

White Farm Equipment Company, a Subsidiary of White Motor Corporation and International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local 745. Case 9-CA-8835

June 22, 1979

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On May 30, 1975, Administrative Law Judge Henry L. Jalette issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Charging Party, herein called the Union, filed exceptions and supporting briefs.¹

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge, only to the extent consistent herewith.

Following a Board-conducted election in June 1971, the Union was certified as the exclusive bargaining representative of a unit of Respondent's warehouse employees at its parts depot in Columbus, Ohio. Thereafter, Respondent and the Union entered into a collective-bargaining agreement effective from August 15, 1971, through August 15, 1974. The parties subsequently executed a second agreement, effective from August 15, 1974, through August 13, 1977.

On June 28, 1974, prior to expiration of the Union's then-applicable agreement with Respondent, Ronald H. Janetzke, general counsel for the Union's District Council Seven, wrote Respondent requesting the following information:

1. The master plans and summary booklets containing the agreements between Respondent and insurance carriers who provide medical insurance coverage, sickness and accident insurance coverage, and life insurance coverage for the unit employees.

2. The total number of males, females, whites, blacks, and other minority applicants who sought employment from January 1, 1973, to the date of the

letter, and the total number in each respective group who were actually hired, on a monthly basis.

According to Janetzke's letter, the information was sought in furtherance of an internal union program calling for the elimination of all forms of discrimination in plants represented by IUE.² The letter further explained that the information was needed by the Union in order for it to complete an analysis of whether plant practices of Respondent might be in conflict with Title VII of the Civil Rights Act of 1964,³ and in order to assure that no contractual provisions discriminate against employees. The following provision with respect to discrimination is contained in the parties' collective-bargaining agreements:⁴

ARTICLE 16—DISCRIMINATION

Neither the Company nor the Union shall discriminate in any manner whatsoever against any employee because of race, sex, political or religious affiliation, nationality, marital status, physical or mental handicap, or membership or non-membership in any labor or other lawful organization.

Having received no reply to its June 28, 1974, letter, the Union reiterated its information request on August 8. On August 19, Respondent replied to the Union's letters, supplied the Union with a booklet describing the insurance programs as they applied to the bargaining unit, and summarized several changes in previous insurance benefits which had resulted from recent contract negotiations. These changes related to a new collective-bargaining agreement, effective from August 15, 1974, through August 13, 1977, which was agreed upon by the parties during negotiations occurring from July 10 to August 14, 1974. Janetzke, the union agent making the information request and to whom Respondent's reply was addressed, had not participated in the negotiations for the new collective-bargaining agreement.

Although Respondent supplied the descriptive insurance booklet, it failed to provide either the insurance master plans or the applicant and hiring data requested, claiming with respect to the employment statistics that it had maintained no tabulation of data

² Janetzke testified at the hearing that the International Union (IUE) in March 1973 commenced implementation of a program to eliminate all race and sex discrimination in plants represented by it, pursuant to resolutions adopted at its convention in 1972. After first attempting to implement the program through local unions and its staff representatives working with local unions, the districts of the International were eventually assigned responsibility for the program. Thus, the information request letter was sent to Respondent by Janetzke after he had first met with representatives of Local 745 and ascertained that officials of the Local had neither the insurance master plans nor information regarding Respondent's hiring practices.

³ 42 U.S.C. §2000e.

⁴ The agreement which expired on August 15, 1974, did not include the phrase "physical or mental handicap"; the provision is otherwise identical in the two agreements.

¹ The Firestone Tire & Rubber Company filed a motion for oral argument, as well as a request to submit a brief *amicus curiae*. Firestone's request to file a brief as *amicus curiae* was granted by the Board by telegraphic order; however, its motion for oral argument is hereby denied as the record and briefs adequately present the issues and positions of the parties. The Equal Employment Opportunity Commission (EEOC) also filed a motion for leave to file a brief *amicus curiae*, which was opposed by Respondent. We hereby grant the EEOC's motion, and have considered its brief which was submitted along with the request.

responsive to the Union's request and therefore did not have the information available. Respondent did, however, advise the Union that of the 12 active bargaining unit employees, all were male and 1 was black.

In ensuing correspondence, more fully described in the Administrative Law Judge's Decision, Respondent reaffirmed its refusal to comply with the Union's information request. When subsequently asked by the Union in a letter from Janetzke dated August 29, 1974, why it had no female employees and only one black employee in the bargaining unit, Respondent declined to respond specifically, but, by letter dated September 18, 1974, advised the Union of its position regarding the other information requested. Thus, with respect to the insurance master plans, Respondent took the position that its contractual commitment was one of providing negotiated benefits and that the manner in which it chose to fulfill that obligation was its own prerogative. Regarding the applicant and hiring data requested, Respondent stated that the Union was requesting information "covering an activity in which the Union has no responsibility or accountability under the terms of our Agreement," and denied the information request. On October 3, 1974, the Union filed the charge initiating this proceeding.

The Administrative Law Judge, relying upon the uncontradicted testimony of Respondent's industrial relations director that Local 745 negotiators made no mention of possible discrimination in fringe benefits or hiring practices during the ongoing negotiations for a new collective-bargaining agreement, concluded that the Union had not established its right to the requested information. Noting the Union's failure to advert to the pending information request throughout the negotiations, while reaching a contract accord on subjects as to which the information had been requested, the Administrative Law Judge found that the Union's purpose in requesting the information could not have been either to negotiate a new contract or to police the administration of an existing contract. While observing that "fulfillment of its duty of fair representation under Title VII" appeared to be the Union's purpose in making the information request, the Administrative Law Judge speculated that the Union did not even want the information for that purpose, "but rather for the purpose of creating the appearance of fulfilling it." Thus, he concluded that the Union's silence in the face of its foreknowledge of possible discrimination, as evidenced by its information request letters, warranted the conclusion that the Union did not want the requested information for a legitimate collective-bargaining purpose. Accordingly, he dismissed the complaint in its entirety.

Contrary to the Administrative Law Judge, we find that the failure of the Local's representatives to reiter-

ate the Union's information request during negotiations for a new collective-bargaining agreement does not warrant a conclusion that the information was not relevant to the Union's collective-bargaining function. Both the International Union (IUE) and its Local 745 are the recognized bargaining representative, and the International clearly had a right to request the information. That the Union subsequently executed a new collective-bargaining agreement without the benefit of Respondent's prior disclosure of the information requested does not establish that the information was not relevant. Rather, as stated by the United States Court of Appeals for the Second Circuit with respect to a union's execution of a contract without the disclosure of requested information, "The most that can be inferred from the Union's action is that the advantages of a contract in hand outweigh those which the Union might later obtain when all relevant information would be available to it."⁵

Consequently, the issue in this case is not what the Union's purpose was in requesting the information, but rather whether the information is relevant to the Union's proper performance of its duties as bargaining representative.⁶ "Once requested information is found to be relevant to the Union's representative function, it is not controlling that such information might also be used for other purposes."⁷ We have considered the relevancy of information such as that sought by the Union herein in several recent decisions⁸ and, unlike the Administrative Law Judge, find the information requested is relevant to the Union's proper performance of its bargaining obligation.

Specifically, with respect to the copies of the master agreements between Respondent and various insurance carriers, we have held in *The East Dayton Tool and Die Co.*, *supra*, as well as in *Automation & Measurement Division, The Bendix Corporation*, *supra*, that such information is presumptively relevant insofar as it pertains to unit employees.⁹ Nor does the fact that

⁵ *N.L.R.B. v. Yawman & Erbe Manufacturing Co.*, 187 F.2d 947, 949 (2d Cir. 1951).

⁶ It is, of course, well established that the duty to bargain collectively includes a duty to provide relevant information needed by a labor organization for the proper performance of its duties as the employees' bargaining representative. *N.L.R.B. v. Truitt Manufacturing Co.*, 351 U.S. 149 (1956); *N.L.R.B. v. Acme Industrial Co.*, 385 U.S. 432 (1967); *Detroit Edison Company v. N.L.R.B.*, 99 S.Ct. 1123, 85 L.C. #11, 129 (March 5, 1979).

⁷ *The East Dayton Tool & Die Co.*, 239 NLRB 141 (1978), fn. 6. Indeed, as we have recently observed, "If information is relevant to collective bargaining, it loses neither its relevance nor its availability merely because a union additionally might or intends to use it to attempt to enforce statutory and contractual rights before an arbitrator, the Board, or a court." *Westinghouse Electric Corporation*, 239 NLRB 106 (1978).

⁸ See, e.g., *Westinghouse Electric Corporation*, *supra*; *The East Dayton Tool and Die Co.*, *supra*; *Automation & Measurement Division, The Bendix Corporation*, 242 NLRB 62 (1979).

⁹ See also *Stowe-Woodward, Inc.*, 123 NLRB 287, 288 (1959), and *Cowles Communications, Inc.*, 172 NLRB 1909 (1968).

the master insurance agreements may apply to employees of Respondent other than those included in the bargaining unit serve to relieve Respondent of its obligation to provide those portions of the master agreements which apply to the unit employees. Such master agreements are clearly relevant to the Union's policing and administration of its contract with Respondent, and Respondent has not effectively rebutted the presumed relevancy of this information. Accordingly, we find that by refusing to furnish copies of the master plans, insofar as they relate to the unit employees, Respondent violated Section 8(a)(5) and (1) of the Act.

With respect to the applicant and hiring data sought by the Union, we have likewise held such data to be presumptively relevant, inasmuch as it is "integral to the Union's fulfillment of its functions as statutory bargaining representative of unit employees."¹⁰ The Board has stated, "an employer's hiring practices inherently affect terms and conditions of employment."¹¹ As we do not find Respondent to have effectively rebutted the presumption of relevancy of the requested applicant and hiring information, we conclude that by refusing to supply information as to the race and sex of applicants for employment and of bargaining unit employees hired, Respondent also violated Section 8(a)(5) and (1) of the Act.

Finally, the General Counsel has alleged that Respondent additionally violated Section 8(a)(5) and (1) of the Act by its failure to respond to the Union's query as to why it had no female and very few black employees. We do not find this request relevant to the Union's duties as the employees' bargaining representative, however, as it would appear to seek a subjective response or argument rather than objective data to be employed by the Union in furtherance of its representative function. Accordingly, we shall not require Respondent to provide the Union with its reasons for not hiring more female and black employees.¹²

CONCLUSIONS OF LAW

1. White Farm Equipment Company, A Subsidiary of White Motor Corporation, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local 745, are each labor organizations within the meaning of Section 2(5) of the Act.

¹⁰ *Automation & Measurement Division, The Bendix Corporation, supra.*

¹¹ *Tanner Motor Livers, Ltd.*, 148 NLRB 1402, 1404 (1964), enforcement denied on other grounds 419 F.2d 216 (9th Cir. 1969).

¹² *The East Dayton Tool and Die Co., supra.*

3. All warehouse employees employed by the Respondent at its parts depot in Columbus, Ohio, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local 745, are, and at all times material herein have been, the exclusive representative of the employees in the unit described above within the meaning of Section 9(a) of the Act.

5. By refusing to furnish the above-named Union with copies of the master plans, insofar as such plans pertain to unit employees, containing the agreements between Respondent and insurance carriers who provide medical insurance coverage, sickness and accident insurance coverage, and life insurance coverage for unit employees, as requested by the Union on June 28, 1974, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By refusing to furnish the above-named Union with information respecting the race and sex of applicants for employment during the years 1973 and 1974, including the race and sex of those applicants hired, as request by the Union on June 28, 1974, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has committed violations of Section 8(a)(5) and (1) of the Act, we shall require it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. As we have found that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union certain information, we shall order Respondent to furnish the IUE and its Local 745 with copies of the current master plans, insofar as they pertain to unit employees, containing the agreements between Respondent and insurance carriers who provide medical insurance coverage, sickness and accident insurance coverage, and life insurance coverage for unit employees. We shall also order Respondent to furnish the Union with current data respecting the race and sex of applicants for employment, as well as those actually hired, as described in the Union's letter of June 28, 1974, requesting such data. However, in view of the delay in

this proceeding necessitated by the holding of oral argument and our considered deliberation as to the proper approach to be taken in cases involving union information requests such as that made by the Union herein, we shall order Respondent to furnish current race and sex information rather than the data for 1973 and 1974 as originally requested by the Union. Thus, we shall order Respondent to, on request, furnish the Union with the total number of males, females, whites, blacks, and other minority applicants who sought employment during the 12 month period immediately preceding the date of our Order herein, and with the total number in each respective group who were actually hired, on a monthly basis. Finally, inasmuch as we do not find Respondent's unlawful conduct to warrant a broad remedial order, we shall order Respondent to cease and desist from the unfair labor practices found and from in any like or related manner infringing upon the employee rights guaranteed in Section 7 of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, White Farm Equipment Company, A Subsidiary of White Motor Corporation, Columbus, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local 745, as the exclusive bargaining representatives of Respondent's employees in the appropriate unit described below, by refusing to furnish copies of the master plans, insofar as such plans pertain to unit employees, containing the agreements between Respondent and insurance carriers who provide medical insurance coverage, sickness and accident insurance coverage, and life insurance coverage for unit employees, as requested by the Union on June 28, 1974. The appropriate unit is:

All warehouse employees employed by the Respondent at its parts depot in Columbus, Ohio, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

(b) Refusing to bargain with the above-named labor organizations, as the exclusive bargaining representative of the employees in the unit described above, by refusing to furnish the information requested on June 28, 1974, respecting the race and sex of applicants for employment during the years 1973 and 1974, including the race and sex of those applicants hired.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act, or to refrain from any or all such activities.

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

(a) Upon request, furnish the above-named Union with copies of the current master plans, insofar as such plans pertain to unit employees, containing the agreements between Respondent and insurance carriers who provide medical insurance coverage, sickness and accident insurance coverage, and life insurance coverage for unit employees as requested in the Union's letter of June 28, 1974.

(b) Upon request, furnish the above-named Union with current data respecting the race and sex of applicants for employment, including those hired, during the 12-month period immediately preceding the date of this Order, as described in the Union's letter of June 28, 1974, requesting such data.

(c) Post at its Columbus, Ohio, facility copies of the attached notice marked "Appendix."¹³ Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

MEMBER MURPHY, dissenting in part:

I agree with my colleagues on the majority that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to supply its employees' recognized bargaining representative with copies of master insurance plans, insofar as they pertain to unit employees. As stated in my separate opinion in *Automation & Measurement Division, The Bendix Corporation*, 242

¹³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

NLRB 62 (1979).¹⁴ I agree that such information regarding group insurance is presumptively relevant to the Union's collective-bargaining function.¹⁵

However, I register my vigorous dissent from my colleagues' infringement into matters properly left to the expertise of the Equal Employment Opportunity Commission through their finding of an additional violation of Section 8(a)(5) and (1) of the Act by Respondent's failure to supply this Union with requested data regarding the race and sex of both applicants for employment and those actually hired. As I have fully articulated my views regarding this issue in previous cases wherein similar information was sought, however, suffice it here to simply reiterate my deep concern that the Board majority in these matters shortsightedly embarks upon unfathomed seas without the benefit of compass, sextant, or chart.¹⁶

¹⁴ At fn. 5.

¹⁵ My conclusion in this regard is based solely upon the fact that group insurance has long been recognized as encompassed within the concept of wages (see, e.g., *Stowe-Woodward, Inc.*, *supra*), and thus presumptively relevant to collective bargaining, and not upon any interest or authority of this Board to intrude itself into matters properly left to the administrative aegis of the Equal Employment Opportunity Commission. Thus, while I note that Congress has, since issuance of the Administrative Law Judge's Decision, legislatively mandated the sexual neutrality of insurance provisions such as some of those involved herein, through passage of the Pregnancy Discrimination Act, Public Law 95-555, 92 Stat. 2076, amending Title VII of the Civil Rights Act of 1964 to specifically forbid discrimination on the basis of pregnancy, childbirth, or related medical conditions, this factor does not affect the Board's authority to pass on issues such as this which fall within established collective-bargaining principles.

¹⁶ See my dissenting opinions in *The East Dayton Tool & Die Co.*, *supra*, and *Automation & Measurement Division, The Bendix Corporation*, *supra*. See also my separate opinions in *Westinghouse Electric Corporation*, *supra*; *Safeway Stores, Incorporated*, 240 NLRB 921 (1979); and *The Bendix Corporation*, 242 NLRB 1005 (1979).

APPENDIX

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

WE WILL NOT refuse to bargain collectively with International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local 745 by refusing to furnish information relevant for the Union to fulfill its obligation to represent the bargaining unit employees. The appropriate unit is:

All warehouse employees employed by the Respondent at its parts depot in Columbus, Ohio, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in

the exercise of their rights to self-organization; to form, join, or assist the above-named labor organization, or any other labor organization; to bargain collectively through representatives of their own choosing; and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL, upon request, furnish the above-named labor organization with copies of the current master plans, insofar as such plans pertain to unit employees, containing our agreements with insurance carriers who provide medical insurance coverage, sickness and accident insurance coverage, and life insurance coverage for unit employees.

WE WILL, upon request, furnish the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local 745 with current data respecting the race and sex of applicants for employment and those actually hired during the 12-month period immediately preceding the date of the Board's Decision and Order.

WHITE FARM EQUIPMENT COMPANY, A SUBSIDIARY OF WHITE MOTOR CORPORATION

DECISION

STATEMENT OF THE CASE

HENRY L. JALETTE, Administrative Law Judge: This case presents the question of a bargaining representative's right to information from an employer relating to matters of minority groups and women as they may affect the Union's duty to fair representation. The proceeding was initiated by a charge filed by the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local 745¹ on October 3, 1974, pursuant to which complaint issued on December 12, 1974. On January 22, 1975, a hearing was held in Columbus, Ohio.

Upon the entire record, including my observation of the witnesses, and after due consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. THE ALLEGED REFUSAL TO BARGAIN

Factual Setting

Respondent is engaged in the operation of a warehouse in Columbus, Ohio, employing about 13 employees.² Since June 23, 1971, the Union has been certified representative

¹ The International and Local 745 are referred to collectively as the Union.

² Jurisdiction is not in issue. The complaint alleges, the answer admits, and I find that Respondent meets the Board's \$50,000 direct outflow standard for the assertion of jurisdiction.

of Respondent's employees in a unit of all warehouse employees and has been party to collective-bargaining agreements with Respondent covering such employees, the most recent of which is effective from August 15, 1974, until August 13, 1977.

On June 28, 1974, the Union wrote to Respondent advising it of a program it had adopted for the elimination of all forms of discrimination in plants represented by it. The Union stated that in pursuance of this program it was necessary for it to analyze plant practices which were not spelled out in the collective-bargaining agreement but which might be in conflict with Title VII of the Civil Rights Act of 1964 and in which it requested that Respondent supply it with the master plans and summary booklets for medical insurance, sickness and accident benefits insurance, and life insurance; for the period from January 1, 1973, to June 1974, the total number of applications for employment, the number of female applicants, the number of male applicants, the number of black applicants, the number of other minority applicants, and the number of white applicants; and for the period from January 1, 1973, a list of the number of female, male, black, white, and other minorities hired on a monthly basis.

On August 8, not having received a reply, the Union renewed its request. On August 19, Respondent replied to the request by enclosing a booklet describing the insurance programs as they applied to the bargaining unit. Respondent stated that the information requested concerning job applications was not available because application forms contained no question on race, and tabulation of persons who came to the warehouse to make application had been maintained. Finally, Respondent stated that it could not state exactly how many people had been hired since January 1, 1973 by breakdown as the Respondent requested. It advised the Union that there were currently two white male employees in the bargaining unit who had been hired since January 1, 1973 and a third employee hired during that period had recently quit. Respondent stated that the change in management made it difficult to retrace history prior to January 1, 1974. Respondent added that of the present 12 active employees all were male and one was black.

On August 29, 1974, the Union acknowledged receipt of the Respondent's reply and reiterated its request for the master insurance policies in order to make a full analysis of certain provisions of the plan which, it stated, appeared to be discriminatory based upon sex. The Union adverted to a bridge benefit for Class A and Class B survivors which appeared to it to be discriminatory toward females, and it adverted to several provisions which appeared to discriminate against females in pregnancy cases.

With regard to Respondent's reply that it kept no tabulation of persons who came to the warehouse to make application, the Union requested that Respondent undertake to make a tabulation or in the alternative that it supply the Union with all job applications for January 1, 1973, to the date of its letter to enable the Union to make its own computation. Furthermore, the Union expressed inability to understand why Respondent's records would not show which persons had been hired since January 1, 1973. Finally the Union reiterated its request for a statement of the reasons why there were no female employees in the unit and why

only one black. The letter concluded with a request that Respondent advise the Union if it was willing to meet concerning such matters.

On September 18, 1974, Respondent replied denying the request for applicant flow and hiring activity on the ground that the data requested covered an activity in which the Union had no responsibility or accountability under the terms of the collective-bargaining agreement. Respondent expressed the belief that it was in compliance with applicable legislation and executive orders and offered to provide the Union with a written statement to such affect for its protection.

As to the master insurance policies, Respondent declined to furnish them on the ground that its contractual commitment with the Union was to provide negotiated benefits but that the manner in which it did so was its prerogative. Respondent noted that the master policies in question involved company locations other than the one involved herein. As to the specific insurance benefits to which the Union had adverted in its letter of August 8, Respondent replied in detail. For example, it acknowledged that there was no weekly indemnity benefits in maternity cases, but denied this was discriminatory. Respondent denied that a transplant donor benefit was not available to pregnant females pointing out rather that it was denied to females only in those instances where the confinement or surgery bringing about the transplant was by reason of the pregnancy or complications therefrom. Respondent acknowledged that pregnancy was not covered under the long term disability benefits pointing out, however, that this coverage was unavailable under certain other situations. In each of the situations described by the Union, as well as with any other not identified, Respondent stated that if the Union wanted benefit coverage altered bargaining demands could be presented and cost considered at the appropriate time. Respondent did not offer to meet or expressly respond to the Union's request in that connection.

Thereafter, the Union filed a charge in the instant case the complaint which issued pursuant thereto alleged that Respondent had violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with the master insurance agreements described above; by refusing to furnish the total number of males, females, whites, blacks, and other minorities who sought unit positions of employment and the total number in each group actually hired in unit positions including their names, dates of hire, departments in which each was placed, starting rate of pay from January 1, 1973 to date of the issuance of complaint; and by refusing to furnish information concerning the reason or reasons why Respondent did not employ any females and only one black in unit positions.

II. ANALYSIS AND CONCLUSIONS

Respondent asserts a variety of defenses to the allegations that it has violated the Act by refusing to furnish the requested information. It does not appear to question the basic legal principle that the Union owes a duty of fair representation to all unit employees pursuant to Section 9 and 8(b) of the Act, nor does it appear to question the proposition that this duty is applicable in matters of possi-

ble race or sex discrimination in matters of employment.³ However, it asserts that the Union has, in effect, waived its right to the requested information. Respondent's assertion is based on the undisputed fact that, although the initial demand for information was made on June 28, 1974, the Union made no mention of possible discrimination in fringe benefits or in hiring practices during negotiations for a new collective-bargaining agreement beginning on July 10, 1974, and concluding on August 14, 1974.⁴

I am not persuaded that the waiver principle is the proper legal principle to apply to the Union's failure to mention in negotiations possible discrimination based on sex or race. Rather, it appears to me that such failure is persuasive evidence that the Union did not request the information for any purpose relevant and necessary to fulfill its obligations under Section 9 and 8(b) of the Act. Except for wage and related information, which is presumptively relevant, a union's right to information is dependent on a showing of relevancy and necessity. This may be done by showing that it is relevant to negotiating a new contract or to police the administration of an existing contract. The Union's purpose for its request herein cannot have been for either of these purposes because it was in negotiations while its request was pending, voiced no objection over Respondent's failure to reply to the request of June 28, and made no claim that it needed the information for any purpose during negotiations. Thus, as to master insurance policies, if the Union believed they contained discriminatory provisions, or if it was too ignorant of the insurance provisions even to form a judgment, why did it remain silent in negotiations and agree not only to a continuation of medical insurance benefits in the new contract, but also to some changes in benefits unrelated to possible discrimination on the basis of sex and without even adverting to the issue of possible discrimination? As to Respondent's employment practices, the Union knew the composition of Respondent's work force, knew that Respondent employed no females and only one black in the unit, and yet it made no mention during negotiations of possible discrimination in hiring. In the circumstances, the Union's silence warrants a finding that it did not want the information for the purpose of negotiating any contract changes, nor to police the administration of any contract, past or present.

The finding that the Union's purpose in requesting the

³ *Emporium Capwell Co. v. Western Addition Community Organization*, 420 U.S. 50 (1975); *Independent Metal Workers Union, Local No. 1*, 147 NLRB 1573 (1964); *Local 1367, International Longshoreman's Association, AFL CIO, South Atlantic and Gulf Coast District, International Longshoreman's Association, AFL CIO and Local 1368, International Longshoreman's Association, AFL CIO*, 148 NLRB 897 (1964), enfd. 368 F.2d 1010 (5th Cir. 1966), cert. denied 389 U.S. 837 (1967).

⁴ This is based on uncontradicted testimony of industrial relations director Robert Finley. According to Attorney Janetzke, gave specific language proposals to Local 745 negotiators and he assumed they were proposed at the bargaining table. No evidence was adduced to show Local 745 made any proposal related to possible discrimination on sex or race.

information in question was not a collective-bargaining purpose (in any sense of the term as applied under the Act) finds further support in Attorney Janetzke's letter of June 28, 1974, wherein he referred to practices which "... may be in conflict with Title VII of the Civil Rights Act of 1964." Such language suggests that the Union's purpose was fulfillment of its duty of fair representation under Title VII, rather than any duty under Section 9 and 8(b). General Counsel and the Union appear to contend that even if such is the Union's purpose it is entitled to the information. One answer to such a contention is that it is not the function of the Board to ensure compliance by a union with Title VII. As the Board stated,⁵ "While the Board must interpret the Act with due regard for Federal policy against racial or other arbitrary or invidious discrimination, we should not attempt to usurp the functions which Congress entrusted to the Equal Employment Opportunity Commission and other agencies." See also *Emporium Capwell Co. v. Western Addition Community Organization*, *supra*.

Another answer is that even under Title VII, a union does not satisfy its obligations by going through the motions of requesting data. When, as here, it is engaged in negotiations and remains silent about matters of which it has knowledge regarding possible sex and race discrimination, the conclusion is warranted that it does not desire the information for the purpose of fulfilling its duty of fair representation, but rather for the purpose of creating the appearance of fulfilling it. In this connection, it is noteworthy that despite the detailed information supplied by Respondent in its letter of September 18, 1974, the Union had not as of the date of hearing requested bargaining to eliminate alleged discriminatory insurance provisions or hiring practices.

In short, the chronology of events, the Union's foreknowledge of possible discrimination based on sex and race, and its silence in negotiations on the very matters adverted to in its June 28 request, warrant a finding that the Union did not request the information for the purpose of obtaining data to fulfill its duty of fair representation by the negotiation of a new contract, nor to police the administration of the contract. Accordingly, the Respondent's refusal to furnish the information was not violative of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. White Farm Equipment Company, a Subsidiary of White Motor Corporation, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. General Counsel has not established by a preponderance of evidence that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act as alleged in the complaint.

[Recommended Order for dismissal omitted from publication.]

⁵ *Bekins Moving & Storage Co. of Florida, Inc.*, 211 NLRB 138, 139 (1974).

