W. R. Grace & Co.-Conn. ***and*** **Harold D. Bivens** ***and*** **Donald F. Boarman** ***and*** **Robert L. Cecil** ***and*** **James D. Chapman** ***and*** **Earl Henderson** ***and*** **Bill Kirk** ***and*** **Henry E. Lott** ***and*** **Charles C. Moseley** ***and*** **Kenneth D. Richardson** ***and*** **James A. Smith** ***and*** **Richard Sutherland** ***and*** **Bobby D. Troutman** ***and*** **Guy C. Troutman** ***and*** **William T. Wink.** Cases 25–CA–22941–1, 25–CA–22941–2, 25–CA–22941–3, 25–CA–22941–4, 25–CA–22941–5, 25–CA–22941–6, 25–CA–22941–7, 25–CA–22941–8, 25–CA–22941–9, 25–CA–22941–10, 25–CA–22941–11, 25–CA–22941–12, 25–CA–22941–13, and 25–CA–22941–14

August 27, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On April 28, 1995, Administrative Law Judge Martin J. Linsky issued the attached decision. The Respondent filed exceptions and the General Counsel filed an exception. The Respondent filed a brief in support of its exceptions. The General Counsel filed a brief in support of the judge's decision and the Charging Parties filed a brief opposing the Respondent's exceptions and supporting the General Counsel's exception. The Respondent filed a reply brief in support of its exceptions and an answering brief to the General Counsel's exception.

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

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

The judge found that the Respondent violated Section 8(a)(5) and (1) by unilaterally modifying the Charging Parties' retiree medical and life insurance benefits[2] by entering into a sales agreement with Hampshire Chemical Corporation (Hampshire). Contrary to the judge, we find merit in the Respondent's contentions that the sales agreement did not modify the existing contractual benefits. We also agree with the Respondent that it was not required under the contract's terms to provide the Charging Parties with the retiree insurance benefits when they ceased employment with the Respondent and transferred to Hampshire's payroll because they did not ''retire'' from W. R. Grace, as that term is used in the contract. Thus, as explained more fully below, we reverse the judge's conclusion that the Respondent violated Section 8(a)(5) and (1) by unilaterally changing retirement benefits.[3]

I. FACTUAL BACKGROUND

The Respondent's national operations included a facility in Owensboro, Kentucky. The Owensboro facility, until December 29, 1992, consisted of three plants, including the organic chemical plant. The Respondent and the International Brotherhood of Boilermakers, Local 726 were parties to a collective-bargaining agreement that covered the unit employees in all three Owensboro plants. That agreement was effective from April 2, 1990, to April 5, 1993. The agreement provided in pertinent part that ''[t]he company will provide to an employee who elects retirement between the age of sixty-two (62) and sixty-five (65), medical insurance coverage until the employee reaches age sixty-five (65)''; and that ''[t]he Company will provide to an employee who elects retirement at age fifty-five (55) or older contributory medical insurance who has ten (10) or more years with the Company. The insurance rate for retirees shall be the same ten percent (10%) contribution as an active employee''; and that any employee retiring on or after April 2, 1991, shall receive a $4000 life insurance benefit.

In the latter half of 1992, the Respondent and Hampshire Chemical Corporation (Hampshire) engaged in negotiations for the sale of the Respondent's organic chemical division, including the Owensboro chemical plant. Edward Najjar, then president of Respondent's national organic division,[4] in a letter dated November 4, 1992, to Local 726 President Crask, stated that:

> I am writing this letter to advise you that the prospective purchaser of the Organic Chemical Division, Hampshire Chemical Corp. (''Hampshire'') . . . has agreed with Grace to continue the employment status of those bargaining unit employees assigned to the Organic Department as of the closing and, following said closing, to continue the present wages, benefits and working conditions, and upon request, to recognize your Union and bargain with it for the purpose of reaching a collective-bargaining agreement comparable to the agreement presently in effect between Local 726 and Grace. Hampshire has also agreed to continue the employment status of a yet to be determined number of bargaining unit maintenance and laboratory employees assigned to the Organic Department as of the closing.

[1] We do not rely on the judge's remarks regarding the Respondent's treatment of its former chief executive.

[2] Charging Party Guy Troutman's testimony indicates that he may have received life insurance benefits.

[3] For the reasons set forth in his decision, we agree with the judge that the complaint is not barred by Sec. 10(b) of the Act.

[4] The Respondent, in its brief to the Board, refers to Najjar as being the president of its organic chemical division at that time. The record also indicates that in any event Najjar had become president of Hampshire's organic chemical division by the time of the hearing.

On December 17, 1992, Najjar wrote to Crask:

> Hampshire intends to continue the employment status of those Bargaining Unit employees assigned to the Organic Division as of the Closing and, following the Closing, to continue the present wages, benefits and working conditions. This will include, but not be limited to, continuation of the present retirement benefits for Bargaining Unit employees. Upon request, after the Closing, Hampshire will recognize your Union and bargain with it for the purpose of reaching a Collective Bargaining Agreement comparable to the Agreement presently in effect between Local 726 and Grace.

Crask's reply, addressed to, President Najjar, Hampshire Chemical Company, dated December 21, 1992, read as follows:

> IN RELIANCE TO [sic] YOUR LETTERS OF NOVEMBER 4, 1992 AND DECEMBER 17, 1992, THE MEMBERS OF OUR LOCAL UNION WHO OPT TO REMAIN IN THE ORGANIC CHEMICAL PLANT AS OF DECEMBER 23, 1992, ACCEPT YOUR PROPOSALS AND WILL CONTINUE TO WORK UNDER THE TERMS AND APPLICATIONS OF THE W.R. GRACE-BOILERMAKERS CONTRACT AND PAST PRACTICES, UNTIL SUCH TIME AS THAT CONTRACT IS REOPENED BY THE UNION.
>
> RELYING ON YOUR REPRESENTATIONS, THE MEMBERS OF THE NEW BARGAINING UNIT WILL WORK AND WILL CONTINUE TO RECEIVE ALL WAGES, FRINGES, AND PENSION RIGHTS WHICH THEY HAVE BEEN RECEIVING AT W.R. GRACE-CONN.

The individual Charging Parties signed forms accepting the offer of employment contained in Najjar's December 17 letter.

On December 29, 1992, the Respondent and Hampshire concluded their sales agreement. The Employee Benefits Agreement, included in the sales agreement, stated in relevant part that:

> 7. Post-Retirement Medical and Life Insurance
>
> (b)(1) Grace shall extend post-retirement medical expense and life insurance coverage to . . . (B) each Covered Employee of the Owensboro plant that is covered on the day before the Closing Date by a collective bargaining agreement . . . provided that, (i) . . . if the Covered Continued Employee is employed at the Owensboro plant of the Division on the Closing Date, such Covered Continued Employee retires on or before April 5, 1993, (ii) the Covered Continued Employee ''remains retired'' (as defined below) from the Buyer for at least 60 months from the date he or she elects such coverage, (iii) the Covered Continued Employee elects such coverage during the 30 day period beginning on the date that he or she retires from the Buyer, (iv) Grace is notified of such election within said 30 day period by the Covered Continued Employee or the Buyer, (v) the Covered Continued Employee would otherwise have been eligible for such coverage, as reasonably determined by Grace, as of the date that he or she retires from the Buyer under the terms of such collective bargaining agreement, if the Covered Continued Employee had retired from Grace on that date, and (vi) the Covered Continued Employee pays the premium for such coverage, as determined by Grace and as in effect from time to time, which would have been applicable had such Covered Continued Employee continued in the employ of Grace under said collective bargaining agreement and retired from Grace on the date said Covered Continued Employee retires from the Buyer.
>
> (2) For purposes of this Section 7(b), a Covered Continued Employee ''remains retired'' from the Buyer only if he or she does not perform any services for the Buyer (including services as an employee of the Buyer, a consultant to the Buyer or an independent contractor) after the date the Covered Continued Employee elects post-retirement medical expense and life insurance coverage from Grace. Notwithstanding the immediately preceding sentence, a Covered Continued Employee ''remains retired'' if he or she performs services for the Buyer solely as an employee of an employer which is not directly or indirectly controlling, controlled by, or under direct or indirect control with, the Buyer.

The 14 Charging Parties were placed on Hampshire's payroll as of January 1, 1993.[5] In April 1993, Local 727, International Brotherhood of Boilermakers[6] was recognized by Hampshire as the new exclusive collective-bargaining representative of Respondent's former employees in the organic chemical division at the Owensboro facility. Hampshire and Local 727 entered into a collective-bargaining agreement in October

[5] The parties stipulated that all the Charging Parties had at least 10 years of service with the Respondent at the time of their separation from Grace. Robert Randolph, Respondent's personnel manager at all times material to this proceeding, testified that at the time the Charging Parties terminated their employment with the Respondent they were all age 55 or older and had 10 years of service with the Respondent. On the other hand, the General Counsel presented a document, summarizing the birth dates and retirement dates of the Charging Parties, prepared by the Respondent during the investigation of this case, which shows that two of the Charging Parties were less than 55 years of age on December 29, 1992.

[6] A new local was formed to represent the Hampshire employees.

1993. Until that agreement was reached, Hampshire applied the terms and conditions of the collective-bargaining agreement between Respondent and Local 726, effective April 2, 1990, through April 5, 1993, to these employees. Under the terms of the new agreement, employees who retired by November, 1993 ''shall be able to continue coverage under the Hampshire Chemical medical plan with the same terms and conditions regarding retiree medical coverage of the 1990–1993 collective-bargaining agreement under which they previously were covered by W.R. Grace.''

While employees of Hampshire, the Charging Parties applied for certain retirement benefits from the Respondent on various dates from January 1, 1993, to June 1, 1993. The Charging Parties purport to have ''officially'' retired from the Respondent by applying for those benefits.[7] Some of the Hampshire employees then attempted to pay premiums for medical coverage as retirees from Grace. In a letter dated June 29, 1993, addressed to ten individuals, including eight of the Charging Parties, Respondent's personnel manager, Randolph, stated:

> We are returning your check and/or cash that was given to Charlotte Arnett for the purpose of purchasing post-retirement medical benefits from GRACE. You are not eligible for the post-retirement medical plan pursuant to the Employee Benefits Agreement signed by W.R. Grace & Co. and Hampshire Chemical Company.
>
> Attached is a copy of the relevant provisions of this Agreement. Please refer specifically to [item 7(b)(2)]. Since you are an active employee of the Buyer (Hampshire Chemical Company) you are not eligible for the medical insurance.

II. THE ADMINISTRATIVE LAW JUDGE'S DECISION

The judge found that the Respondent had violated Section 8(a)(5) and (1). He reasoned that the Sales Agreement between the Respondent and Hampshire, ''sought to negate the right of Respondent's unit employees (who transferred to Hampshire) to receive Respondent's post-retirement medical insurance coverage as set forth in Respondent's contract with Local 726'' and ''also sought to void Respondent's contractual obligation to provide, upon later-retirement from Respondent, the $4,000 life insurance benefit due its retirees.'' The judge concluded that the Respondent had violated Section 8(a)(5) and (1) of the Act by modifying the Charging Parties' postretirement benefits without giving prior notice and an opportunity to bargain to Local 726.

[7] Charging Parties Guy Troutman and Wink testified during cross-examination that what they had applied for and received were ''vested retirement pension benefits.''

III. ANALYSIS AND CONCLUSION

The question presented is whether, following the sale of its organic chemical plant to Hampshire and the Charging Parties' transfer to Hampshire's payroll, the Respondent was required to provide the Charging Parties with contractual retiree medical and life insurance benefits. We find that under the circumstances here, the Charging Parties did not have a contractual right to the benefits they sought because they did not ''retire'' from the Respondent, within the meaning of the bargaining agreement's terms. We further find that there was no unilateral change in benefits and no violation.

The correspondence between Najjar and Crask reflects the understanding between the Respondent and Local 726 that the unit employees who remained employed at the plant would become Hampshire employees and would be subject to the existing terms and conditions of employment—including retirement benefits—until a new agreement was reached. The General Counsel concedes that until October 1993, when Hampshire and Local 727 negotiated a successor agreement, Hampshire applied the terms of the Respondent's contract with Local 726.

Pursuant to that contract, otherwise eligible employees who retired from W. R. Grace would receive retiree insurance benefits. Thus, until December 29, 1992, the Charging Parties could have retired from the Respondent and, if otherwise qualified, would have received postretirement life insurance and medical coverage. We find, however, that the General Counsel has failed to prove that the Charging Parties retired from W. R. Grace. The record demonstrates only that they opted to transfer to Hampshire's payroll. The fact that the Respondent provided the Charging Parties with vested pension benefits to which they were legally entitled does not demonstrate that they retired. Moreover, under the Respondent's collective-bargaining agreement, only present employees are eligible to elect to change their employment status and obtain retiree medical insurance coverage. Thus, *former* employees, like the Charging Parties here, who terminated their employment with the Respondent on a given date and went to work for another employer could not later obtain retiree medical insurance benefits from the Respondent. Here, there is no evidence that the Charging Parties timely requested retiree benefits on December 29, 1992, when they ceased employment with the Respondent.

Moreover, after Hampshire adopted and applied the terms of the Respondent's contract with Local 726, eligible unit employees would receive the same contractual retirement benefits if they retired from Hampshire. In fact, the changes in retirement benefits available to unit employees that became applicable after November 1, 1993, were the result of the collective-bargaining

process and the newly negotiated agreement between Hampshire and Local 727, as agreed to by Najjar and Crask in their respective letters. Contrary to the judge's findings, such changes were not the result of the sales agreement because, until the newly negotiated agreement changed the terms, the unit employees were in the same position with Hampshire, with the same contractual rights, as they were with the Respondent before the December 29, 1992 sale.[8] All that was changed was that Hampshire, rather than the Respondent, became the Employer from which qualified unit employees had to retire to receive the retirement benefits. Rather than changing the nature or amount of the available benefits, the sales agreement was merely a mechanism for allocating the cost of retirement benefits during the term of the Respondent's contract with Local 726, which expired on April 5, 1993. In this regard, the sales agreement provided that the Respondent would fund the cost of retiree medical and life insurance coverage for former Grace employees who retired from Hampshire and applied for the benefits before April 5.

By seeking to remain actively employed in the organic chemical plant and also to receive retirement benefits, the Charging Parties sought a benefit which the collective-bargaining agreement between the Respondent and Local 726 did not mandate. The agreement between the Respondent and Local 726 did not grant the employees (nonretirees from Respondent) a right to continue to work at the Owensboro facility and to receive medical coverage and life insurance benefits as retirees. The letters from Najjar did not promise the continued employees the additional benefit of both retaining their active employment status with the organic chemical division of the Owensboro facility and also receiving benefits as retirees.

Simply stated, the Charging Parties did not ''retire'' as that term was used in the collective-bargaining agreement. Rather, they continued to be active employees of the Owensboro organic chemical division. Accordingly, we find that the General Counsel has not established that the Respondent had a contractual obligation to provide the medical coverage and life insurance coverage sought by the Charging Parties. We therefore conclude that the General Counsel has not established that the Respondent has unilaterally modified, through its sales agreement with Hampshire, or otherwise, the right of the Charging Parties to receive postretirement medical coverage and life insurance benefits. We therefore find no violation of Section 8(a)(5) and (1) of the Act.

[8] The General Counsel contends that if the Charging Parties had known at the time of the sale that they would lose retirement benefits by becoming Hampshire employees, they would likely have remained active employees of the Respondent. We note, however, that assuming the same contractual retirement benefits would still apply if the Charging Parties were transferred or reassigned by the Respondent, they would still have to retire to receive the retiree medical and life insurance benefits—the same situation they faced as Hampshire employees.

ORDER

The complaint is dismissed.

Steve Robles, Esq., for the General Counsel.
Edwin S. Hopson, Esq., of Louisville, Kentucky, and *Richard G. Remmes, Esq.*, of Lexington, Massachusetts, for the Respondent.
John Frith Stewart, Esq., Louisville, Kentucky, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge. On December 20, 1993, the 14 individual Charging Parties filed 14 separate charges against W. R. Grace & Co.-Conn. (Respondent).

On March 8, 1994, the National Labor Relations Board, by the Regional Director for Region 25, issued a consolidated complaint, which alleges that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act), when it unilaterally and without giving prior notice and opportunity to bargain to the Union modified and/or eliminated future retiree medical insurance and life insurance benefits for the 14 individual Charging Parties.

Respondent filed an answer in which it denied that it violated the Act in any way and that, in any event, the charges were filed in an untimely fashion and are time-barred, even if meritorious, by Section 10(b) of the Act.

A hearing was held before me in Owensboro, Kentucky, on November 10, 1994.

I find that the General Counsel has proved its case and will recommend an appropriate remedy.

Based on the entire record in this case, to include posthearing briefs submitted by the General Counsel, Respondent, and Charging Parties, and based on my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is, and has been at all times material, a corporation existing under and by virtue of the laws of the State of Connecticut.

At all times material, the Respondent has maintained an office and place of business in Owensboro, Kentucky (the facility), where it is and has been at all times material, engaged in the manufacture, sale, and distribution of chemicals.

During the 12 months preceding the issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations described above, purchased and received at the facility products, goods, and materials valued in excess of $50,000 directly from points located outside the Commonwealth of Kentucky.

The Respondent admits, and I find, that it is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local Lodge No. 726 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL–CIO (the Union) is now and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The Respondent in these cases operates on the national level, which operations include its facility in Owensboro, Kentucky. At Owensboro, it manufactures and sells certain chemical products. Respondent and the International Brotherhood of Boilermakers, Local 726 have had a collective-bargaining history concerning this facility for over 30 years. As of December 1992, there were approximately 300 employees in the Owensboro bargaining unit, with approximately 30 unit employees employed in its Organic Chemical Division at the facility. Prior to January 1993, Respondent's Owensboro enterprise consisted of three fairly autonomous operations, i.e., the papermill plant, the battery separator plant, and the organic chemical plant or division. The organic chemical plant/division and certain of its employees are the focus of this case.

As of December 1992, Respondent and Local 726 were parties to a collective-bargaining agreement (G.C. Exh. 3) which covered the unit employees in all three Owensboro plants, including the organic chemical plant and its unit employees. That agreement was effective from April 2, 1990, to April 5, 1993. The agreement currently in effect between Respondent and Local 726 (G.C. Exh. 12) is effective from April 5, 1993, to April 1, 1996.

The collective-bargaining agreement in effect immediately prior to January 1, 1993 (G.C. Exh. 3), provided for several retirement related benefits, e.g., (1) for those employees who retired at age 55 or older, and who had at least 10 years' service with Respondent, Respondent would provide contributory retiree medical insurance; (2) the insurance rates would be at the same 10-percent contribution rate as active employees; and (3) any employee who retired on or after April 2, 1991, would receive a $4000 life insurance benefit.

In the several months prior to December 29, 1992, Respondent and Hampshire Chemical Corporation (Hampshire) engaged in negotiations for the sale of the organic chemical plant operations in Owensboro. During the negotiations, Edward Najjar, then president of Respondent's (National) Organic Chemical Division, wrote two significant letters to Bobby W. Crask, president of Local 726. In his November 4, 1992 letter (G.C. Exh. 2), Najjar advised Crask of the prospective sale, and assured Crask that, after the sale, Hampshire would, inter alia, continue the then-current wages, benefits, and working conditions of Respondent's organic chemical unit employees who transferred to Hampshire employment. In this letter, Najjar also promised that Hampshire would recognize the Union and enter into a collective-bargaining agreement comparable to Local 726's contract with Respondent. In Najjar's December 17, 1992 letter (G.C. Exh. 5) to Crask, Najjar repeated the assurances of his November 4, 1992 letter, and specifically assured Crask that the then-current retirement benefits would remain the same under Hampshire.

Based on the promises contained in Najjar's two letters, Local 726 President Crask, on December 21, 1992, wrote a reply letter (G.C. Exh. 6) to Najjar stating that Respondent's Owensboro organic chemical unit employees would transfer to Hampshire employment. Crask's December 21, 1992 letter repeated Najjar's assurances of continuing unchanged benefits (including retirement benefits) as the basis for the unit employees' agreement to transfer to Hampshire. Based on Respondent's (Najjar's) assurances, many of Respondent's Owensboro organic chemical employees, including all 14 Charging Parties here, signed acceptance of employment forms (G.C. Exhs. 7(a)–(n)), all dated around December 21, 1992. These forms were prepared by Respondent and distributed to Respondent's employees.

On December 29, 1992, Respondent and Hampshire concluded their sales agreement. This sales agreement sought to negate the right of Respondent's unit employees (who transferred to Hampshire) to receive Respondent's postretirement medical insurance coverage as set forth in Respondent's contract with Local 726 (G.C. Exh. 3) and as detailed in Respondent's (1992) summary plan description (Resp. Exh. 1, see p. 21 of that exhibit). The December 29, 1992 sales agreement also sought to void Respondent's contractual obligation to provide, on later-retirement from Respondent, the $4000 life insurance benefit due its retirees (G.C. Exh. 3). It is undisputed that Respondent neither notified Local 726 prior to the sale, of these significant detrimental changes in employees' retirement benefits, nor offered to bargain concerning these changes. Not only was there no actual prior notification and bargaining regarding these changes, but Respondent's agents, Tony Rowe and Bill Vargason, plant manager and production superintendent, respectively, in December 1992, informed then Local 726 Vice President Glen Davis that they were forbidden to discuss or disclose any aspect of the sales agreement to the Union or anyone else. Tony Rowe and Bill Vargason transferred to similar management positions with Hampshire following the sale.

The 14 Charging Parties here transferred to Hampshire, rather than transfer to Respondent's two remaining operations in Owensboro or immediately retire, and were placed on its payroll as of January 1, 1993. Thereafter, during the period January 1 to June 1, 1993, the Charging Parties, on various dates officially retired from Respondent, and began to receive Respondent's pension and certain other retirement benefits with the expectation on their part that Respondent's retiree medical benefits and life insurance benefits would follow. The Charging Parties were active employees of Hampshire during this period, however, they were, until October 1993, when Hampshire entered into a collective-bargaining agreement with ''new'' Local 727, operating under all the terms and conditions of the Respondent's contract with Local 726 (G.C. Exh. 3).

In the period prior to June 29, 1993, several of the Charging Parties, i.e., Bivens, Boarman, Cecil, Henderson, Kirk, Lott, Moseley, and Richardson, attempted to pay by check their premium copayment under Respondent's retiree medical insurance program. Charging Parties Guy Troutman and Bobby Troutman attempted to pay in person on June 28,

1993. Charging Parties Wink, Chapman, Smith, and Sutherland intended to make their payment but did not because they learned that Respondent was refusing tendered payments. On June 29, 1993, by mail, Respondent returned the checks tendered by eight of the Charging Parties and informed them that, under the terms of the December 29, 1992 sales agreement between Respondent and Hampshire, the Charging Parties were not eligible for Respondent's postretirement medical insurance. This memo (G.C. Exh. 11) is the first time that any of the Charging Parties were told that, despite prior assurances from Respondent's agents, they would lose both their eligibility for Respondent's postretirement medical coverage and their $4000 life insurance benefit. It is uncontradicted that, had the Charging Parties known at the time of the December 29, 1992 sales agreement that they would lose these benefits by becoming Hampshire employees, they could have made a fully informed decision on whether or not to transfer to Hampshire or remain active employees of Respondent or immediately retire. Guy Troutman testified, with great believability, that he would not have transferred to Hampshire had he had known the impact on postretirement benefits which information was kept from him and his fellow Charging Parties.

B. *Analysis*

Respondent raises a 10(b) defense, i.e., the charges were filed more than 6 months after the Charging Party learned of the alleged unfair labor practices. I disagree.

Respondent carefully kept from the Charging Parties and their Union any knowledge of these changes to retiree medical benefits and life insurance benefits and, in addition, Respondent lulled the Union and the individual Charging Parties into a false sense of security. In his letters of November 4 and December 17, 1992, Edward Najjar, a high-ranking official of Respondent, informed the Union that the wages, benefits, and working conditions under Respondent would continue for those employees who transferred to Hampshire. In addition Respondent's supervisors, Tony Rowe and Bill Vargason, in December 1992 would not tell the Union the specifics of the sale of the plant to Hampshire.

It is undisputed that the terms of the sales agreement between Respondent and Hampshire were kept confidential and Local 726 was not aware of the contents of the sales agreement and reasonably relied on Respondent's representations that wages and benefits and working conditions for those employees of Respondent who transferred to Hampshire would remain the same as they were under Respondent.

In early spring of 1993 a new local union was formed. It was Local 727, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL–CIO, and it represented the former employees of Respondent who had transferred to Hampshire.

Former Local 726 Vice President Glen Davis became president of new Local 727 and on May 26, 1993, wrote to Plant Manager Tony Rowe and requested a copy of the sales agreement. In his letter Davis wrote that ''this information is needed to intelligently represent the bargaining unit employees in regard to wages, hours of work, and other conditions of employment.'' (G.C. Exh. 9.)

On June 2, 1993, Tony Rowe sent to Davis a copy of part of the sales agreement which contained the language which would put the Union and the 14 individual Charging Parties on notice that their postretirement medical benefits and life insurance benefits would not be as good as they had been assured in Najjar's letters of November 22 and December 17, 1992, they would be.

In his cover letter to Davis, Rowe wrote that the part of the sales agreement he sent to Davis, i.e., a document entitled the ''U.S. Employee Benefits Agreement'' contains ''confidential information'' and was being furnished with the express agreement that the Local 727 negotiating committee ''shall maintain the confidentiality of the document and will not disclose this document or any information contained in this document to any other person or entity.'' (G.C. Exh. 10.) Davis and his negotiating committee complied with this understanding and did not disclose the contents of the U.S. Employee Benefits Agreement to any of the 14 Charging Parties and the 14 Charging Parties did not know until June 29, 1993, in a memo from Human Resources Manager Bob Randolph that the medical insurance benefits and life insurance benefits available to them when they retired would not be as promised, i.e., the same as that which they would get if they had stayed on as employees of Respondent and not transferred to Hampshire. Accordingly, the charges, which were filed on December 20, 1993, or within 6 months of the Charging Parties' first learning of the change in retiree benefits, were timely filed.

As to the merits it is clear that Respondent modified to be detriment of the 14 Charging Parties their postretirement benefits without giving prior notice and opportunity to bargain to Local 726. This is a violation of Section 8(a)(1) and (5) of the Act.

The treatment accorded the 14 Charging Parties in this case by Respondent contrasts rather sharply with Respondent's treatment of its recently ousted Chief Executive J. P. Bolduc. The following was reported on page F1 of the business section of the Washington Post on April 7, 1995: ''J. P. Bolduc, ousted as chief executive of W. R. Grace amid allegations of sexual harassment, will receive a severance package of about $43 million—twice as much as first reported. The chemical and health care company, based in Boca Raton, Fla., is giving Bolduc, 55, lifetime pension and health benefits potentially worth nearly $23 million, in addition to $20 million previously reported, the company told the SEC.''

The remedy for this violation should be as follows: Respondent should be ordered to cease and desist from this or similar misconduct; Respondent should post a notice at its Owensboro, Kentucky plant; the postretirement benefits available to the 14 Charging Parties in the area of medical benefits and life insurance benefits should be restored to what they would have been prior to the transfer of the 14 Charging Parties to Hampshire; and Respondent should be ordered to bargain in good faith with the Union regarding wages, hours, and other terms and conditions of employment of its employees.

Conclusions of Law

1. The Respondent, W. R. Grace & Co.-Conn. is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 726 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers,

AFL–CIO is, and has been at all times, a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) and (5) of the Act when it unilaterally and without giving prior notice and opportunity to bargain to the Union modified future retiree medical insurance benefits and life insurance benefits for the 14 Charging Parties.

[Recommended Order omitted from publication.]