economic package proposal.

Accordingly, Respondent violated Section 8(a)(5) and (1) of the Act as found above.

CONCLUSIONS OF LAW

1. The Respondent, Allison Corporation, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, Furniture Workers Division, I.U.E. Local 282 is a labor organization within the meaning of Section 2(5) of the Act.

3. The unit described herein is a unit appropriate for purposes of collective bargaining.

4. By conditioning negotiations on the Union's first agreeing that the following items were not negotiable. Piece work rates for the unit; regarding the arbitrability of piece work rates; that the loser pay all costs including expenses for arbitration, and agreeing to increase the probationary period for certain new

employees from 60 calendar days to 90 working days Respondent has violated Section 8(a)(5) and (1) of the Act.

5. By failing and refusing to timely furnish the Union the information it requested on March 2, 1995, relevant to piece work rates, which information is necessarily and relevant for the Union performance of its duties as the exclusive collective-bargaining representative of the unit employees. Respondent has violated Section 8(a)(5) and (1) of the Act.

6. By subcontracting out unit work which resulted in the lay-off of unit employees without giving the Union prior notice and affording it an opportunity to bargain with respect to such subcontracting and its affect on unit employees. Respondent has violated Section 8(a)(5) and (1) of the Act.

7. By failing and refusing to timely furnish the Union with the information it requested about May 18, 1995, with respect to such subcontracting which information is necessary and relevant to the Union's performance of its duties as the exclusively collective-bargaining representative of the unit employees. Respondent has violated Section 8(a)(5) and (1) of the Act.

8. By participation of supervisor personal in the circulation of a petition to decertify the Union, Respondent has violated Section 8(a)(1) of the Act.

9. By on or about August 14, 1995, withdrawing recognition of the Union as the exclusive collective-bargaining representative of employees in an appropriate unit. Respondent has violated Section 8(a)(5) and (1) of the Act.

10. By unilaterally, and without notice to the Union and affording it an opportunity to bargain during the first week of

January 1996 and implementing a unilateral wage increase to unit employees Respondent has violated Section 8(a)(5) and (1) of the Act.

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

REMEDY

Having found that the Respondent, Allison Corporation, has engaged in certain unfair labor practices, set forth above, it shall be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Because Respondent withdrew recognition of the Union as the exclusive collective-bargaining representative of employees in an appropriate unit and failed and refused to furnish the Union with certain information requested by the Union which is necessary and relevant to the Union in the performance of its' duties as the exclusive collective-bargaining representative of the unit employees in violation of Section 8(a)(1) and (5) of the Act, it is ordered to within 14 days of this order restore recognition to the Union and furnish the union with the information it has heretofore requested which is necessary and relevant to the Union in the performance of its duties as the exclusive collective bargaining of the employees in the above-described unit, and on request bargain in good faith with the Union as the exclusive representative of the employees in the appropriate unit.

[Recommended Order omitted from publication.]