JD(ATL)–23–10
Madison, TN

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

PACCAR, INC. d/b/a
PETERBILT MOTORS COMPANY

and **CASE 26–CA–23225**

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE and AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW and UAW, LOCAL 1832

Susan B. Greenberg, Esq.,
for the General Counsel.
Joseph Torres, Esq. and
Lauren Baird Neubauer, Esq.
(Winston & Strawn, LLP),
for the Respondent.
Deborah Godwin, Esq. (Godwin, Morris,
Laurenzi & Bloomfield, P.C.),
for the Charging Party.

DECISION

Statement of the Case

KELTNER W. LOCKE, Administrative Law Judge. By failing to provide a union representing its employees with requested information relevant to and necessary for the Union's performance of its representation duties, Respondent violated Section 8(a)(5) and (1) of the Act. This unfair labor practice rendered unlawful a lockout which had been lawful at its inception.

Procedural History

This case began on October 30, 2008, when the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (the International Union) filed an unfair labor practice charge against Paccar, Inc. doing business as Peterbilt Motors

Company (the Respondent). In filing this charge, the International Union acted on behalf of itself and its constituent Local 1832 (the Local Union). For brevity, the International Union and Local Union together will be referred to as the Union or as the Charging Party.

The Union amended the charge on July 20and again on July 30, 2009. After an investigation, the Regional Director for Region 26 of the National Labor Relations Board issued a complaint and notice of hearing (the complaint) on February 26, 2010. In doing so, the Regional Director acted on behalf of the Board's General Counsel (the General Counsel or the Government).

On June 9, 2010, a hearing opened before me in Nashville, Tennessee. The parties presented evidence on that date and on June 10, 2010.[1] After the hearing, counsel filed briefs.

Undisputed Allegations

Based on admissions in Respondent's answer, I find that the charge was filed, amended, and served as alleged in complaint paragraphs 1(a), (b), and (c).

Further, I find that at all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (the Act). Respondent meets both the statutory and discretionary standards for the assertion of jurisdiction.

Based on Respondent's answer, I also conclude that the Government has proven that at all material times, the following individuals were Respondent's supervisors within the meaning of Section 2(11) of the Act and its agents within the meaning of Section 2(13) of the Act:

> Human Resources Manager Brenda Copeland; Plant Manager Larry Vessels; Paccar, Inc. Director of Labor Relations Kären White.

Additionally, Respondent has admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act. Based on Respondent's admissions, I further conclude that since at least 1973 and at all times material to this case, the Union has been, and Respondent has recognized the Union as being, the exclusive collective-bargaining representative, within the meaning of Section 9(a) of the Act, of a unit of Respondent's employees at its plant in Madison, Tennessee. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from June 22, 2003, through June 20, 2008 (the 2003–2008 agreement).

More specifically, the Union has been the exclusive representative of the following unit of employees, which is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Included: All production and maintenance employees employed by Respondent at its

[1] I hereby correct, sua sponte, he following error at page 385, line 9, by changing "Im going to strike it" to "I'm not going to strike it."

Madison, Tennessee facility.

Excluded: All office clerical employees, technical employees, professional employees, guards and supervisors as defined in the Act.

Respondent also has admitted, and I find, that on or about April 30, 2008, Respondent and the Union began negotiations for a successor collective-bargaining agreement to the 2003–2008 agreement.

Based on the record, I also find that at the time of these negotiations Respondent operated four truck manufacturing plants. Two of them, at Denton, Texas, and Chillicothe, Ohio, were not unionized. Labor organizations did represent units of employees at the other two plants, located at Renton, Washington, and Madison, Tennessee.

This proceeding concerns only the Madison, Tennessee plant which Respondent ultimately closed. The complaint does not allege that this closing violated the Act.

It may be noted that Madison, Tennessee, is located near Nashville and sometimes in their testimony witnesses referred to this facility as the "Nashville plant." The terms "Nashville plant" and "Madison plant" refer to the same facility and are used interchangeably herein.

The Alleged Unfair Labor Practices

After the initial bargaining session on April 30, 2008, the Union and Respondent held an additional 16 meetings to negotiate a new contract. Respondent sought a number of significant changes, including the addition of language about "sourcing" to the management-rights clause. The union negotiators feared that the proposed change would give Respondent an unlimited right to outsource work performed by bargaining unit employees.

Respondent also proposed a multitiered wage and benefit system which would provide different wage rates for existing employees, for new hires, and for workers recalled from layoff. The Union, noting that laid-off workers already had suffered, objected to paying them lower wages and benefits when they were recalled.

Respondent sought changes in the seniority system which, it argued, would provide more flexibility in the assignment of employees. It also proposed designating certain workers "key operators" and protecting them from layoffs by giving them "superseniority." The Union strongly opposed changes in the seniority system.

The parties' bargaining sessions consisted of meetings in which all of the negotiators on each side took part, and smaller meetings in which only the principal negotiators took part. The latter meetings, called "sidebars," were not off-the-record or confidential.

At such a sidebar meeting on June 13, 2008, Plant Manager Vessels remarked that the Nashville plant had the highest operational costs in the Company. During his testimony, Vessels explained what prompted him to make this comment. Vessels had believed that, as the June 20, 2008 contract expiration date approached, the parties were making progress towards a new

agreement. However, at the June 13 sidebar meeting, a union negotiator, Mike Brown, described the Union's proposals as a "package deal" which must be accepted in toto. Brown's statement dashed Vessels' hopes of reaching a new agreement in the remaining week before the existing contract expired.

In apparent frustration, Vessels responded that the Nashville plant had the highest operational costs in the company. Brown then asked whether Vessels was talking about costs per hour or costs per truck. Vessels replied, "Both." There was no further discussion about the matter.

One of Respondent's negotiators made a similar statement about operating costs during a meeting with the Union on June 16. According to Union Representative Timothy Bressler, Respondent's director of labor relations, Kären White, said that "the Madison facility was the highest cost facility in the Peterbilt chain." To some extent, the testimony of Union Representative Terry Bolte corroborates Bressler's, but vagueness reduces the value of Bolte's testimony as corroboration.

White testified that she believed Vessels was the one who, during the June 16 meeting, commented that the Madison facility had the highest operating costs. It is not clear from Vessels' testimony whether he made such a statement at the June 16 meeting. Similarly, his testimony does not rule out the possibility that White made the remark at the June 16 meeting.

As discussed above, Vessels did remark at the June 13 meeting that the Madison plant had the highest operating costs. While cross-examining Vessels, the General Counsel asked whether White also had said that the Madison plant had the highest labor costs, Vessels answered "Not in my presence." However, the General Counsel's question asked whether White had made a statement about *labor* costs, not operating costs. Respondent took pains to draw a distinction between the term "labor costs," which Vessels and White deny using, and "operating costs." Therefore, Vessels' answer on cross-examination, denying that White had made a statement that the Madison plant had the highest labor costs, does not rule out the possibility that White said that this plant had the highest operating costs.

White did not flatly deny telling the Union that the Madison facility had the highest operating costs, but only said that she *believed* that Vessels made this statement at the June 16 meeting. Crediting Bressler's testimony, I conclude that she did tell union negotiators, on June 16, that the Madison plant had the highest operating costs.

When the negotiators met on June 19, the Union gave Respondent the information request referred to in complaint paragraph 10(b), and a copy of which is attached to the complaint as appendix. The information request states as follows:

> In the spirit of good faith bargaining and in the interest of reaching a timely settlement, the Union is requesting the following information based on the Employer's assertion during this round of collective bargaining that the UAW represented PACCAR/Peterbilt facility in Madison, TN was the highest cost facility operationally.

For every PACCAR production facility in the United States, please provide the following information for production and skilled trades employees. Please provide the information separately for each facility.

1. Hourly wage rates by job classification as of the most recent pay period available. Please note the pay period from which the information was derived.

2. Number of employees working in each job classification as of the most recent pay period available. Please note the pay period from which the information was derived.

3. Total number of hours worked in 2007 and year-to-date 2008. Please note the date range from which the year-to-date data was derived.

4. Number of 1.5x overtime hours in 2007 and year-to-date 2008. Please note the date range from which the year-to-date data was derived.

5. Number of 2x overtime hours worked in 2007 and year-to-date. Please note the date range from which the year-to-date data was derived.

6. Number of employees working on each production shift.

7. Amount of shift premium (if applicable) paid to employees working on each shift.

8. Number of paid holidays observed each calendar year.

9. Number of vacation days used in 2007.

10. Total cost of all medical (hospital, dental, vision, Rx) insurance programs in 2007.

11. Amount of 401(k) or other pension program costs or contributions by the Employer in 2007.

12. Total worker's compensation cost in 2007 and year-to-date 2008. Please note the date range from which to year-to-date data was derived.

13. Total cost of all other benefit programs (long term and short term disability, tuition/education assistance, tool/shoe allowance, etc.)

14. Total "all-in" hourly labor cost for production employees.

15. Number of temporary employees and total hours worked by temporary employees in 2007 and year-to-date 2008. Please note the date range from which year-to-date data was derived.

16. Hourly rate paid to temporary workers.

My observations of the witnesses lead me to resolve any conflicts in the testimony by crediting that of Union Representatives Bressler and Bolte. Based on that testimony, I find that when Bressler gave Respondent's negotiators the information request on June 19, he explained that the Union needed the information to make a proposal.

Director of Labor Relations White testified that Bressler said the information request was a "sample" or "example" of the type of information request the Union had directed to other employers. Several reasons, including the credited testimony of Bressler and Bolte, cause me to reject White's account.

For one thing, the information request did not look like a sample. The document did not carry any notation indicating it was a sample. (For example, the word "Sample" was not stamped or written on the information request.) Moreover, the very first paragraph of the information request made clear that it pertained specifically to Respondent and that it was a result of statements made by Respondent's negotiators. Thus, it explained that it was based on Respondent's "assertion during this round of collective bargaining that the UAW represented PACCAR/Peterbilt facility in Madison, TN was the highest cost facility operationally."

If the document had been a sample of information requests the Union had made to other employers at other times, it would not have begun with a statement that it was predicated on Respondent's assertions about Respondent's plants. A sample likely would have borne the name of some other employer or have been blank.

The specific language at the beginning of the information request left little doubt that it was addressed to Respondent and that it pertained to current matters raised during bargaining. That language, by itself, reasonably would have put Respondent on notice that the Union representatives were not simply talking about an information request but actually making one.

Moreover, one of Respondent's documents revealed that management understood the Union to be making an information request. Management staff prepared, and Director of Labor Relations White reviewed, a daily chronology which included a summary of each bargaining session. The entry for the June 19, 2008 session included the following:

> Larry [Vessels] and Karen [White] had a side-bar with Tim Bressler, Terry Bolte, Mike Pardue and Mike Brown. Bressler accused the Company of ghost bargaining *and requested comparative wage data from other Paccar facilities*. The Union could be preparing for multiple ULPs. (Italics added)

Rather than making any mention of a sample, Respondent's summary clearly and unequivocally states that the union representative *requested* the wage information. The further observation that the Union could be preparing for multiple unfair labor practice charges also buttresses the conclusion that management understood Bressler's document to be an actual information request rather than a sample of one. An initial and necessary element of a refusal-to-provide information unfair labor practice is a request for information, not the tendering of a sample.

Although White only reviewed, and did not author, the bargaining session chronology described above, she did write another document which referred to the information request. In a June 19, 2008 email to various management officials, White wrote that the union officials "are positioning themselves for several ULPs. This is a 'head's up' as to where they will come from." White's email then listed "Failure to respond to information requests on" a number of matters, including "Comparative wage data from other PACCAR facilities."

Thus, on the very day the Union made the information request, Director of Labor Relations White viewed it as a predicate to the filing of unfair labor practice charges. Additionally, her phrase "information requests" clearly includes the Union's asking for comparative wage data from other plants. I conclude that when White wrote this email she already regarded the Union's June 19 information request as precisely that, an information request.

For all these reasons, I find that from the time it received the information request on June 19, 2008, Respondent knew that the Union seriously was seeking information. Although White characterized the information request as a sample, and indeed wrote the word "sample" on her copy, I conclude that this action was disingenuous and does not enhance her credibility.

On Friday, June 20, 2008, the collective-bargaining agreement expired. Respondent notified its workers not to show up for work on Monday, June 23. Although some employees did arrive at the plant, they left after learning of the lockout.

Director of Labor Relations White testified that Respondent has a policy that bargaining unit employees only were allowed to work if a collective-bargaining agreement were in effect at the time. The General Counsel does not dispute the lawfulness of the lockout at its inception, but argues that it became unlawful later when Respondent failed to provide the information requested by the Union.

Although I have concluded that Respondent knew from the outset that the Union's June 19, 2008 information request was the real McCoy, even were I to assume that management really believed the document was just a sample, such confusion could not have lasted long. A June 30, 2008 letter from an International Union vice president to Plant Manager Vessels included the following:

> On June 19th, we reiterated our request for information about the labor costs at non-union truck facilities (to which you've compared the Madison plant). We ask that you provide this information without further delay.

On July 3, 2008, Plant Manager Vessels replied to the Union's letter. This reply included the following:

> Your letter references a June 19, 2008 request for information about the labor costs at other PACCAR facilities. The Company did not compare the wages and benefits at Nashville with those of other PACCAR facilities. In a side–bar, the union presented a document listing 17 items regarding wages, hours, overtime and benefits at other

> facilities. In response to Company inquiries regarding the reason for this request, the union stated it was a "sample" that is typically requested. The union stated it was not requesting the items listed. The Company marked it as a sample and did not view it as a request for the information listed.

For the reasons discussed above, I do not find that Respondent ever considered the information request to be a "sample." Moreover, I do not credit the testimony of White or Vessels to the extent it indicates that any union representative or negotiator characterized the document as a "sample." To the contrary, I find that neither Bresser nor any other union representative made such a statement.

One of the Union's International representatives, Michael E. Brown, replied to Vessels' July 3, 2008 letter. Brown's July 8, 2008 response stated, in part, as follows:

> First, as you know, on June 19th, the Union requested information related to labor costs at other PACCAR plants. Your most recent letter makes a number of statements about this request that are incorrect.
>
> You assert that the data requested is irrelevant because the Company has allegedly not "compare[d] the wages and benefits at Nashville with those of other PACCAR facilities." This is untrue. More than once, Peterbilt has claimed that the per hour labor costs at the Madison facility are higher than those at other plants. Before we can make an informed decision about the concessions that you've proposed, we need to know if the costs at Madison are in fact comparatively high. For this reason, we made the data request on June 19th.
>
> Frankly, we're surprised that you didn't view the document we provided to you that day as a demand for information. During the discussion mentioned in your letter, Tim Bressler made it clear that we needed data about the labor costs at other plants in order to evaluate the Company's proposals. In response [to] this request, management representatives stated that it would be difficult for them to get all of information immediately. Bressler told them that, while he understood that it might take some time to gather all of the data, the Union would ultimately need it to validate the Company's claims. In light of these facts, the assertion that the Union "stated that it was not requesting the items listed" is just plain wrong. We expect to receive a response to the June 19th request without further delay.

Plant Manager Vessels replied by letter dated July 16, 2008. It stated, in pertinent part, as follows:

> The Company did not compare the wages and benefits at Nashville with those of other PACCAR facilities. We will clarify the basis for the Nashville wage and benefit proposal at the bargaining table on the 16th so we can resolve any misunderstanding.

At its July 16 meeting with the union negotiators, Respondent took the position that information about wage and benefit rates at other plants was not relevant because Respondent based its proposals on the wages and benefits which other employers in the Nashville area paid

to their workers. In a July 16 email, White summarized what management told the union negotiators:

> We closed the meeting with a statement that we have comploied [sic] with all the requests for information except the comparative data on the other facilities. They were told that any reference to other plants was not the basis for any proposals. Further, we recalled only one reference on our part, which was in a confidential sidebar discussion, and another time when the Union made mention of a 401(k) "that the other plants have." We used local competitive data to formulate our proposals.

The complaint alleges that Respondent's refusal to provide the requested information made the lockout unlawful as of July 16, 2008. From the record as a whole, the record does not establish that Respondent, thereafter, furnished the Union with the requested information and I conclude that it did not.

Analysis

When a union is the exclusive bargaining representative of a unit of an employer's workers, the employer has a duty to provide requested information relevant to the union's representation duties and necessary for that purpose. The Board presumes to be relevant information about the wages, benefits, and other terms and conditions of employment of bargaining unit members. *U.S. Information Services,* 341 NLRB 988 (2004); *International Protective Services,* 339 NLRB 701 (2003); *Zeta Consumer Products Corporation*, 326 NLRB 293 (1998).

Information about persons outside the bargaining unit does not enjoy a presumption of relevance. *Caldwell Mfg. Co.*, 346 NLRB 1159 (2006). However, the burden to establish relevance is "not exceptionally heavy" *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983), and "[t]he Board uses a broad, discovery-type of standard in determining relevance in information requests." *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994).

Respondent, in its answer, raised as a defense that "the Complaint fails to state a claim because the requested information was not relevant to the parties' bargaining proposals." Essentially, Respondent argues that the requested information—about wages and benefits received by employees at other plants—lacks relevance because Respondent did not use such information in formulating its proposals. That argument misses the point.

The duty to provide the requested information does not depend on whether Respondent used the information in formulating its own proposals. Rather, the issue of relevance here focuses on a claim Respondent's negotiators made at the bargaining table. The Union sought the requested data to determine whether this claim was valid or invalid. The relevance of the requested information turns on whether the information might substantiate or debunk the claim.

Moreover, it is important to take the entire context of negotiations into account. At the bargaining table, Plant Manager Vessels made statements suggesting that the fate of the Madison facility hung in the balance. Union Negotiator Bressler credibly testified about remarks made by

Plant Manager Vessels at a June 16, 2008 meeting:

> Mr. Vessels was — very concerned with the future of the plant. In that meeting, he said that a — a lockout, a strike, or — or working without a — a contract would be — put the plant in potential jeopardy, and he stated that if — if the work had ever went to the Denton facility and most likely it wouldn't come back.

Plant Manager Vessels' remark that the Madison facility had the highest operating costs of any of Respondent's truck plants must be considered together with his expressed concerns about the future of this factory. Vessels clearly communicated to the union negotiators that more was at stake than merely the final wage or benefit package. The continued existence of this factory, and the bargaining unit jobs it provided, might turn on the concessions made by the Union at the bargaining table.

In this light, an observation that the Madison plant had the highest operating costs was particularly ominous and might lead the Union to make concessions which otherwise would be unacceptable. Before agreeing to concessions to keep the plant open, the Union reasonably needed to verify whether this facility did, in fact, have the highest operating costs. Accordingly, I conclude that the information about labor costs at other plants was relevant to the Union's responsibilities to protect the jobs of bargaining unit employees and, at the same time, to negotiate a satisfactory contract. Further, I conclude that the requested information was necessary for that purpose.

The second defense raised in Respondent's answer also must fail because it is based on the same misapprehension concerning what makes the requested information relevant. Again, Respondent incorrectly assumes that to be relevant the requested information must pertain directly to Respondent's bargaining proposals. Thus, Respondent's second defense states that "Assuming the request for information . . . was made in response to Respondent's bargaining proposals or the Union's perceived understanding of the Respondent's bargaining proposals, the Complaint fails to state a claim because the Respondent clarified its position and/or retracted any purported reliance upon the subject matter of the information request in connection with Respondent's bargaining proposals."

The information certainly does have relevance to Respondent's bargaining proposals, most notably the multitiered wage structure which Respondent sought to establish. However, the Union's primary reason for requesting the information related to Respondent's claim that the Madison facility had the highest operating costs. The Union needed the information to confirm or invalidate that claim.

Whether or not Respondent relied on wage and benefit data from its three other truck plants or, as it claimed, used information from other factories in the Nashville area as a basis for formulating its proposals, does not affect the relevance of the information sought by the Union. Rather, the requested information is relevant to Respondent's asserted basis for making substantial changes in pay and benefits.

Respondent has noted that its negotiators never said that the Madison facility had the highest *labor* costs rather than the highest *operational* costs of any of its four truck plants. This

fact does not make the information any less relevant. Plant Manager Vessels acknowledged that labor costs are part of overall operational costs. Moreover, labor costs, both the direct costs associated with wages and benefits and indirect costs associated with working conditions, are the only part of operational costs subject to modification by the collective-bargaining process. In these circumstances, the requested information is highly relevant.

I conclude that the requested information was relevant and necessary and that the Respondent had a duty to furnish it. I further conclude that by failing to do so, Respondent violated Section 8(a)(5) and (1) of the Act.

Citing *Central Illinois Public Service*, 326 NLRB 928 (1998), Respondent argues that even if it violated the Act by failing to provide the requested information, that violation did not render the lockout unlawful. Considering the somewhat unusual facts in that case, the Board held that there was no evidence that respondent's failure to provide the union information concerning some relatively minor matters adversely affected the negotiations. Therefore, the Board did not find that this violation rendered the lockout unlawful.

However, in the present case, the information requested related to a quite central matter, whether the Union would make wage concessions. Indeed, Respondent proposed changing the wage structure to a multitiered system which would adversely affect employees returning from layoff. The Union had a very substantial need to determine the accuracy of the claim that the Madison facility's operating expenses were the highest of all four truck plants. Without the requested information, the Union lacked the means to evaluate what concessions it needed to make and what concessions would be unnecessary.

Accordingly, I conclude that Respondent's failure to provide the requested information had a substantial adverse impact on the negotiating process and placed an obstacle in the way of settlement. Therefore, I further conclude that, as of July 16, 2008, Respondent's failure to provide the requested information rendered the lockout unlawful. *Globe Business Furniture*, 290 NLRB 841, 841 fn. 2 (1988).

Remedy

As stated in the complaint, the General Counsel "seeks an Order requiring Respondent to: (1) make whole the affected Unit employees for loss of earnings and other benefits resulting from the unlawful lock out; and (2) pay interest compounded on a quarterly basis for all backpay owed in this matter."

Respondent certainly must make the affected employees whole, with interest, for the losses they suffered, beginning on July 16, 2008, when the lockout became unlawful. Respondent's closure of the Madison facility adds a complicating factor. The present record is insufficient to establish whether, and under what circumstances, Respondent's employees at a facility being closed would be allowed to transfer to work at other facilities. Matters relating to the effect of the plant closure and the duration of the backpay period must be left to the compliance stage of this proceeding.

With respect to the compounding of interest, I am bound to follow existing Board precedent. Accordingly, the recommended Order does not include a requirement that interest be compounded.

Because the Madison plant, where the unfair labor practices occurred, is no longer in operation, Respondent should be required to mail a copy of the notice attached hereto as appendix to all current employees and former employees who had been employed at the Madison plant at any time since July 16, 2008, the date of the unfair labor practice.

Conclusions of Law

1. The Respondent, Paccar, Inc. d/ b/ a/ Peterbilt Motors Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and its affiliated Local 1832 are labor organizations within the meaning of Section 2(5) of the Act.

3. At all times material to this case, the Charging Party has been the exclusive collective, bargaining representative, within the meaning of Section 9(a) of the Act, of an appropriate unit of Respondent's employees, described more fully in paragraph 4, below.

4. The following unit is appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed by Respondent at its Madison, Tennessee, facility, EXCLUDING all office clerical employees, technical employees, guards and supervisors as defined in the Act.

5. On June 19, 2008, the Charging Party requested that Respondent furnish it with certain information, described more fully above, pertaining to employees at Respondent's other truck manufacturing plants.

6. The information requested by the Charging Party, described above in paragraph 5, was relevant to the Charging Party's duties as exclusive bargaining representative, and was necessary for the Charging Party to perform those duties.

7. Since July 16, 2008, and continuing to date, Respondent has failed and refused to furnish the Union with the requested information described above in paragraph 5, and thereby has violated and is violating Section 8(a)(5) and (1) of the Act.

8. On June 23, 2008, Respondent locked out its bargaining unit employees at its Madison, Tennessee facility. This lockout continued until about April 6, 2009.

9. Beginning July 16, 2008, and continuing to date, the lockout described in paragraph 8 above was prolonged and rendered unlawful by Respondent's unfair labor practices described in paragraph 7, above.

10. Respondent did not violate the Act in any other manner alleged.

On these findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended[2]

ORDER

The Respondent, Paccar, Inc. d/b/a Peterbilt Motors Company, Madison, Tennessee , its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide to the Union representing an appropriate unit of employees requested information which is relevant to the Union's duties as exclusive bargaining representative and necessary for that purpose.

(b) Locking out its employees at a time when its unremedied unfair labor practices obstruct or impede the negotiating process or otherwise are inconsistent with that process.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

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

(a) Furnish to the Union the information described in the Union's June 8, 2008 information request.

(b) Make its bargaining employees whole, with interest, for all losses they suffered because of its unfair labor practices and their conversion, on July 16, 2008, of the lockout into an unlawful one.

(c) Within 14 days after service by the Region, mail to bargaining unit members who had been employed at Respondent's Madison facility, as identified below, copies

[2] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, these findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board, and all objections to them shall be deemed waived for all purposes.

of the attached notice marked "Appendix"[3] after it has been signed by Respondent's authorized representative. Because Respondent has closed the Madison plant, Respondent shall duplicate and mail, at its own expense, a copy of the notice to each employee who had been a member of the bargaining unit at Respondent's Madison plant at any time since July 16, 2008.

(d) 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 Regional Director attesting to the steps that the Respondent has taken to comply.

Dated Washington, D.C., October 28, 2010.

Keltner W. Locke
Administrative Law Judge

[3] If this Order is enforced by a judgment of the 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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of these rights, guaranteed to them by Section 7 of the National Labor Relations Act.

WE WILL NOT fail or refuse to provide information requested by a union representing our employees which information is relevant to and necessary for the Union to perform its function as exclusive bargaining representative.

WE WILL NOT lock out our employees at a time when our unremedied unfair labor practices obstructed or impeded the negotiating process or otherwise are inconsistent with that process.

WE WILL make employees whole, with interest, for all losses they suffered because our unfair labor practices rendered unlawful the lockout which began on June 23, 2008.

WE WILL furnish to the Union the information described in the Union's June 8, 2008 information request.

PACCAR, INC., d/b/a
PETERBILT MOTORS COMPANY
(Employer)

Dated: _____ **By:** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret–ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's

Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

The Brinkley Plaza Building, Suite 350, 80 Monroe, Avenue Memphis, TN 38103–2416

(901) 544–0018, Hours: 8:00 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (901) 544–0011.