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Stepan Company *and* United Electrical, Radio & Machine Workers of America (UE), Machine Tool & Die Local 155. Case 4–CA–34417

February 14, 2008

DECISION AND ORDER

BY MEMBERS LIEBMAN AND SCHAUMBER

On February 21, 2007, Administrative Law Judge Wallace H. Nations issued the attached decision. The General Counsel and Charging Party Union filed exceptions and supporting briefs; the Respondent filed an answering brief; and the General Counsel filed a reply brief.

The National Labor Relations 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[2] and to adopt the recommended Order.[3]

ORDER

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

Dated, Washington, D.C. February 14, 2008

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Jennifer R. Spector, Esq., for the General Counsel.
Adam C. Witt, Esq. and *David L. Christlieb, Esq.,* of Chicago, Illinois, for the Respondent.
Joseph Cohen, Esq., of Pittsburgh, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on November 7, 2006. The charge was filed by United Electrical, Radio & Machine Workers of America (UE), Machine Tool & Die Local 155 (Union) on January 24, 2006. The Union filed an amended charge on July 20 and a further amendment on July 26. The Regional Director for Region 4 issued complaint and notice of hearing on July 31. The complaint alleges that Stepan Company (Stepan or Respondent) engaged in certain conduct in violation of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (Act). Respondent filed a timely answer, admitting, inter alia, the jurisdictional allegations of the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Union, and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, engages in the manufacture and sale of specialized chemicals at its facility in Fieldsboro, New Jersey, where it annually sold and shipped goods valued in excess of $50,000 directly to points outside of the State of New Jersey. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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

[2] In adopting the judge's finding that the Respondent did not violate Sec. 8(a)(5) by refusing to furnish the Union with information it requested in its letter of January 17, 2006, we rely on the judge's finding, which turned in significant part on credibility resolutions, that the "requested information was sought solely to support the [Union's] unfair labor practice charges and for no other reason." See, e.g., *Saginaw Control & Engineering, Inc*., 339 NLRB 541, 543–544 (2003) (finding that an employer's refusal to provide potentially relevant information was not unlawful where the evidence showed that the union was merely seeking to support a previously filed unfair labor practice charge). This finding is buttressed by the timing of the Union's information request, made just days after the Union had filed its charges and the Board's Regional Office had asked the Respondent to provide information related to the charges, and by the fact that the information sought by the Union largely paralleled that requested by the Region. Because the complaint allegation was properly dismissed on this basis, we find it unnecessary to rely on the judge's finding, or supporting analysis, that the requested information was not relevant to the Union's bargaining proposals.

In adopting the dismissal of the 8(a)(5) allegation, we also do not rely on the judge's statements that: (1) under *Union-Tribune Publishing Co.*, 307 NLRB 25, 26 fn. 6 (1992), an employer need not produce requested information that it "reasonably believes" may be related to a pending unfair labor practice charge against the employer; and (2) "that there is no reason the Union could not have bargained over wages in the absence of the requested information."

[3] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Members Liebman and Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

As noted above, Respondent operates a manufacturing facility in Fieldsboro, New Jersey. At all material times, its management at the facility consisted of Hector Cuello, plant manager, Michael Prising, production manager, and Charlie Worden, human resources manager for Respondent's Millsdale, Illinois plant. At all material times since it was certified on January 18 or 19, 2005, the Union has represented the employees of Respondent in the unit described below:

> All full-time and regular part-time production, maintenance and laboratory employees, including Operators, Production Assistants, Maintenance Mechanics, E and I techs, Warehouse Employees, Boiler Operators and Lab Technicians employed by Respondent at the Plant; excluding all other employees, management employees, clerical employees, guards and supervisors as defined by the Act.

The initial collective-bargaining agreement between Respondent and the Union is effective for the period November 28, 2005, through November 27, 2008. The complaint alleges that negotiations leading to this contract were conducted from April 2005 until about May 1, 2006. On or about January 17, 2006, as part of the negotiations, the Union, by letter, requested the following information:

> 1. In any year prior to 2004-5, did Stepan Chemicals utilize the Hourly Wage Survey Data collected by the chemical company association, which you previously supplied to us, to determine the level of wage increases at Fieldsboro (decreases or freezes) which it provided to employees now represented by our union? If your answer is affirmative, please provide us with copies of all of those surveys for each year in which such survey impacted wage actions taken by the Company from 1994 through the present date.
>
> 2. Copies of any and all additional wage surveys used by Stepan Company in evaluation and adjusting the wage structure for Fieldsboro employees from 1994 to the present:
>
> 3. A listing of annual wage adjustments (increases, decreases, or freezes) provided to Fieldsboro employees from 1994 to the present, which includes the following information:
>
> a. The amount of each such increase or decrease;
>
> b. The effective date of each such increase or decrease;
>
> c. The basis for calculating the amount of such in creases or decreases;
>
> d. The classifications which each increase, decrease or wage freeze affected;
>
> e. Notation of years in which no increase was given, along with the reason no increase was given.

The Union sought additional information in this letter, information that the General Counsel does not deem relevant or necessary to the Union's role as the unit employee representative. It is alleged in the complaint that the Respondent thereafter refused to supply the requested information for approximately 2 months. From on or about January 24, 2006, until on or about May 4, 2006, the Respondent locked out its unit employees. The complaint alleges that Respondent's refusal to timely supply the requested information violated Section 8(a)(1), (3), and (5) of the Act and made unlawful the lockout for the period of time that Respondent withheld the requested information.

A. Evidence Adduced Relating to the Complaint Allegations

1. Evidence adduced by General Counsel

James Ermi is a field organizer for the International Union. He works with a number of locals, including Local 155, on contract administration, grievances, and contract negotiations. He was the chief negotiator for the Union in bargaining for the initial contract. At the outset of negotiations, on April 6, 2005, the Union presented Respondent with a complete proposed contract, including wage proposals. The Union's wage proposal represented an attempt to address what some employees believed to be wage inequities between various job classifications as well as proposing a 5-percent wage increase in all wage classifications in the first year, and a 4-percent increase for the other years to be covered by the proposed contract. Stepan responded by deferring discussion of economic issues until all other issues had been settled and did not make a wage proposal until November 30, 2005. In the period between April and November 2005, the parties met five or six times a month for bargaining.

Respondent's bargaining committee consisted of Charles Worden, Stacie Santoleri, and Mike Prising throughout the negotiations. Sitting in for some of the sessions were the plant managers at the time, Damien Burke and Hector Cuello. At some sessions, Respondent's Mayberry New Jersey plant manager, Don Watson, sat in as did the Fieldsboro human resources manager. The Union's committee consisted of Ermi as lead negotiator, and committee employee members Frank Donaghy, Mark Bowman, George Olshansky, Ron McCullough, and Steve Cameron.

Ermi characterized the Respondent's November 30 wage proposal as outrageous, as it called for between a 25- and 30-percent wage cut for most job classifications. During the day of November 30 and the next day, December 1, the parties made a number of wage proposals and counterproposals. There was some movement by both sides. Ermi testified that in justification for its wage proposal, Respondent told the Union that it had been paying a premium wage to the Fieldsboro employees for many years. Ermi added that the Respondent stated that the wages at Fieldsboro were in the top 7 or 8 percent of industry wages in the involved part of the country. Respondent noted that its other unionized facilities were watching the involved negotiations and Respondent did not want to set a new standard or pattern for all of its union represented facilities. Respondent also supplied the Union with an area-wage survey involving 16 or 17 companies compiled by the Ocean Spray Cranberry Company.

Ermi testified that at the end of the day on December 1 the parties were not close on the issue of wages. The Respondent, according to Ermi, was proposing a slight reduction in some wage classification and/or a continuation of an ongoing wage freeze. The Union was mindful of an alleged statement by the

Respondent during the union organizing campaign in December 2004 or January 2005 that it had budgeted a 3-1/2-percent wage increase for employees in 2005. A Stepan document that Ermi had seen stated that the increase was withheld because of contract negotiations. Based on Respondent's alleged statement, the Union believed that there were meaningful wage increases to be obtained for the first year of the contract.

The next bargaining session took place on December 7, 2005. The parties discussed wages throughout the day and at the close of the session Respondent presented the Union with what it termed its last, best, and final offer on wages. The parties left with an agreement to meet the next day. At the next meeting, the Union counterproposed that the employees in the wage classifications that Respondent proposed to reduce be red-circled and exempted from the reductions for the duration of the contract. According to Ermi, the Respondent agreed to red-circle at least some of the affected positions. Ermi also testified that at this meeting Worden, on behalf of Respondent, noted that Respondent had not only relied on the Ocean Spray wage survey, but had also looked at a wage survey taken by the New Jersey Chemistry Council. Respondent offered to make this survey available to the Union if it wanted to see it. Both surveys were given to the Union, though a cover page to the Chemistry Council survey was not provided until on or about January 10, 2006. According to Ermi, Worden modified his earlier claim that the Fieldsboro employees were in the top 8 percent of area employers in terms of wages to claiming that these employees were in the top 10 percent.

Following the meeting on December 8, the Union held a vote and the Respondent's offer was rejected. The parties next met on January 10, 2006. At this meeting, Respondent was represented by Worden, Cuello, Prising, and Stepan Corporate Vice President Tony Zoglio. This was the first session that Zoglio had attended. Ermi led the Union's team as he had throughout negotiations. The Union intended in this meeting to continue to address the wage issue and an outstanding issue on benefits. At the outset of the meeting, the Union asked whether there was an opportunity to have meaningful wage discussions. Worden responded that the Company had made its final offer on wages, but was open to making some changes within the framework of the offer. Zoglio then complimented the others on the number of agreements that had been reached and offered justifications for Respondent's stand on wages. According to Ermi, Zoglio told the Union that the Fieldsboro wages were in the top quarter of wages paid in the area, down from the top 8- to 10-percent characterizations made by Worden. Zoglio stated that Respondent's wage proposal was fair and was produced using the same criteria that Respondent had routinely used in the past to set wages. These criteria included wage surveys, plant profitability, industry forecasts for the upcoming years. Zoglio also noted that the Fieldsboro plant's sales had been on a steady decline since it lost a major account a few years earlier.

Ermi's affidavit to the Board on the subject to wage surveys being discussed at the January 10 meeting reads:

> "Both Worden and Zoglio said something like we've give you what we think is a competitive wage offer, we've gone over the surveys, we need to adjust our wage scales". Ermi then said, "You guys have had every opportunity to adjust your wage scales for umpteen years. Obviously, the company chose to pay the rates that it's paying now. The only intervening event we're aware of was the January 6th vote for the men to join the union. Now you've decided that you were paying these guys too much and you need to cut it or at least hold them." "Zoglio said Fieldsboro had seen a $9 million annual profit and loss before they lost Clairol [a major account], and it had been a straight line annual decline since then." Zoglio continued, "We're simply not going to pay the premium wages that we have in the past. We have done some benchmarking, as we routinely do on wages in the South Jersey and Philadelphia area, and that research puts Fieldsboro wages in the upper fourtile. We see our offer as a very livable contract without any take-backs."

According to Ermi, the forgoing quotes are all that was said at the meeting about profitability and surveys. Ermi admitted that Zoglio did not say the company had used past wage surveys to make its contract proposal on wages. Ermi clearly believed that Respondent had historically relied on wage surveys when setting wage rates and had held that belief since at least November 30, 2005. His notes of that bargaining session reflect that he stated during that meeting: "I'm sure the company looked at wage surveys when you set up the current wage structure many years ago." On redirect he seems to contradict himself by testifying at that point in his examination that he did not really believe that Respondent had used wage surveys in determining wages prior to 2005.

Also on January 10, the Union filed a ULP charge alleging the Respondent failed to implement the 3-1/2-percent across-the-board wage increase promised during the Union's organizing campaign in retaliation for other charges filed by the Union and in retaliation for the employees' voting in the Union. This charge was ultimately dismissed by the Region or withdrawn by the Union. The Union had previously filed a charge alleging that the Respondent's wage proposals were made in retaliation for earlier charges filed. Ermi agreed that to make a determination on the merits of these charges, it would be important to know what the Company had done in terms of wage increases and how the Company determined to give wage increases in the years before the employees elected the Union. Ermi agreed that the information sought on January 17, 2006, related to the allegations in the charges the Union had filed.

On January 10, the Union proposed red-circling employees who stood to have a wage cut in the first year of the proposed contract and making a lump sum payment to employees in lieu of an across-the-board wage increase. Nothing was agreed on in this regard and the Union then threatened to file additional charges with the Board based on the failure of Respondent to live up to its electioneering statement that it was going to give employees a 3-1/2-percent wage increase in 2005. Ermi testified that he also said that what had transpired at the meeting might generate some additional information requests. This latter alleged statement is not mentioned in Ermi's affidavit to the Board given in connection with this case.

A couple of days later, the Union made the information request which is at the heart of this proceeding. Ermi testified that

the Union wanted the surveys the Respondent had used to formulate its wages in the recent past and the current wage proposal. When asked on cross-examination why it wanted this information, Ermi testified that one reason was to determine Zoglio's credibility. Ermi testified that the Company told them in negotiations that it was not claiming an inability to pay with regard to the wage issue.

Following the January meeting on January 10, the Union conducted an unannounced 24-hour strike commencing at midnight of January 23. It characterized the strike as an unfair labor practice strike. Ermi told Respondent that the only reason for the strike was Respondent's refusal to supply information on its investigation of the alleged harassment committed by employee George Kudamaris that led to a warning. The warning was the subject of a grievance. The strike ended when Ermi and other union officials and members showed up at the plant at about 11:30 p.m. on January 23 and used a phone at the plant's gate to reach Prising. Ermi asked Prising if Hector Cuello could come to the gate to meet him. When Cuello met with him, Ermi announced that the strike was ending and the employees were making an unconditional offer to return to work.[1] Cuello informed Ermi that Respondent had decided to lock the employees out. Cuello suggested that if Ermi wanted to talk further about the lockout he should speak with Worden. Using his cell phone, Ermi called Worden and reiterated the Union's unconditional offer to return to work.

According to Ermi, Worden listened to Ermi and then asked if he could call him back as he was nursing a sore throat and needed to take something if he wanted to continue talking. According to Ermi, he again offered to return to work and Worden responded, "Well, you know what, we have a company to run, we're tired of all the bullshit games, the guys are locked out." Ermi testified that he inquired about what "games" Worden was referencing. Worden replied, "Well, all this stuff with the sickout, the Board charges, and you know, everything, it's just everything. We've got a company to run. We have customers we have to satisfy."[2] Ermi testified that he then said, "Charlie, I'm just asking you for more information. There are other Board charges already filed that are being investigated. We just asked you for information. Have you responded to that yet?" Worden responded that he believed that something had been mailed. Ermi stated the he had not received anything. Worden said that the response went out on Friday and Ermi noted that he had not been in his office all day and it might be there. He asked for time to review the response and Worden again told him that the employees were locked out.

The following day, Ermi went to his office and read Respondent's response to the information request. Ermi characterized the response as a refusal to supply the requested information. Ermi testified that at the time the lockout began the Union had not been supplied with the information it wanted. Ermi also testified that if the information had been supplied and supported Zoglio's claim that there was a connection between the wage surveys for each year and the wages set for each year, then the Union's bargaining position would have been affected. He testified that it would likely have forced the Union's bargaining team to reevaluate its wage proposal. If the surveys did not support Zoglio's claim, then the Union would have dug in even deeper in support of its proposal.

Respondent's reply to the information request reads:

> I am in receipt of your letter of January 17, 2006. In that letter, you request voluminous information regarding wage increases or adjustments, and the reasons for those increases and adjustments. Of course, you have already filed a Charge with the NLRB regarding *inter alia*, our proposals on wages, the reasons for those proposals, and an alleged failure to provide a scheduled raise in wages. You knew of Stepan's use of wage surveys, as well as our profitability concerns, no later than November of 2005. However, it was not until you had filed NLRB charges on these issues that you requested any further information. In fact, your information requests largely mirror the requests for information we've received from the Region in regard to these charges.
>
> Thus, it is clear that your "information request" is nothing more than an attempt to conduct discovery regarding your pending NLRB charges. As such, under established NLRB precedent, we are under no duty to provide you any such information.
>
> Please feel free to contact me with any questions or concerns. Also, we are still waiting for your reply from our last meeting of January 10, 2006.

Following their telephone conversation of January 23, Worden wrote to Ermi the following:

> I am writing to confirm our conversation from the night of January 23rd and in response to your letter of today's date. During our conversations, you indicated to me that the employees were interested in ending the strike that the Union had initiated the night before, and that they were willing to return to work at 12:00 am. I indicated to you that the Company was locking out all bargaining unit employees at Fieldsboro as of 12:00 am. I explained the reasons for this action to you as follows:
>
> The Company put a good faith, Best and Final offer on the table back in December and, when the employees voted it down, we received no additional proposals from the Union. Indeed, as I stated to you, I left a message for you a week ago that we had expected to hear something from the Union on or before January 20th (based upon your assurances to us when we met on January 10th). Instead, we received an inappropriate information request and, subsequently, the Union called employees out on strike. While the Company sent you a response to the information request, you indicated that the Union had not yet reviewed it, as you had been on the picket line.
>
> Since the ratification vote, we have seen nothing but game-playing from the Union, and I informed you that the Company is tired of waiting for this issue to be resolved. We must ensure that we meet our customers' needs, and,

[1] The Union did not tell the Company it would not strike again.

[2] On cross-examination, Ermi admitted that Worden had not mentioned the Board charges in this conversation, and further, that he Ermi, had in fact, asserted to Worden that the Board charges were the reason for the lockout. Worden denied this assertion in the conversation.

to do this, the Company requires a regular workforce and labor peace. The lack of a contract and, consequently, the absence of a no-strike provision (among other things) puts these requirements in jeopardy and, therefore, endangers the Company's business.

While you misinterpreted my explanation, accusing the Company of locking-out employees in retaliation for the strike, I assured you that this was not the case. The Union's strike was simply the last straw in the Union's game-playing. The Company cannot do business under constant threat of intermittent strikes. Simply put, for the reasons explained above, the Company must run its business and ensure that the needs of its customers are met.

Finally, in your letter of today's date, you claim that the Union "requires" the information requested in your January 24th letter "to meaningfully respond in bargaining to proposals and statements made" by the Company representatives at our January 10th meeting. I fail to see how this could be the case. After all, the profitability and wage surveys in question were discussed in detail at the bargaining table. The surveys in question were provided to you. Furthermore, the Company provided you with a presentation and detailed data on the profitability issue. The Union never asked for additional information; nor did the Union indicate that it was in any way hampered in its bargaining through a lack of any additional information. Nothing has changed at the bargaining table such that the Union would now need this information, especially given that you never asked for it previously.

In fact the Union did not request this information until after it had filed an unfair labor practice charge regarding precisely these issues. This is not a coincidence. The Union is simply seeking this information in an attempt to discover evidence concerning its charges against the Company. As you know, this is improper. Thus, our response, as detailed in my prior letter to you, remains the same.

Following this letter, there was no communication between the parties until Ermi and Worden spoke at the end of February or the first of March. The two men met and Worden gave Ermi annual changes to the corporatewide employee health plan. Worden explained that the changes were about to go into effect and he did not want the Fieldsboro employees to be taken by surprise. Ermi remembered there was a passing comment made about the outstanding information request.

On March 22 or 23, Ermi received another response to the information request. In the letter accompanying the information provided, Worden wrote:

I am writing with regard to your Information request of January 17, 2006. As you know, Stephan declined to provide you with the information requested therein, to the extent that you did not already have it, on the grounds that it was clearly intended as a discovery device in support of certain of the unfair labor practice charges that the UE had previously filed against the Company. We have since been advised by Region 4 of the NLRB that the specific charges in question will be dismissed. For that reason, I am enclosing herewith the information you have requested.

In producing this information, you should be specifically aware that Stepan is in no way waiving any right or ability to contest the merit of the UE's charge concerning this issue, or any other issue, before the NLRB. We continue to believe that the UE's charges are without merit. Further, the Company is in no way conceding that this information is at all relevant or necessary for the purposes of collective bargaining. Quite the contrary, for example, you indicate in your January 17th letter that you seek wage survey information from prior years to evaluate the "impact" of wage surveys on the Company's "current" wage proposal. As you are aware from our discussions at the table, however, we did not refer to any wage surveys other than those discussed at the table to develop the Company's current wage proposals." (The letter then goes on to answer the specific questions posed by the January 17 letter).

The parties next met for bargaining on March 24. On the evening before this meeting, Ermi, Worden, and Union Representative Gene Elk met for a discussion. According to Ermi, Worden expressed his angst about the situation that existed and said that Respondent had the ability to rework some of the wage offer. Ermi testified that Worden said he could take a nickel or so out of the second and third year proposals and put that money into the first year. The men also talked about putting profit sharing back on the table. Worden told Elk and Ermi that profit sharing might get back into the mix and he was giving them a "heads up" before they formally met to bargain. When they did meet on March 24, profit sharing was put back on the table, but no real changes were made to the wage proposal. At this stage, there were also outstanding issues relating to short term disability and the employees contribution to health care. Both were considered by Ermi to be important issues.

There was no discussion of the information that Respondent had provided in response to the January 17 letter, other than the union representatives noting that it had the information with them.

Subsequent to this meeting, as part of discovery for a New Jersey unemployment compensation hearing, the Union acquired a spread sheet detailing the costs suffered by Respondent as a result of the lockout. The document shows the estimated cost of the lockout as of March 31 to be about $1.8 million. The Union copied the document and then distributed it to Stepan shareholders who attended the Company's annual meeting on or about April 25. Copies were also given to the Company's operating officers in attendance at the meeting. Ermi was of the opinion that the company executives were unaware of this document until the Union gave it to them. Two days after the shareholders meeting, Worden called Ermi and asked for a meeting. The parties then met on May 1. Appearing for the Company at this meeting were Worden and Zoglio. According to Ermi, the two men made it clear they wanted to settle the dispute once and for all. During the day, the Respondent and the Union reached agreement on all outstanding issues. The evening after the agreement a couple of issues surfaced that needed attention and, thus, the parties met the next morning and worked through the issues.

The final agreement on wages was close to what had been

proposed by Respondent in January, but with what was called a schedule premium that amounted to almost a 3-percent increase for all but five or six people in the bargaining unit. There was also a $1000-signing bonus paid to the employees upon ratification. The five men in the maintenance department who were not getting an hourly increase received a $1250-signing bonus.

2. Evidence adduced by Respondent

There are no serious differences in the evidence put in the record by the General Counsel and Respondent. There are some minor variations, but they do not affect the outcome of this proceeding. The General Counsel disputes some testimony by Respondent's chief witness to the effect that he noted in either the November or December 2005 bargaining sessions that Respondent had historically used wage surveys as part of the process of setting Fieldsboro wages. Whether he noted this or not makes no difference in the decision-making process.

Charles Worden is human resources manager for Respondent's Millsdale plant, located in Elmwood, Illinois. Worden resides in Plainfield, Illinois. Prior to this position, he had been corporate labor relations manager from 1999–2004. Stepan manufactures surfactant chemicals, which are used in soap products, fabric softeners, and specialty chemical products. The Fieldsboro plant makes surfactants. As Worden was the most experienced negotiator with Stepan, he was made chief negotiator for the Respondent in the involved negotiations. The Respondent has a bargaining relationship with the Union at its Anaheim, California plant. The Fieldsboro bargaining unit has 38 employees, with the job classifications of operators, boiler operators, warehouse employees, laboratory technicians, and maintenance employees.

Before negotiations for the first contract commenced, the Union requested certain information from Respondent including information relating to pay differentials and premium pay, the current hourly rate of pay, and raises given during 2004–2005. Respondent supplied this information. The parties met to negotiate 33 times between April 6, 2005, and May 2, 2006. Worden traveled from Illinois to the Fieldsboro plant for each of these sessions, staying from 2 to 10 days each time. The Company's final offer given to the Union on December 7, 2005, came after the parties had met 29 previous bargaining sessions. As of the December 7 meeting, the parties had reached tentative agreement on, inter alia, the following subjects: union security, dues checkoff, number of stewards, pay for employees on the bargaining committee, bulletin boards, pay for holidays worked, need for approval for holiday pay in certain circumstances, safety shoes, provision of uniforms, seniority, overtime and premium pay, limitation on hours worked consecutively, hours of work, breaktime, a job bidding system, meal breaks and meal allowances, a just-cause standard for discipline, limitations on the use of verbal written warnings, a grievance and arbitration procedure, bereavement pay, leaves of absence, and plant closure severance pay. Each of these subjects had been requested by the Union and the agreement on each constituted a change in Respondent's prior practice. As of December 7, the open issues were: employee healthcare contributions, short-term disability payments, personal and sick days, and attendance bonus and wages.

With respect to employee healthcare contributions, Worden testified that there had been many proposals on this issue. As of December 7, 2005, the Company was proposing as the maximum yearly employee contribution 22 percent for the duration of the contract, and the Union proposed 15 percent for the first 2 years of the contract and 20 percent for the final year. With respect to the short-term disability issue, the Union proposed keeping the plan the Respondent had prior to negotiations and the Respondent proposed dropping the plan and having employees use the New Jersey State temporary disability plan with a company paid supplement of $150. With respect to personal and sick days, the Respondent was offering 3 days and the Union wanted 5 days. On the issue of an attendance bonus, the Union wanted 6 hours of pay and the Company was offering 5 hours of pay.

Worden testified that discussions of the wage issue began on November 22, 2005, and that the Respondent's use of wage surveys was discussed on that date. On that day, Respondent offered the Ocean Spray wage survey that covered the wages and benefits of some 19 companies in the area of Fieldsboro. The Respondent also offered information on some four or five other area companies that had given Respondent information about their wages and benefits. Worden testified that this information was supplied to the Union as the Company felt the Union's wage proposals were out of line and high when compared with wages and benefits being paid by companies in southern New Jersey. Worden also testified that the Fieldsboro employees were already being paid more than employees working at Respondent's unionized Anaheim California plant.

According to Worden, at the December 7, 2005 meeting, the parties talked about wage surveys the Company had used in the past and he specifically mentioned information obtained from the New Jersey Chemical Industry Council. Worden believed that he mentioned that the Company had used such surveys in the past to evaluate wage increases at Fieldsboro. Worden testified that employee bargaining committee member McCullough responded that it did not make any difference what the wage surveys said.

At one of the meetings in November and December 2005, employee bargaining committee member Jeff Thomas presented the Company with a cover page from a website showing wage rates for 27 companies, only three of which were considered peers with Stepan. Worden testified that Respondent went to the website and found that there were more than three companies with operations similar to Stepan's. Respondent then asked the Union to provide more information with respect to those companies so that Respondent could compare their wages with those paid by Respondent. The Union did not provide this information.

Respondent introduced all proposals made by the parties with respect to wages. The Company's first wage proposal was given to the Union on November 30 and reflects first-year wage rates for the various job classifications ranging from a low of $21.76 an hour for warehouse employees to a high of $25.42 for laboratory technicians and "A Operator-continuous." Respondent proposed raises of 58 cents per hour in each of the following 2 years. The Union rejected this proposal and the Company came back with another one. This one ranged from a

low of $22.74 to a high of $26 for the first year with the same 58 cents raise in the following 2 years. The Union countered with a wage scale that ranged from a low of $26.50 per hour to a high of $28.50 for the first year, and raises and an approximate 85 cents per hours' increase in the last 2 years. This counterproposal was made either late on November 30 or early on December 1. The Respondent then countered with wage rates ranging from a low of $24.30 to a high of $26.20 and increases of 60 cents per hour in each of the following 2 years. The Union countered with a proposed rate that ranged from $24.43 to a high of $28.50 with most classifications receiving $27 per hour or higher. It also proposed increases of about 80 cents per hour in each of the succeeding 2 years and a shift premium of 75 cents in the second year and 85 cents in the third year. Worden was unhappy with the Union's counter as it reflected very little movement.

The Respondent made yet another counter and the Union responded with one of its own. Worden testified that this counter had an increase from the first counter. Respondent then made another counteroffer with wage rates ranging from a low of $23 to a high of $26.25 with a raise of 60 cents per hour in the following 2 years. The Union made no counter, but rejected Respondent's counter. Respondent countered yet again with a wage scale that ranged from a low of $23.20 to a high of $26.90 with a 65-cent per hour raise in the second year and a 60-cent per hour raise in the third year.

On December 7, the Company made what it termed its last and final offer on wages. This offer proposed wage rates ranging from a low of $23.30 to a high of $27 with increases in the last 2 years of 65 cents each year. The Union countered this offer with wage rates ranging from a low of $24.07 to a high of $27.23 and increases of approximately 80 cents per hour in the last 2 years. The Respondent rejected this counter and asked the Union to submit Respondent's last offer to the membership for a vote. By way of comparison of the competing proposals as of December 8, 2005, the differences in hourly wages by classification for the first year is as follows:

Lab Tech	75 cents
A Operator-Continuous	86 cents
B Operator	87 cents
Warehouse	$2.85
Production Assistant	77 cents
E & I Tech	83 cents
Mechanic A	83 cents
Mechanic B	87 cents
Boiler Operator Blue	87 cents
Boiler Operator Black	87 cents

One employee in the warehouse was to have his current wage red-circled and be unchanged.

At no point in the bargaining about wages did the Union indicate to Worden that it needed more information about the Company's use of wage surveys. No one from the Union indicated that they were lacking any information regarding wages, wage history, or plant profitability. The subject of Respondent's 2004 wage freeze was discussed often. On December 8, 2005, employee bargaining committee member George Olshansky indicated to Worden that the employees might go strictly by procedures which meant to Worden that there would be a slowdown in what was being done in the laboratory.

After the last offer was voted down, the parties met on January 10, 2006. Worden remembers Zoglio saying that Respondent had used wage surveys in the past, had benchmarked with wage surveys in the past and used them routinely in figuring wage increases given to employees. According to Worden, this was no different from what he had discussed with the Union in the November—December 2005 meetings. The matter of the loss of Clairol business and the loss of some business from Unilever was first discussed in bargaining on October 18, 2005. At that meeting, Respondent made a presentation on the plant's profitability and financial state of the Fieldsboro operation. The loss of the Clairol and Unilever business was part of this presentation.

At the January 10 meeting, the Company made no proposals with respect to wages, and the Union did not request any wage history, wage survey information, or information about profitability. Worden testified that no one from the Union mentioned that they might seek further information. At the meeting on January 10, the Union requested the cover letter for information supplied it by Respondent on December 7. This letter was provided. The meeting ended with the Respondent waiting to hear from the Union. As noted earlier, the Union filed a charge with the Board on January 10, 2006. Subsequently, on January 11, Respondent received a letter from the Board requesting certain information related to the charge. Some of the information requested by the Board is similar to information requested by the Union on January 17. In this regard, the Board asked for (a) A listing showing employee wage increases for the years 2000–2005, showing dates, names, and classifications of employees and amount of wage increase; and (b) any documents related to the Employer's decision to give or not to give a wage increase in 2005.

When Worden received the Union's information request on January 17, 2006, he was upset as he felt it was very similar to the information being sought by the Board in its investigation of the Union's charges. He further believed the Union was seeking this information to bolster its case in support of its charges.

Worden, in an explanation for the Respondent's lockout, noted that the Union on November 8 and 9, 2005, had 18 employees (almost 50 percent of the unionized work force) call out sick. There had never been a mass call out before. At the next negotiating session, Worden warned the Union that such action was not going to help negotiations and stated that it should stop. The call-out required Respondent to shut down part of the plant and/or run it with salaried employees. The Union set up a "practice" picket at the plant on January 13, 2005. Union members picketed with signs saying "Practice Picket, UE Local 155." Next, the Union engaged in a 1-day strike on January 23, 2006. The Respondent was forced to shut down the plant totally for the 24-hour period of the strike. According to Worden, in his conversation with Ermi at the strike's conclusion, he told Ermi that the employees were being locked out because of the sickout out and the 1-day strike. He added that the Company needed to run its plant and needed labor peace. Worden denied mentioning the Board charges filed by

the Union in his discussion with Ermi. Worden hoped that the lockout would lead to a contract with the Union. All of the bargaining unit employees were locked out though some had crossed the picket line during the strike.

Worden testified that the Company needed to be able to service its customer and run its plant without interruption. It brought in employees from all over the United States and kept the plant running. On or about January 24, 2006, Worden received a letter from Ermi. This letter reads:

> I am writing this letter to confirm our telephone conversation late last night and to reiterate that our union and members repeatedly and unconditionally offered to return to work last night. During my conversation with Plant Manager Hector Cuello and during my second telephone conversation with you, Stepan responded by stating that until further notice our bargaining unit members are not permitted to return to work.
>
> In the event that you disagree with the above, please contact me as soon as possible so that the Union is aware of the specific nature of your disagreement with the above statements.
>
> Please be further advised that I am in receipt of your letter [of] January 20, 2006, in which you claim that Stepan is "under no duty [to] provide . . . information" which I requested on January 17. Again, I must reiterate that the union requires the information requested in that letter to meaningfully respond in bargaining to the proposals and statements made by your representatives on January 10, 2006 that its wage offers were based on company profitability and an area wage survey. I would therefore request that you reconsider your position and provide the union with such information as quickly as possible so that the union may intelligently respond to your proposals.

Ermi never provided any other reason for needing the information requested on January 17, 2006.

On February 16, 2006, Worden sent a letter to all Fieldsboro employees. The first two paragraphs of the letter explain COBRA benefits for the locked out employees. The remainder of the letter sets out the Company's reasons for the lockout and expresses hope that it would end soon with the signing of a contract. Prior to sending the letter, Worden met with Ermi showing him the letter and asking if there was any hope for an additional bargaining session. Ermi said that the Union's position was unchanged. Ermi asked if the Respondent's position had changed and Worden said it had not. Ermi then said there was no sense in meeting.

Worden next talked to Ermi on March 14. Worden was at the Fieldsboro plant and called Ermi to see if there was any sense in trying to meet and attempt to arrive at a contract. Ermi's response was similar to his response on February 16, and no meeting was scheduled.

Ermi called Worden on March 17 and requested a meeting and one was scheduled for March 24, 2006. On March 20 or 21, Worden called Ermi and asked if they could meet on the evening of March 23 to discuss some ideas that Worden had to get the parties to a contract. During the calls of March 14 and 17, Ermi mentioned nothing about his outstanding information request.

On March 23, 2006, Worden met with Ermi and Elk. They talked about the outstanding issues and Worden indicated that he might move some things around in Respondent's proposal to make it more appealing to the Union. In the meeting held the next morning, Respondent capped its proposed employee health care contribution at 20 percent, down from its previous 22-percent proposal. Respondent's work performance proposal was dropped and in its place a proposed schedule premium of 50 cents per hour was proposed. It changed the amount that the employee bargaining committee members would be paid for their participation in negotiations. It red-circled four employees who were already making more that the rates scheduled in Respondent's final offer. It increased the hourly wage proposals for the first year by 10 cents, taking 5 cents from each of the wage proposals for the next 2 years. It also made an adjustment for weekend coverage by maintenance employees. It also made a proposal on shift differential. The Union made no new proposals at this March 24 meeting. Following the meeting it made a counteroffers on various items, all but one of which was rejected by Respondent. Respondent did agree on a proposal that maintenance employees received 4 hours of pay at their regular rate for each week of on-call coverage. This pay will be in additional to any pay they received for hours actually worked.

The Union took a vote on the modified final offer and rejected it by vote of 19 to 16. When Worden was advised of the vote, he offered to add profit sharing to Respondent's final offer. The Union rejected this proposal. On March 29, 2006, Worden sent a letter to the Union which detailed the changes Respondent had made to its last offer on March 24 and pointed out that the profit-sharing feature which it proposed to add amounted to 1.9 percent of base salary in 2005. It also offered to move the effective date of the contract back to November 2005. It also pointed out that in a conversation with the Union on March 27 Worden had set a deadline of March 27 for the Union to accept the modified final offer or the Respondent would revert to its previous final offer, made December 7, 2005. In the letter, Worden rescinded the deadline and announced the modified offer was to remain the Company's final offer. He then asked for further discussions about the contract and for the Union to hold another vote.

At no time during the meetings of March 23 or 24 did the matter of the information request surface.

On April 10, 2006, Worden sent a letter to the bargaining unit employees pointing out the value of the profit-sharing feature which Respondent had added to its proposal and urging the employees to prod the Union into another vote. Worden testified that he sent the letter to make sure the rank-and-file employees knew of the profit-sharing proposal.

Worden next contacted Ermi on April 26 or 27 to set up another meeting. They agreed to meet on May 1. At the meeting were Worden, Zoglio, Ermi, and three employee negotiating committee members. Zoglio told those present that they needed to get the contract settled. He asked the employee negotiators to write down on note cards the top three or four items standing in the way of finalizing the contract and that he would address them, noting that the parties would stay until a contract was reached. The employee committee came up with five items:

short-term disability, wages in the first year, the attendance bonus, shift differential, and one other that Worden could not recall. The Company then made a proposal addressing these issues.

It increased the supplement for short-term disability from $150 per week to $200 per week. It added profit sharing, beginning January 1, 2007, to the final offer. It put back in the work performance bonus at 4 hours' pay. The wages in the first year remained the same, but Respondent agreed to a 2.5-percent increase in year two and another 2.5-percent increase in year three. It raised the schedule premium from 50 to 75 cents. It also added a one-time $1000-payment in lieu of profit sharing for 2006. This constituted the changes to the last offer. As Ermi noted, the $1000-payment was raised to $1250 for certain employees following the meeting. This final offer was ratified by the employees.

At no time did the Company ever condition the end of the lockout on employees resigning their union membership, or on the withdrawal of the parties' tentative agreement on union security or dues checkoff. There was never a threat by the Company that employees could not return to work when the lockout ended. In fact, all 38 unit employees did return to work.

Michael Prising, Respondent's production superintendent at Fieldsboro, testified about the Union's activity leading to the lockout, mentioning the sickout, practice picketing, and the unannounced 1-day strike. He noted that at the time of the sickout, the Company was making a special product and the sickout nearly caused the product to be ruined. Respondent had to shut down all of the plant operations to have enough employees to make the involved product during the sickout. The product is important to Respondent and is only made twice a year.

During the practice picketing, a couple of tank trucks refused to cross the line and had to be rescheduled.

With respect to the 1-day strike, Prising received a call from the on-call supervisor at the plant about 11 p.m. He had received a call from the Union's chief steward saying the Union was going on strike at midnight. Prising came into the plant about 11:30 p.m. and attempted to find out the status of equipment and processes at the plant. In anticipation of the strike, the employees had shutdown the equipment by the time he arrived. Respondent's management spent the next day planning how to get it back up and running. It pulled 20 to 25 employees from other locations and had them come to the Fieldsboro plant. During the strike, Prising went to the gate and was told the strike was a ULP strike in protest of the discipline given employee George Kudamris and the refusal to supply information related to the discipline.

Robert Mangold is vice president of Stepan's North American plant operations. He gave a presentation during negotiations on October 18, 2005. At this presentation, he showed the sales and financial data for all the Company's North American operations, highlighting Fieldsboro. It reflects a steady decline in the plant's profitability and reflects that Fieldsboro had the worse performance of any of Stepan's plants from the standpoint of sales and profitability. After the presentation, and up to January 17, 2006, the Union did not request any additional information regarding the plant's profitability.

Referencing the exhibit reflecting the cost of the lockout, Mangold testified that the expenditure was worth it because it needed to continue to meet its customer's needs. Any loss of customers could be very expensive to the Company. The Company also went into lockout mode because of safety concerns. Starting and stopping a chemical plant is very dangerous and the Company could not rely on an intermittent work force. He testified that if an accident occurred the costs associated with it could run into the millions. These reasons caused the Company to institute the lockout until a contract and labor peace were achieved.

Anthony Zoglio is Respondent's vice president for its supply chain. With respect to the January 10 bargaining session he attended, Zoglio testified that he mentioned "benchmarking" as something done at all contract negotiations conducted by Respondent. He also noted the business lost as a result of Fieldsboro losing the Clairol and Unilever accounts. This loss caused the Respondent's profit at Fieldsboro to drop from $9 to $1 million annually. He testified that the Union mentioned a wage freeze often in this meeting, claiming that some employees had had their wages frozen for 3 years. Because of this alleged wage freeze the Union was only interested in wage increases.

Zoglio was involved in the decision to lock out the Fieldsboro employees. He mentioned as reasons for the lockout the same reasons articulated by the other management witnesses. On March 6, he caused a letter to be sent to all Fieldsboro employees. This letter reads:

> The UE has made a lot of baseless accusations. In NLRB charges and otherwise, about Stepan's conduct during the course of negotiations. They claim that we locked employees out as 'punishment' for organizing a union; that the Company seeks to impose a 'wage freeze;' and that Stepan refused to bargain in good faith for a contract. I want you to know that the Company has been careful to ensure that all of its actions throughout this process have complied with the law. As such, we are comfortable that the NLRB will fully vindicate Stepan.
>
> As Charlie Worden explained to you in his last letter, the employees have been locked out because we need to be able to provide uninterrupted service to our customers without the threat of intermittent work stoppages (e.g. the sickout and the 24 hour strike), and because we want agreement on our proposal. The lockout has nothing to do with your having organized a union. Think about that. Between April and December of 2005, Stepan went to the time and expense of meeting with the UE bargaining committee on 30 separate occasions in the hope of agreeing to a contract. Why would we have done this if we wanted to 'punish' the employees for organizing, or if we didn't want a contract with the Union?
>
> We *do* want a contract. To that end, in those 30 bargaining sessions, Stepan and the UE were able to reach tentative agreement on 26 separate Articles for a new contract. Those agreements included an increase in your holiday pay; increase in your shoe allowance; provisions for uniforms, lab coats, and jackets; increases in premium and overtime pay; increase in your meal allowance; extension of bereavement leave; increase from zero to three personal

days with pay; dues check-off directly to the Union; a union security clause; layoff and recall by seniority; just cause discipline with binding arbitration; and severance in the event of plant closure.

Stepan has not proposed a "wage freeze." On wages, the Company proposed increases of between 4.8% and 5.5% over a three year contract. On health insurance, the Company proposed to *cap* increases to employee's co-payments (to *restrict* the Company's ability to increase) at 22%. On Short Term Disability, the Company proposed the benefits provided by the New Jersey Temporary Disability Benefits Law, plus $150 per week supplement up to 26 weeks.

We think that these proposals represent a contract worth voting for. Otherwise Stepan would not have proposed it. In fact, with the wage proposal we have on the table, Fieldsboro employees would remain in the top 25% for wages paid to chemical workers in the Fieldsboro area, even under the wage surveys reference by the Union. The fact is, the Company wants you back to work under a fair contract just as much as you do, and this can happen as soon as your certified bargaining representative, the UE, agrees to our proposals.

Zoglio was present at the annual Stepan shareholders' meeting in April. He testified that several union employees asked questions of management. These questions raised the alleged wage freeze and the cost of the lockout. After the meeting, Zoglio met with these employees. He was struck by their level of concern and determined to have a meeting with the Union's bargaining committed to reach a contract. They did meet and an agreement was finally reached.

B. Findings and Conclusions

The result in this case turns on whether the Union's information request was necessary and relevant to its role in bargaining for a contract or, conversely, was wanted to support its unfair labor practice charges filed with the Board. I firmly believe that the information was sought solely for the latter purpose. Respondent did use wage surveys in preparing its wage proposals for the negotiations and it timely supplied the surveys used in this regard. Its historical use of surveys had nothing to do with its current wage proposal and everything to with the Union's allegations of unfair labor practices concerning the alleged wage freeze and Respondent's refusal to honor a wage increase allegedly promised during the campaign which resulted in the Union's selection as bargaining representative of the involved unit of employees. It is telling that when the Union received the requested information, it made absolutely no use of the information in the continuing negotiations.

The Union gave no credible explanation of how the information it sought related to the ongoing contract negotiations or why its absence would preclude meaningful bargaining. As can be seen from the facts set forth above, the parties had reached agreement on many substantive issues and were clearly not near impasse on the remaining issues. There were still outstanding issues other than wages over which the parties could have bargained had the Union chosen to do so. Moreover, there was no reason the Union could not have bargained over wages in the absence of the requested information. The Respondent had shown movement on the wage issue. On the other hand, the information request was clearly related to the charges it filed with the Board. The Union had filed 8(a)(3) charges, alleging that the Respondent had retaliated or discriminated against employees by failing to provide a 3-percent wage raise in 2005 and by lowering its wage proposals at the bargaining table. One of the primary methods for investigating allegations of discrimination or retaliation, absent direct evidence, is to determine whether the employer acted differently in similar situations prior to the "triggering event" that purportedly caused the discrimination and/or retaliation. See, e.g., *Plumbers Local 198,* 322 NLRB 112, 120 (1996). In this case, the "triggering events" would have been the representation election (in the case of the Respondent's purported failure to give employees the "promised" 3-percent increase) and the first unfair labor practice charge file by the Union on November 17, 2005 (in the case of the Respondent's purported retaliatory wage proposals).

Thus, to investigate the Union's allegations of discrimination and retaliation, it would make sense that the Union, and the Region for that matter, would look to Stepan's wage increases, and the reasons for those increases, prior to 2005, to ascertain whether they differed in any way from the Company's post-"triggering event" conduct so as to infer discriminatory or retaliatory motive. The Region sought just that type of evidence in its information request of January 11, 2006. The letter from the Region asked for, inter alia*:* "Employee wage increases (including effective dates) for the years 2000 through 2005; and: 'Any documents related to the Employer's decision to give or not give a wage increase.'"

In the Union's January 17, 2006 letter, it requested nearly identical information (albeit for a longer period of time).

Both the timing of the Union's information request and the information sought strongly support Respondent's position that the requested information was sought solely to support its unfair labor practice charges and for no other reason. I totally agree.

As the Union's motive in requesting the information had nothing to do with current negotiations but was intended as a means of discovery to bolster its alleged 8(a)(3) violation charge against Respondent, I find that Respondent was lawfully allowed to refuse to comply with the information request. In *Union-Tribune Publishing Co.,* 307 NLRB 25 (1992), the union filed a charge against the employer, alleging that the employer had discriminated against an employee in violation of Section 8(a)(3) by suspending and then terminating him. The employee asked for information regarding the suspension and termination, and the employer refused to provide it, citing the fact that there were unfair labor practice charges on the issue.

In upholding the employer's refusal to provide the information, the Board explained that:

> [T]he rule is that an employer faced with a pending 8(a)(3) charge may legitimately decline to provide to furnish information that may relate to the charge prior to the hearing. It follows that an employer who declines to provide information on that basis, as the Respondent did, has a valid motive for doing so.

Id. at 26. "Any other rule," according to the Board, "would, in effect, impose a discovery requirement where none otherwise exists." Id. Indeed, the Board held that the employer was justified in refusing the information request because "[the] employer could reasonably have believed that [the employee's suspension and termination] might have become the subject of a Board complaint." Id. at fn. 6. Thus, the rule is simple: An employer need not produce requested information where the employer reasonably believes that the subject of the information requested may related to an unfair labor practice charge. Id.: *Pepsi-Cola Bottling Co.,* 315 NLRB 882 (1994); *Saginaw Control & Engineering, Inc.,* 339 NLRB 541, 544 (2003).

Aside from the Respondent's refusal to comply with the January 17 information request until the Region acted on the unfair labor practice charges, the Region does not contend that that lockout was unlawful. The Respondent has established that it was bargaining in good faith and had substantial, nondiscriminatory, reasons for the lockout. As I have found that the Respondent lawfully refused to comply with the information request, there was nothing unlawful about the lockout. I recommend that the complaint in this case be dismissed.

CONCLUSIONS OF LAW

1. The Respondent, Stepan Company, is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Electrical, Radio and Machine Workers of America (UE), Machine Tool and Die Local 155 is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not commit the unfair labor practices alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The complaint is dismissed.

Dated, Washington, D.C., February 21, 2007

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