

**Peter Satori Co., Ltd. and International Association
of Machinists District Lodge 94.** Cases
31-CA-812, and 31-CA-812-2

March 25, 1969

DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

On April 23, 1968, Trial Examiner Martin S. Bennett issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal as to them. Thereafter, the Respondent and the General Counsel filed exceptions to the Decision and supporting briefs.

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

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent herewith.

We agree with the Trial Examiner, for the reasons set forth in his Decision, that the Respondent engaged in conduct violative of Sections 8(a)(5) and 8(a)(1) of the Act by (1) refusing to furnish the Union with information concerning the details of a profit-sharing and retirement plan previously established, and (2) negotiating directly with employees in the body shop department concerning wages at a time when wage negotiations with the Union were pending. Contrary to the Trial Examiner, however, we do not agree that the Respondent's course of conduct in its negotiation sessions with the Union can be characterized as merely "hard bargaining by a manifestly skilled negotiator." Viewed in its totality, we are persuaded, for the reasons discussed below, that the Respondent was determined to frustrate the collective-bargaining process and thus bargained in bad faith in violation of Section 8(a)(1) and (5).¹

¹Nor do we agree with the Trial Examiner that it would be "superfluous and unduly extensive" to consider the Respondent's overall bargaining conduct because the remedy would be identical to that found for the above violations. Based upon the Trial Examiner's Decision, the Respondent could, and probably would, assume that its conduct at the bargaining table

The Union was certified on December 13, 1966. Thereafter, the Respondent and the Union engaged in 14 negotiation sessions between April 13 and October 18, 1967. At the first meeting,² the Respondent's chief negotiator, Burdette Fredricks, refused the Union's suggestion, made by its chief negotiator, Charles Edwards, that they go through the Union's proposed contract provision by provision in an attempt to narrow the issues. Fredricks insisted that the Respondent would not negotiate in that fashion, but would bargain only on the basis of an entire contract, a position he maintained throughout the bargaining sessions.

Despite the Respondent's position, the Union attempted to reach an agreement on the basis of its contract proposals. During the first six sessions, between April 13 and July 17, Edwards interpreted and explained the Union's specific proposals. Following the Respondent's expressed inability to agree to certain items the Union withdrew approximately 11 proposals, including demands for parking facilities, notification to the Union of industrial accidents, minimum pay for employees who report when no work is available, seniority in work assignments, written summaries of grievance adjustments, negotiation of matters not specifically provided for in the agreement during the contract term, bidding by seniority for promotions and transfers, prohibition of subcontracting unit work, the right to refuse to work on struck goods, furnishing statistical data to the Union for wage surveys, and payment of employment agency fees by the Respondent. At the same time the Union indicated its understanding that tentative agreement had been reached with the Respondent on several matters, including the following: vacation proposals, Union notification of all leaves of absences in excess of 30 days, proposed safety and shop committees, sanitary and washing facilities, bulletin board privileges and access to the plant by Union representatives, and no strikes, slowdowns, or lockouts during the term of the agreement.

At the July 17 meeting the Respondent presented its counterproposals and indicated that it did not consider itself bound by the previous negotiation sessions. The Respondent rejected the contention that tentative agreements had been reached, and reasserted its position that it would only negotiate on the basis of a complete package. The proposed contract contained only two of the items upon which the parties had previously indicated agreement: length of vacation and the no strike, no slowdown, and no lockout provisions. The shop and safety committee proposals previously discussed were drastically changed, and no provision was made for

was permissible under the Act. Thus, the remedy would be inadequate and would offer no resolution of the basic issue as to whether the Respondent's bargaining table conduct constituted bargaining in bad faith nor would it afford any guidance as to required future bargaining table conduct.

²The factual presentation of the bargaining sessions is based upon uncontradicted record testimony.

shop stewards.

Following the July 17 meeting, the remaining seven sessions were held with a Federal mediator in attendance. At the session on August 15, the Union reduced its wage demands for several job categories, withdrew a demand for an eighth holiday and proposals for checkoff, jury duty pay, severance pay, time off for blood donations, and second and third shift bonuses. On August 21, the Respondent modified its package proposals by offering a 10-cent-an-hour increase for mechanics, agreeing with the Union's proposal to substitute the day after Thanksgiving for an employee's birthday as a holiday, making Saturday work voluntary, and raising the pay of "service writers." After making this proposal, Fredricks commented:

This offer of August 21, 1967, represents the total offer of the Company, and we will not answer each and every point that Mr. Edwards has raised. This entire matter will probably be brought up in another forum, in the NLRB.

At the September 15 meeting the Union further reduced wage demands for four job categories and agreed to the Respondent's proposal for shared contribution for the cost of the rental of uniforms. On September 18, the Respondent modified its proposals by agreeing that work in excess of 8 hours a day would be voluntary and to certain changes in wage formulas. Fredricks indicated that the Respondent was not going above this offer and announced to the Federal mediator present that as far as the Respondent was concerned an impasse had been reached.

On September 29, the Union further modified its demands by proposing concessions in its wage demands and health plan. On the same day the Respondent modified its previous offer by proposals which would substantially reduce the vacation plan then in effect, exclude body shop employees from its present policy of paid holidays and sick leave, increase the wage rates for mechanics and lubrication men and service writers monthly guarantees, and include shop stewards on the grievance committee. Following this offer, Fredricks stated to the mediator that this was "our final offer." Edwards rejected the offer and noted that the Respondent had not included a grievance procedure. When the mediator suggested further bargaining, Fredricks made a "final offer on grievance procedure" which provided for arbitration on unresolved grievances if both parties agreed.

Another session was held on October 18. Fredricks emphasized throughout that the Respondent had made a final offer and that an impasse had been reached. The Respondent did not respond to the Union's proposals reducing wage demands for two job categories and providing for management rights. No further bargaining negotiation sessions were held.

On October 19, the day after the Respondent refused further bargaining sessions, the Respondent without consultation with the Union reduced vacation benefits of bargaining unit employees from 4 weeks to 2 weeks.

Upon consideration of the totality of the Respondent's course of bargaining conduct, as indicated by the above, as well as by its conduct away from the bargaining table, we find, contrary to the Trial Examiner, that the Respondent refused to bargain in good faith with the Union from the inception of bargaining on April 13, 1967, and that such conduct was violative of Section 8(a)(5) and (1) of the Act. As illustrated from the above course of conduct, the Respondent coupled a determination to yield nothing of substance to the Union with an attitude of offering its proposals on a take or leave it basis. The Respondent's major bargaining position of insisting upon a complete package while repeatedly making counterproposals which virtually ignored previous tentative partial agreements, and its refusal to narrow bargaining by finding issues upon which agreement could be reached do not in our view reflect the attitude of an employer who approached bargaining with an open mind and purpose to reach agreement consistent with the respective rights of the parties. We are persuaded that the insistence of the Respondent throughout on the finality of its offers and the alacrity with which the Respondent announced impasses demonstrated not a desire to bargain but a means by which to conceal a purposeful strategy to make bargaining futile and eventually fail completely.³

Our conclusion that the Respondent did not approach the bargaining table with a good-faith intent to reach an agreement is reaffirmed by its refusal to furnish the Union with necessary information concerning the details of the established profit-sharing and retirement plans during the bargaining and its negotiating directly with body shop employees, both of which we have found to be independent violations of Section 8(a)(5) and (1) of the Act. In addition, we find that the Respondent's unilateral reduction of vacation benefits for bargaining unit employees at a time when it had an obligation to bargain collectively with the Union was additional evidence of its bad-faith bargaining at the table and was independently violative of Section 8(a)(5) of the Act.⁴

³See, e.g., *East Texas Steel Casting Co., Inc.*, 154 NLRB 1080, 1082, *Kohler Co.*, 148 NLRB 1434, 1444, enfd 345 F.2d 748 (CA DC), cert denied 82 US 836, *NLRB v Insurance Agents' International Union, AFL-CIO (Prudential Insurance Company of America)*, 361 US 477, 485, *NLRB v Herman Sausage Company, Inc.*, 275 F 2d 229, 231, 232, (CA 5), rehearing denied 277 F 2d 134 (C.A. 1), cert denied 346 US 887

⁴See *Safeway Steel Scaffolds Co.*, 153 NLRB 417, 418, enfd 383 F 2d 273 cert denied 390 US 955, *NLRB v Andrew Jergens Co.*, 175 F 2d 130, 136 (CA 9) *Intercoastal Terminal, Inc., etc.*, 125 NLRB 359 at 360-361 and 369-370

THE REMEDY

Having found that the Respondent has engaged in other unfair labor practices violative of Section 8(a)(5) and (1) of the Act, in addition to those found by the Trial Examiner, we shall order it to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act. It has been found that the Respondent refused to bargain in good faith at the bargaining table with the Union that represented a majority of the employees in an appropriate unit. We, therefore, shall order that the Respondent cease and desist from negotiating with the Union in bad faith and with no intention of entering into any final or binding agreement. We shall further order the Respondent, upon request, to bargain with the Union as the exclusive representative of the employees in the appropriate unit. It has also been found that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally reducing the existing vacation benefits of employees in the appropriate unit. Accordingly, we shall order that the Respondent cease and desist therefrom and restore to affected employees their previously existing vacation benefits⁵ and make them whole for any loss they may have incurred as a result of the Respondent's illegal conduct. The amount due each employee shall bear interest at the rate of 6 percent per annum from the date such vacation was payable under the Respondent's program which existed prior to October 19, 1967, until paid.⁶

In view of the Trial Examiner's finding which we have affirmed, that the Respondent unilaterally bargained with its body shop employees in violation of Section 8(a)(5) and (1) of the Act, we shall order that the Respondent cease and desist from bargaining directly with such employees, and, upon request, bargain with the Union with regard to the wages, hours, and other terms and conditions of such employees.

AMENDED CONCLUSION OF LAW

The following is substituted for the Trial Examiner's fifth Conclusion of Law:

"5. By negotiating in bad faith with no intention of entering into any final or binding collective-bargaining agreement with the Union as the exclusive bargaining representative of its employees in the aforesaid appropriate unit, by refusing to unconditionally furnish the Union with information concerning the details of its profit-sharing and retirement plan, and by refusing to bargain with the Union with regard to the wages, hours, and other terms and conditions of employment of its body shop employees, the Respondent has engaged in unfair labor practices

within the meaning of Section 8(a)(5) and (1) of the Act. By unilaterally reducing the existing vacation benefits of employees in the appropriate unit, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) 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 Peter Satori Company, Ltd., Pasadena, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from.

(a) Refusing to bargain collectively in good faith with the Union, International Association of Machinists District Lodge 94, as the duly designated collective-bargaining representative of employees in the appropriate unit certified by the Board on December 13, 1966.

(b) Refusing to bargain with the Union with regard to the wages, hours, and other terms and conditions of employment of its body shop employees.

(c) Refusing to bargain in good faith with the Union by failing to provide information concerning the details of its profit-sharing and retirement plan.

(d) Refusing to bargain in good faith with the Union by unilaterally reducing the existing vacation benefits of employees in the appropriate bargaining unit.

(e) In any like or related manner interfering with the right of employees to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively in good faith with International Association of Machinists District Lodge 94, as the exclusive bargaining representative of all employees in the aforesaid appropriate collective-bargaining unit, and embody all understandings reached in a signed agreement.

(b) Promptly and unconditionally furnish the Union the requested information concerning the details of its profit-sharing and retirement plan.

(c) Restore to employees their previously existing vacation benefits and make them whole for any loss of benefits they may have incurred in the manner provided above in the section herein entitled, "The

⁵Intercoastal Terminal, Inc., etc., supra at 362.

⁶Cf. Star Expansion Industries Corp., 164 NLRB 563.

Remedy”.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of vacation pay or other benefits due under the terms of this Order.

(e) Post at its plant at Pasadena, California, copies of the attached notice marked “Appendix.” Copies of said notice on forms provided by the Regional Director for Region 31, shall, after being duly signed by the Respondent, be posted by it immediately upon receipt thereof, and be maintained for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 31, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

WE WILL NOT in any like or related manner interfere with the right of our employees to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8(a)(3) of the Act.

PETER SATORI CO., LTD
(Employer)

Dated _____ By _____ (Representative) _____ (Title)

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board’s Regional Office, 10th Floor, Bartlett Building, 215 West Seventh Street, Los Angeles, California 90014, Telephone 213-688-5800.

⁷In the event this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words, “a Decision and Order” the words “a Decree of the United States Court of Appeals Enforcing an Order”

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Decision and Order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL, upon request, bargain collectively with International Association of Machinists District Lodge 94 as the exclusive representative of our employees in the appropriate unit described below and embody all understandings reached in a signed agreement

The appropriate unit is: all service department employees including automotive line mechanics, their apprentices and helpers; front-end mechanics; brake mechanics; tune-up mechanics; air conditioning mechanics; automatic transmission mechanics; heavy-duty mechanics; lubrication mechanics; automotive electricians; used car get-ready mechanics; new car get-ready mechanics; new car detail mechanics; paint and body mechanics, their apprentices and helpers, service writers; pick-up delivery men; lot men; parts pick-up and delivery men; parts men; and dispatchers, excluding all office clerical and professional employees, salesmen, guards and supervisors

WE WILL promptly and unconditionally furnish to the above-named Union all information regarding our pension plan heretofore requested by it.

WE WILL restore to employees their previously existing vacation benefits and make them whole for any loss they may have incurred because of our previous withdrawal of those benefits.

WE WILL NOT negotiate wage increases directly with employees while wage negotiations are pending with said Union.

TRIAL EXAMINER’S DECISION

STATEMENT OF THE CASE

MARTIN S. BENNETT, Trial Examiner: This matter was heard at Los Angeles, California, on February 13, 14 and 15, 1968. The complaint, issued November 9 and based upon charges filed August 22 and October 23, 1967, by International Association of Machinists District Lodge 94, herein called the Union, alleges that Respondent, Peter Satori Co., Ltd, had engaged in unfair labor practices within the meaning of Section 8(a)(5), 8(a)(3), and, derivatively, 8(a)(1) of the Act. Briefs have been submitted by the General Counsel and Respondent.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTIONAL FINDINGS

Peter Satori Co., Ltd. is a California corporation maintaining its principal office and place of business at Pasadena, California, where it is engaged in the retail sale and service of imported automobiles. It annually sells and distributes products valued in excess of \$500,000 and purchases and receives goods valued in excess of \$50,000 from suppliers who receive same directly from states other than the State of California and from foreign countries. I find that the operations of Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Association of Machinists District Lodge 94 is a labor organization within the meaning of Section 2(5) of the Act.

III THE UNFAIR LABOR PRACTICES

A *Introduction, The Issue*

The Union was certified on December 13, 1966, as the representative of Respondent's service department employees, including automotive line mechanics, their apprentices and helpers; front-end mechanics; brake mechanics; tune-up mechanics, air conditioning mechanics, automatic transmission mechanics; heavy-duty mechanics, lubrication mechanics; automotive electricians, used car get-ready mechanics; new car get-ready mechanics; new car detail mechanics; paint and body mechanics, their apprentices and helpers; service writers, pick-up and delivery men, lot men, parts pick-up and delivery men, parts men, and dispatchers, excluding office clerical and professional employees, salesmen, guards and supervisors.

Following the certification of the Union, the parties held 14 bargaining meetings between April 13 and October 18, 1967, during which many proposed contracts and counterproposals, written and oral, were exchanged. The General Counsel alleges that Respondent refused to bargain in good faith by (1) refusing to furnish the Union with information concerning the details of a profit-sharing and retirement plan previously established by Respondent; (2) negotiating with the Union in bad faith without any intention to consummate a contract, (3) refusing to bargain with Respondent's body shop employees, and (4) unilaterally changing existing vacation benefits. The last specified item refers to changes made on October 19, 1967, one day after the bargaining sessions ended.

Respondent contends that it made specified concessions during the course of bargaining and that it put its final offer into effect after rejection by the Union and arrival at an impasse on October 18, 1967. It further alleges that a designated commissioner of the Federal Mediation and Conciliation Service announced an impasse and stated that further negotiating meetings were not in order.

B *Refusal to Bargain*1. *Appropriate unit and majority representation therein*

It is undisputed, and I find, that the above-described unit is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. It is also undisputed, and I further find, that the Union has been and was the representative of said employees at all times material herein for the purposes of collective bargaining, within the meaning of Section 9(a) of the Act.

2 *Prefatory statement*

Initially, it is perhaps in order to set forth what is not treated herein. The General Counsel has argued extensively that Respondent's course of conduct throughout the 14 bargaining meetings constituted bad-faith bargaining with no intention to enter into a collective-bargaining contract, this reflecting a determined effort to frustrate the collective-bargaining process.

The record does disclose hard bargaining by a manifestly skilled negotiator on the part of Respondent and it is a truism that bargaining on an initial contract, as is the case here, will establish the framework upon which future negotiations will be conducted. Stated otherwise, the simple fact is that an employer will understandably bargain vigilantly in this posture. And I see nothing amiss, contrary to the General Counsel, in the employer bargaining, as did Respondent, on the basis of agreement

on an entire contract rather than on a piecemeal basis. See *Taylor Instrument Companies*, 169 NLRB No 28.

Inasmuch as, in my belief, the evidence preponderates in favor of the General Counsel in two specific areas, and the remedy would be identical, I deem it superfluous and unduly extensive of this decision to consider the broader theory I refer specifically to the Union's efforts to obtain data concerning Respondent's profit-sharing and retirement plan and, further, to Respondent's direct negotiations with employees of its parts department.¹

3 *Bargaining on the profit-sharing and retirement program*

Since approximately 1953, Respondent has had a noncontributory profit-sharing and retirement plan to which it annually allots 50 percent of gross profits before taxes or 15 percent of salaries, whichever is the lower figure.

The Union's original contract proposal provided that Respondent participate in the Union's existing pension trust fund,² which provided for payment into the fund of a stated sum per day or week for each covered employee.

Present at a meeting on June 13, 1967, when the topic was discussed, as at all meetings, were President Peter Satori of Respondent, its counsel herein, H. Burdette Fredricks, and consultant Richard Cords. The Union was represented at all meetings by its business representative and negotiator, Charles Edwards, and by a shifting group of union members and Business Representative Thomas Burniston.

Edwards testified that President Satori declared on June 13 that Respondent preferred its own plan because the Union's plan did not cover nonunit employees. Edwards replied that the Union could cover nonunit employees and furnished Satori with a brochure outlining the details of its plan.

Edwards then asked how much money Respondent contributed to its plan and Satori outlined the 50-15 percent formula. Edwards stated that covered employees should know their potential under Respondent's plan. He asked that Respondent furnish him with the amount credited to each employee so that he would be in a position to advise the covered employees if this plan was equal or superior to the Union's plan, adding that if this were the case, the Union would withdraw its demand for its own plan.

Satori replied that each employee could find out his allotted share from the office manager and that the Union did not need these details, the record also discloses that this figure is supplied to each employee at Christmas. Edwards pointed out that he wished this information only with respect to those in the unit. He also explained that employment with other employers covered by the Union's plan could be counted as credited service.

The subject arose again at the next meeting on July 17. Edwards reminded Respondent's negotiators of his previous request for this data. Fredricks refused to supply each employee's balance. Edwards responded that absent this data they could not bargain intelligently on the issue. He explained that he wished to compare benefits due under the allotted amounts under the respective plans and

¹As I read the complaint, the last item was not specifically alleged as such. However, it was litigated without objection and I consider it to be before me for decision.

²More specifically, the International Association of Machinists Labor-Management Pension Fund.

that this could not be determined from Respondent's brochure which described the plan. He again stated that the Union would withdraw its plan if the comparison of benefits demonstrated that Respondent's plan was equal or superior to the plan of the Union. Fredricks repeated that this specific data was of no concern to the Union.

According to Edwards, Satori then offered to let him proceed to Respondent's office and inspect all of the employee accounts but "not take notes", if he would give his word of honor not to divulge this information to anyone. Edwards refused, stating that he wanted to sit down with the Union's attorney and evaluate the potential benefits under the respective plans. Both Satori and Fredricks then stated that this data would not be provided if Edwards did not pledge his word of honor as requested.

Copies of Respondent's plan and the accompanying trust instrument were given to the Union after the August 11 meeting. At the August 21 meeting, Edwards pointed out that he was not asking for the full value of the trust fund but rather where each unit employee stood with respect to his potential pension and he renewed his request for this specified data.

On September 18, Edwards again asked for this material. Satori responded that if the balance of each was made public this would cause unrest among the employees.³ Fredricks repeated that this was of no concern of the Union, adding, however, that Edwards could see the figures if he gave his word of honor not to reveal the amounts to anyone; Edwards refused.

Again, at a meeting on September 29, Edwards repeated that if he had the respective sums allotted under Respondent's plan and union counsel advised, after a study, that benefits thereunder would be equal or superior to those under the Union's plan, the Union would settle for Respondent's plan.

In an effort to shorten the hearing, the parties stipulated that the testimony of Business Representative Burniston and employee Dunling would be substantially the same as that of Edwards and that the testimony of Respondent's co-negotiator, Cords, would follow that of Negotiator Fredricks, described below.

Burniston, in rebuttal, testified that Edwards requested this trust fund data at almost every meeting. At one meeting, above placed by Edwards on July 17, Satori offered Edwards the data in his office if he gave his word of honor to reveal it to no one and to take no notes. On the other hand, Burniston did not recall whether Satori offered to show each employee's balance or the entire trust fund. Be that as it may, Satori admitted herein, in agreement with Fredricks, and I so find, that the main issue here was Edwards' request for a breakdown of the balance of each employee in the fund. Satori at the most offered this breakdown to Edwards in confidence "for his own use" only. Edwards responded that he wanted this data officially and not confidentially. To this, Satori replied that he wanted to keep the amount of each employee confidential and that if Edwards wished to obtain or to publish this data he should obtain it from the respective employees.

The case for Respondent was presented by Fredricks and his version does not differ too much from that of Edwards. His testimony was silent as to the June 13 meeting and as to details of the July 17 meeting, except for the request by Edwards for the trust documents.

Fredricks placed the discussion of September 18 described by Edwards on September 15. The latter

"again" asked for the exact amounts each employee had in his fund. Satori responded that this was an improper request and an invasion of the privacy of the respective employees. He then offered to reveal the total contributions to the fund each year by Respondent and added that an individual breakdown would be given to each employee who wished it. Edwards replied that this was insufficient.

On September 19, counsel for the Union wrote to Fredricks as follows:

Following extensive correspondence throughout June and July, 1967, the above-named company did furnish what purports to be a copy of an Employee Profit Sharing and Retirement Plan

At this time I request, on behalf of my clients, that you furnish a statement as to the amount of monies contributed by the employer under such plan and for the account of each individual employee.

Could you also state if at all possible the amount of such monies they have vested as to each of the employees. Such information is deemed necessary in order that the Union be enabled to intelligently negotiate with regard to the entire area of pensions and profit sharing

On October 11, Fredricks replied:

In reply to your recent communication relative to the above entitled matter whereby you requested that the company submit to your office a complete breakdown of the funds for each individual employee involved in the company trust fund, please be advised that we have repeatedly informed Mr Charles Edwards of the International Association of Machinists that we did not feel it was proper to submit the information on mass [sic] that he had requested, but that the information would be available to him at the offices of the company provided that he could keep the individual accounts confidential so that one employee would not know what other employees have in the trust account as we feel that that information is personal to the employee just as much as an individual savings account. We have also offered Mr. Edwards the information if he would have each member of the bargaining unit request same from the office. To date Mr. Edwards has failed and refused to procure the available information in either of the suggested ways.

Accordingly, we must respectfully refuse to communicate the information in the manner it was requested. We hereby reoffer to have the information submitted, however, as set out in the paragraph above.

At the October 18 meeting, with a conciliation commissioner in attendance, Edwards renewed his demand for the trust fund data and Fredricks, as he testified, "again renewed our offer to show him the annual amount contributed to the trust fund and to submit [to] each employee — though we do it annually — the amount that they have now in their trust fund." Fredricks later testified that he told Edwards that the amount each had in his own account was his own business and "confidential."

To sum up, according to Edwards, Satori variously wanted a pledge that the data would be confidential because its divulgence would cause unrest or stated that no notes were to be taken. Burniston confirmed the last position which, according to Edwards, was taken on July 17.

Satori supported Edwards, variously testifying that these individual amounts would be provided if kept confidential "for his own use", that he did not feel at liberty to divulge to Edwards the balance of each in the

³Just why this result would follow is not indicated

trust fund, and, finally, that he wanted to keep the balance of each confidential and leave it to each employee to decide whether his balance would be disclosed.

In the exchange of correspondence with the Union, Fredricks took a mildly broader position, to wit, that the data would be available to Edwards at the offices of Respondent if the individual amounts were kept confidential, but also raising the requirement that each employee request his balance.

This, in essence, may be characterized as a fluid position on the part of Respondent but, nevertheless, at no time did Respondent agree to meet the request of the Union for the data, except with restrictions as specified.

Realistically speaking, the simple answer is that Respondent was unwilling to turn over this information unqualifiedly to a responsible agent of the Union for use in comparison of the two plans. A requirement that it would be available only to Fredricks "in confidence" at the offices of Respondent, or with no notes taken or that it be submitted only to the respective employees placed Edwards in the unworkable position of being unable to evaluate Respondent's proffered plan, fraudulently removing the data or memorizing it, hardly a tenable position.

Conclusions

Because, in the posture most favorable to Respondent, it refused to give union officials the data concerning the individual fund balances for analysis, evaluation and comparison with the union proposals, Respondent must be faulted here. It is axiomatic that profit-sharing and pension plans are a part of wages and therefore a mandatory subject of bargaining Section 8(a)(5) of the Act imposes an obligation upon an employer to furnish, upon request, "all information relevant to the bargaining representative's intelligent performance of its function" *Wilson Athletic Goods Mfg. Co., Inc.*, 169 NLRB No. 82.

The pertinent issue, therefore, is the relevance of the requested information to the Union's bargaining demands. The Union had come forward with its own well-established plan and Respondent in turn pointed to its own. Knowledge of the amounts credited to each employee would seem critical to a comparison and analysis of the potential benefits under the respective plans; indeed, the Union readily offered to abandon its request for its own plan if the analysis disclosed that Respondent's plan provided equal or superior benefits.

As an example of the relevancy of a comparison of the plans, the General Counsel points out that one feature of Respondent's plan is its provision for payment of benefits, unless otherwise requested, in quarterly installments of 5 percent of the total unit until depleted, viz, over a maximum period of 5 years; moreover, the Union's plan gives qualifying seniority credit for employment with other employers contributing to its own fund, manifestly a benefit not present in Respondent's plan.

While the claim that employees may prefer financial anonymity in this area is understandable, such individual desires have long gone by the wayside in the face of collective bargaining in behalf of the interests of the entire bargaining unit. I find that the duly requested and refused data was relevant to bargaining upon the respective retirement programs. The refusal to furnish the data served only to frustrate meaningful bargaining in this indicated area.

I find that Respondent in this respect has defaulted in its bargaining obligation by withholding from the Union relevant information concerning the operation of its own plan. I further find that Respondent has thereby engaged in unfair labor practices within the meaning of Section 8(a)(5) and, derivatively, Section 8(a)(1) of the Act. See *NLRB v. Goodyear Aerospace Corporation*, 388 F.2d 673 (C.A. 6), *Cone Mills Corp.*, 169 NLRB No. 59; *Weber Veneer and Plywood Co.*, 161 NLRB No. 97, *B. F. Diamond Construction Co.*, 163 NLRB No. 25; and *The Electric Furnace Co.*, 137 NLRB 1077.

4. Undercutting the Union

Preceding and during the contract negotiations, the employees of Respondent's parts department were paid a fixed salary without any commission. The compensation for this group was taken up at several negotiating meetings, including those of September 18 and September 29. This discussion included a contract offer by Respondent on September 18 providing a new form of compensation, namely, a smaller salary plus commission.

However, during the negotiations, Respondent went directly to the employees of the parts department with such a proposal. According to parts man David Hingst, John Ekman, head of the department spoke with the men in April or May, shortly after negotiations started. He proposed that they be paid a monthly salary of \$350 a month plus 1 percent commission, rather than the existing salary of \$425 or \$450 a month without commission. He promised that this would constitute an increase for them. John Ringe of the parts department similarly testified that some time before October 19, Ekman proposed putting such a plan into effect in discussions with several employees. I find that this was in essence the plan later put forward by Respondent on September 18.

As noted, negotiations collapsed on October 18 and Respondent did install this plan on October 19. It has resulted in a small increase for Hingst and no real change of earnings in the case of Ringe.

It is readily apparent that in the face of a designated bargaining representative actively engaged in contract negotiations, Respondent negotiated directly with its employees concerning wage changes, contrary to its obligation to deal with their bargaining representative. I find that by negotiating with its employees concerning wages at a time when wage negotiations with the Union were pending, Respondent took steps which tended to undermine the designated bargaining representative, contrary to its obligations under the Act. I find that Respondent has thereby engaged in conduct violative of Section 8(a)(5) and 8(a)(1) of the Act. *Medo Photo Supply Corp. v. N.L.R.B.*, 321 U.S. 678, 684.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III and occurring in connection with its operations set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it cease and desist

therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that Respondent unconditionally furnish the Union the requested information on its pension plan, refrain from negotiating wage increases directly with employees when wage negotiations with the Union are pending, upon request, bargain with said Union concerning rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody same in a signed agreement

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1 Peter Satori Co., Ltd. is an employer within the meaning of Section 2(2) of the Act

2. International Association of Machinists District Lodge 94 is a labor organization within the meaning of Section 2(5) of the Act.

3. All service department employees of Respondent, including automotive line mechanics, their apprentices and helpers; front-end mechanics, brake mechanics, tune-up mechanics, air conditioning mechanics; automatic transmission mechanics, heavy-duty mechanics, lubrication mechanics; automotive electricians; used car get-ready

mechanics, new car get-ready mechanics; new car detail mechanics; paint and body mechanics, their apprentices and helpers; service writers; pick-up and delivery men; lot men; parts pick-up and delivery men; parts men; and dispatchers, excluding all office clerical and professional employees, salesmen, guards and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. International Association of Machinists District Lodge 94 has been since December 13, 1966, and now is, the exclusive representative of the employees in the above-described appropriate unit within the meaning of Section 9(a) of the Act

5 By refusing to unconditionally furnish the Union the respective balances accrued to employees under its pension plan and by negotiating wage increases directly with employees while wage negotiations were pending with the Union, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the foregoing conduct, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

[Recommended Order omitted from publication]