Zukiewicz, Inc. d/b/a Baldwin Shop 'N Save *and* United Food and Commercial Workers International Union, Local Union 23, AFL–CIO–CLC. Cases 6–CA–24950, 6–CA–25054, 6–CA–25104, and 6–CA–25282

June 27, 1994

DECISION AND ORDER

BY MEMBER STEPHENS, DEVANEY, AND COHEN

On August 13, 1993, Administrative Law Judge Marvin Roth issued the attached decision. The Respondent filed exceptions and counsel for the General Counsel filed a brief in answer to the Respondent's exceptions.[1]

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,[2] and conclusions and to adopt the recommended Order.

[1] Counsel for the General Counsel filed a motion to strike portions of the Respondent's brief, alleging that the Respondent made assertions of fact that were not part of the record. The Respondent filed a response to the motion and counsel for the General Counsel filed a reply. We deny counsel for the General Counsel's motion. We have not, however, relied on any assertion of fact that was not part of the record in this case.

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

The judge found that Store Manager Zukiewicz had told the Union's payroll checker, Haviland, on March 15, 1993, that Artie Devine was no longer employed, but that Zukiewicz had admitted in her testimony that this was not true. The record does not support this finding. Haviland testified that Devine was described as a manager at that meeting. Zukiewicz testified that in an August 20, 1992 meeting with union representatives, she identified Devine as a manager. Further, in her notes of the August 20 meeting Zukiewicz indicated that she had described Devine as part of management. In a written summary of the March 15, 1993 meeting Zukiewicz noted that Devine had not been employed on August 20, 1992. Zukiewicz testified, however, that this was a mistake and that Devine had been employed on August 20, 1992. The judge's erroneous finding does not affect the result reached here.

In referring to the allegations concerning the information requested regarding employees Klelgrowski and Devine, the judge stated that he would deal with the allegations as alleging that the Respondent failed and refused to furnish the information until late January 1983. The correct date should be late January 1993. At fn. 7 in his decision the judge stated that in April 1982 Haviland refused to sign a verification attesting to the accuracy of the information that she had received. Haviland did sign such a verification in April 1992 but refused to do so in May 1992. These inadvertent errors do not affect our decision.

ORDER

The National Labor Relations Boards adopts the recommended Order of the administrative law judge and orders that the Respondent, Zukiewicz, Inc. d/b/a Baldwin Shop 'N Save, Baldwin, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

JoAnn F. Dempler, Esq., for the General Counsel.
Richard Sandow, Esq., of Pittsburgh, Pennsylvania, for the Respondent.
James R. Reehl, Esq., of Pittsburgh, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge. These consolidated cases were heard at Pittsburgh, Pennsylvania, on June 10 and 11, 1993.[1] The charges and amended charges were filed on various dates during the period October 13 through February 22 by United Food and Commercial Workers International Union, Local Union 23, AFL–CIO–CLC (the Union). The second consolidated amended complaint, which issued on April 1, alleges that Zukiewicz, Inc. d/b/a Baldwin Shop 'N Save (Respondent or the Company) violated Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act. The gravamen of the complaint is that the Company allegedly: (1) issued a 3-day suspension to employee Diana Singer because of her union and protected concerted activities, and because she gave testimony to the Board; and (2) failed and refused to furnish the Union with requested information necessary and relevant to the Union's performance of its duties as bargaining representative. The Company's answer denies commission of the alleged unfair labor practices.

All parties were afforded full opportunity to participate, to present relevant evidence, to argue orally and to file briefs. On the entire record in this case,[2] and from my observation of the demeanor of the witnesses, and having considered the briefs submitted by the General Counsel and the Company, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Company, a Pennsylvania corporation with an office and place of business in Baldwin, Pennsylvania, is engaged in the operation of a retail grocery store. In the operation of its business, the Company annually derives gross revenues in excess of $500,000 and annually purchases and receives at its Baldwin facility goods valued in excess of $50,000 directly from points outside the State of Pennsylvania. I find, as the Company admits, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

[1] All dates are for the period from July 1, 1992, through June 30, 1993, unless otherwise indicated.

[2] The General Counsel's motion to correct transcript is granted. I have found other errors which have been noted and corrected.

II. THE LABOR ORGANIZATION AND BARGAINING UNIT INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act. At all times material, the Union has been the designated and recognized exclusive collective-bargaining representative of the Company's employees in a unit appropriate for collective bargaining. The unit, as defined in the recognition clause of the collective-bargaining contract between the Company and the Union which was in effect from February 1, 1990, through January 31, 1993, and the current contract (effective February 1, 1993, through January 31, 1996) is as follows:

> 1.1 The Union shall be the exclusive bargaining agency for all store employees except the owners, store managers, store co-managers and produce managers employed at Baldwin Shop 'N Save or at any future supermarket locations owned by Zukiewicz, Inc., which may be operated in any areas assigned to Local 23 by the United Food and Commercial Workers International Union. Past practices will be observed.

So far as indicated by the present record, the Company operates only the Baldwin store.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Suspension of Diana Singer and Information Request Pertaining to Singer*

Diana Singer began working for the Company on August 24, 1991. Like most of the store employees, she was a student and part-time employee. Singer worked as a cashier, usually 25 to 30 hours per week. The collective-bargaining contract contained a 45-day union-security clause, and Singer was a union member.

Both the 1990–1993 and 1993–1996 contracts provided that employees were entitled to 1-week paid vacation after 1 year of continuous service. For employees hired on or before October 1 (like Singer) ''eligibility for vacations shall be computed from original date of employment.'' Such employees ''earn and accrue vacation each year on the anniversary date of his/her employment,'' and like all employees, ''must take their time off.'' The contract further provided as follows:

> 13.3 Vacation selections will be granted on a seniority basis, so far as possible, preference as to dates being given in the order of length of service. The time of vacation shall be fixed by the Employer at any mutually convenient time during the calendar year but no employee shall be compelled to take a vacation prior to April 15. The Employer shall have the final decision. The employees must make known their vacation preferences by April 15 and, after April 15 the Employer shall have the right to assign vacation times. The Employer will post the sign up sheet for vacation schedules by January 1 of each year.

At the beginning of 1992, Store Manager Joan Zukiewicz posted a ''tentative vacation sheet'' on which employees could indicate requested vacation times.[3] Zukiewicz testified that some time during the spring or summer, in response to inquiries from new employees, she posted a notice concerning vacation eligibility. The list indicated vacation eligibility for recent employees, including Singer (1 week after September 1, 1992, to September 1, 1993). Singer testified that the list was posted some time during the last 3 months of 1992.

Singer entered her name on the tentative vacation sheet, requesting September 15 to 26. Later she scratched her name off the list, because she was not certain she could take time off from school. She did not enter another date. However in early September Singer again changed her mind. On September 5 she handed Joan Zukiewicz' son, Manager Joey Zukiewicz, a written request to take vacation from September 18 to 27. She received no answer. On September 8 she placed a note to Joan Zukiewicz in the cash drawer, renewing her request. Again receiving no response, Singer testified that she went to Joan Zukiewicz and verbally presented her request. Zukiewicz denied the request, explaining that people with more seniority needed the time off. Singer then complained to Paul Brophy, the Union's business representative. Brophy called Joan Zukiewicz, and asked what was the problem. Zukiewicz said that other employees with more seniority then Singer wanted to take off that week. Brophy insisted that Singer was entitled to take her requested vacation time. Zukiewicz told him to look at the contract. Brophy replied that if Singer did not get her requested vacation, he would look into filing charges, meaning an unfair labor practice charge. On September 15 the Union filed an unfair labor practice charge (Case 6–CA–24878), received by the Company the next day, alleging that the Company violated Section 8(a)(1) and (3) by denying Singer a vacation because of her union and concerted activities. Zukiewicz testified that a named employee with more than 10 years' seniority wanted a vacation at the same time as Singer, that two employees were off sick, and that she could not grant Singer's request on such short notice.

Shortly after Brophy's call, about 5:15 p.m. on September 10, there was, as Joan Zukiewicz later indicated in a memo to herself, a ''blow-up'' or ''confrontation'' at the register between herself and Singer concerning vacation time. Zukiewicz asked what was wrong. Singer testified in sum that Zukiewicz was abusive toward her, calling her a spoiled brat and a liar, and asserting that Zukiewicz was sick of her ''shit.'' Zukiewicz testified that Singer never personally asked her for the vacation time. However, Zukiewicz testified concerning the confrontation at the register. Zukiewicz testified in sum as follows: Singer was acting in a rude manner. Zukiewicz asked her what was the matter. Singer indicated that she was angry about not getting her requested vacation time. Zukiewicz was not abusive toward Singer. Zukiewicz explained the ''time frame,'' and that ''we had more senior people looking for vacation who had already requested it under the time frame of the contract.'' Singer said she did not have a copy of the contract, and Zukiewicz suggested she get one from the Union. Singer, in her testimony, admitted that Zukiewicz told her that under the contract people with more seniority get time off first, and Singer replied that she never saw the contract.

[3] Unless otherwise indicated, ''Zukiewicz'' refers to Joan Zukiewicz.

Singer and Zukiewicz testified concerning another sequence of events which eventually culminated in Singer's suspension. Singer testified in sum as follows: On Thursday, September 10, prior to her confrontation with Zukiewicz, Singer was at school (Community College). Another person accidently knocked her down some steps. She was not aware of any injury and did not then report the matter. The following day, at work, she told Ralph, the produce manager, that her back was bothering her and she was going to the hospital. She went, X-rays were taken, and she was given discharge instructions and a request by the attending physician that she be excused from work on September 11 and 12. Singer returned to the store and gave the papers to Joan Zukiewicz. She told Zukiewicz that a black man age 23 to 26 knocked her down. She did not say that she reported the incident to school security. Zukiewicz commented that no one that age would go to college, but she did not request further documentation. Singer did not work on September 11 or 12. She went home and followed the discharge instructions. Singer reported to work on September 13, but complained to Ralph that her back hurt. He sent her home. The following day (September 14), at school she was almost knocked down again. Her back irritated her, and she asked the school nurse for a note. Singer referred to the prior injury, but did not make clear that the injury occurred at school. The nurse told her to see the doctor at the hospital, and made no report concerning the matter. Singer again went to the hospital. The doctor told Singer that her back was bruised. She again received discharge instructions, together with the physician's request that she be excused from work for 24 hours. The following day (September 15) Singer gave Joan Zukiewicz the papers. Zukiewicz simply said ''okay'' and Singer did not work that day.

As indicated, the Union filed its unfair labor practice charge on September 15. On September 18 Singer received notice of a certified letter from Joan Zukiewicz, dated September 15 but postmarked September 17 ''pm.'' Zukiewicz stated in sum that on September 11 Singer said she could not work due to being pushed at school, and that she ''made out a report at school.'' Zukiewicz requested ''as your employer'' that Singer give her a copy of the report within 5 days. Singer initially testified that she did not see the letter, but subsequently admitted that she did receive the letter. Singer further testified in sum as follows: When the 5 days were up (apparently September 20) Zukiewicz asked her for the report. Singer told her she forgot it. Singer did not tell Zukiewicz that there was no report. Business Representative Brophy advised her that she fulfilled her obligation by furnishing the physicians' excuses. Singer asked Zukiewicz why she wanted the report. Zukiewicz answered that the doctors' excuses weren't good enough. On September 21 Singer handed Zukiewicz a letter which she had prepared with assistance from Brophy and union counsel. The letter, in sum, described the September 10 incident, stated that security was not notified and no report filed, and advised Zukiewicz that she could contact the doctors if she had further questions. Zukiewicz told Singer that the letter was not good enough. That same day (September 21) Brophy appointed Singer as union shop steward. As will be discussed, there is a fact question as to when the Company received notice of her appointment.

By certified letter dated and postmarked October 6, and received October 7, Zukiewicz informed Singer that she was suspended for 3 days beginning Monday, October 12 ''for insubordination, frequent unexcused calling off work and apparent lying.''[4] Zukiewicz indicated that this action was triggered by Singer's failure to supply the school report. She added that the suspension would be lifted if Singer brought the report ''that you so adamantly said you made out.'' On October 9 Singer handed Zukiewicz a letter, which she prepared on advice of Brophy and union counsel, enclosing the school nurse's summary of her interview with Singer on September 18. In her summary, the nurse described Singer's narrative of the events beginning with her fall on September 10. The nurse indicated that Singer first came to her on September 14, and that at the time, she did not realize that the September 10 incident occurred on campus. Zukiewicz told Singer that this was not the report she was expecting. Singer served the suspension.

Joan Zukiewicz testified in sum as follows: On September 11 a cashier reported to her that Singer was telling some employees that she was pushed down by a black kid at school. Zukiewicz asked Singer what happened. Singer said that a kid ran past her at school, knocked her down steps, her leg was hurt, and she reported the incident to school security. Zukiewicz asked her for the report, because ''we investigate . . . on any kind of a problem on any kind of an activity (involving injury) whether it's outside the store or inside the store.'' Singer said she would get the report. She did not say there was no report, and she worked her shift that day. Subsequently Singer made excuses for failing to bring in the report, e.g., that she was late for school. Zukiewicz was concerned because honesty and trustworthiness was particularly important for a cashier. Zukiewicz rejected Singer's September 21 letter because she wanted the school report. On September 25 and 28 Zukiewicz again asked for the report. Each time Singer gave an excuse for not bringing in the report. On September 28 or 29, Zukiewicz handed Singer a note informing her that unless Singer produced the note within 5 days, ''further disciplinary action may have to be taken.'' Zukiewicz called Community College, and was informed that all such incidents on campus were documented, but Zukiewicz would have to request such documentation from the student. Zukiewicz was concerned because Singer was not being truthful. When Singer again failed to produce the report, Zukiewicz issued the suspension letter.

Business Representative Brophy testified that on September 21 he appointed Singer as union shop steward. Union receptionist Carol Bacco testified in sum that on September 21 she prepared, stamped, and deposited for mail pickup a letter addressed to ''Baldwin Shop 'N Save,'' informing the Company of Singer's appointment as steward. It is undisputed that by letter dated December 14 addressed to ''Joan Zukiewicz'' at ''Baldwin Shop 'N Save,'' the Union informed the Company of Singer's appointment effective September 21, and that Zukiewicz received the letter. Zukiewicz testified that the December 14 letter was the first notice she received that Singer had been appointed shop steward. I do not credit Zukiewicz in this regard. I find that Zukiewicz re-

[4] The letter indicated that suspension would begin on October 11. However in context it is evident that Zukiewicz confused dates and that suspension would begin on Monday.

ceived the September 21 letter and knew by late September that Singer was designated union shop steward.

The prevailing rule of law is that where one witness testifies that he mailed a certain letter and the alleged recipient testifies that he never received the letter, the questions of whether the letter was mailed and received are not resolved by any conclusive presumption; but rather, present questions of fact. IX Wigmore, *On Evidence*, par. 2519; see also, *Machinists District 9 (Marvel-Schebler)*, 237 NLRB 1278 fn. 6 (1978). Singer testified that she said nothing to Zukiewicz about her status as steward prior to the January 1993 contract negotiations. However on October 9 the Union filed a grievance over Singer's suspension, which Zukiewicz admittedly received. The grievance identified Singer as the steward, but the Company raised no question in this regard. By letter dated February 29, 1992, Zukiewicz informed the Union that all union correspondence ''must be sent directly to Joan Zukiewicz at Baldwin Shop 'N Save,'' and that any other correspondence ''shall be considered as non-correspondence and will not [sic] recognized.'' As indicated, the Union's September 21 letter, unlike the December 14 letter, was not addressed directly to Zukiewicz. The Company's February 29, 1992 policy statement takes on added significance in light of strange developments involving Singer's union dues deductions after September 21. A steward paid less union dues than a rank-and-file union member. An outside firm, Charley Brothers, Inc., processed payrolls for union-represented firms, including checkoff of union dues. By letter dated September 21, the Union informed Charley Brothers of Singer's appointment, and requested that her dues be adjusted to the steward rate as of October 1. However, Zukiewicz testified that Charley Brothers cannot make changes in dues deductions for company employees without her authorization. Nevertheless, Singer's dues were deducted at the steward rate in October. Thereafter, in November and December, her dues were deducted at the higher, rank-and-file member rate. Union Secretary-Treasurer James Bono testified that he sent the Union's December 14 letter when he learned of the upward adjustment. Zukiewicz, in her testimony gave a rather lame, hearsay explanation. According to Zukiewicz, she learned after December 14 that an employee at Charley Brothers initially changed Singer's dues to the steward rate, and then changed the rate a second time because she thought she was wrong the first time. It is evident from the October dues adjustment, that Charley Brothers received notice in September that Singer was appointed steward. It is unlikely that Charley Brothers would make the first change, and even more unlikely, the second change, without checking with or being authorized by the Company. I find that Zukiewicz received the Union's September 21 letter, but instructed Charley Brothers to rescind the dues reduction, either because the letter failed to comply with her declared policy, or because Zukiewicz did not wish to admit that she knew of Singer's appointment at the time she suspended Singer.

Returning to the exchanges between Zukiewicz and Singer, I find that Singer told Zukiewicz that she reported the September 10 incident, and at least impliedly promised to bring the report. As indicated, Singer testified that after receiving Zukiewicz' written request she told Zukiewicz that she forgot to get the report. Singer would not have said this without indicating that there was a report and she intended to bring it to Zukiewicz. However, I find that Zukiewicz did not request the report prior to receiving the Union's unfair labor practice charge. Zukiewicz had a practice of writing self-serving memoranda, either in correspondence or notes to herself, or both. This practice may have stemmed from her experience in a prior unfair labor practice case (which will be discussed). Zukiewicz tended to load such memoranda with any facts which she believed might justify her position. If Zukiewicz had requested the report prior to sending her letter dated September 15, it is probable that she would have so indicated in the letter. However, the letter unambiguously purports to be an initial request. In view of the postmark dated September 17 p.m., I find that Zukiewicz actually prepared and sent the letter after she received the unfair labor practice charge.

Zukiewicz' suspension letter was demonstrably false in one significant respect. Zukiewicz told Singer that she was suspended in part for ''frequent unexcused calling off work.'' However, the Company failed to produce any evidence that Singer had a record of excessive or unexcused absences. Singer testified without contradiction that Zukiewicz and the produce manager excused (and the produce manager on one occasion even directed) her absences related to the September 10 injury. Zukiewicz, the Company's only witness, did not deny Singer's testimony in this regard.

With respect to the September 10 confrontation between Zukiewicz and Singer, I credit Singer's testimony to the effect that Zukiewicz initiated the confrontation and engaged in a vituperative outburst against Singer. I have reservations concerning the credibility of both Zukiewicz and Singer. However, Singer was by far the more credible witness. As found, the evidence indicates that Zukiewicz gave a patently false reason for suspending Singer, falsely denied any knowledge of Singer's status as steward prior to December 14, and backdated her first letter to Singer. Zukiewicz was demonstrably determined to avoid or conceal any facts which might prejudice her defense. In contrast Singer candidly admitted that she told Zukiewicz that she forgot to bring the report, although she could easily have denied that she ever told Zukiewicz there was a report. Except where otherwise indicated, I have credited Singer's testimony where it conflicts with that of Zukiewicz.

I find that the Company suspended Singer in reprisal for Singer's determined pursuit of her grievance over denial of a vacation request, specifically, by enlisting the Union's aid, including filing of an unfair labor practice charge. Zukiewicz made clear, by her outburst on September 10, that she was angry over the fact that Singer complained to Business Representative Brophy, and invoked the Union's aid, including the possibility of a charge. The following day Singer did not approach Zukiewicz to describe the incident at school. Rather, Singer was talking to other employees. Nevertheless Zukiewicz, for no apparent legitimate reason, injected herself into the matter, summoned Singer, questioned her about the incident, and suggested she was lying. Zukiewicz accepted the proffered physicians' excuses and hospital discharge instructions without comment. By September 16 Singer was back at work. However on receiving the unfair labor practice charge, Zukiewicz promptly revived the matter. She demanded that Singer produce the school report. As indicated, Zukiewicz testified that she did so in accordance with standard company practice to investigate any incident involving

''somebody being hurt,'' even if the accident occurred away from work. In fact, the Company had no such practice. The Company failed to produce any documentary evidence to indicate that it ever requested verification of injury other than doctor's excuses. The parties stipulated that the Company had no records during the period from January 1, 1990, to the date of this hearing (other than that involving Singer), which would show that the Company requested unit employees to furnish verification other than doctor's excuses. This, notwithstanding that another employee was absent from work for a lengthy period of time during the summer of 1992, by reason of a fall and resulting injuries away from the store. Zukiewicz also testified that she pursued the matter because she was concerned about Singer's honesty and trustworthiness. However, Zukiewicz admitted in her testimony that she had no reason to question Singer's honesty in her work as cashier, and that Singer had never been written up for shortages. Zukiewicz recognized until September 16 that her only legitimate concern was Singer's physical ability to perform her job. That interest was satisfied by the documents which Singer brought to her. After receiving the unfair labor practice charge, Zukiewicz revived and relentlessly pursued the matter. Zukiewicz proceeded to suspend Singer notwithstanding that Singer provided Zukiewicz with her written statement and that of the school nurse, fully explaining the facts and making clear there was no other report which could be furnished.

I am not persuaded that Singer's appointment as shop steward was a factor in Zukiewicz' decision to give her a 3-day suspension. By September 21 Zukiewicz had embarked on the course of action which led to the suspension. The store had been without a steward for some time, the previous steward having left the Company's employ. Zukiewicz testified that she was pleased to have a steward, as this relieved her of paperwork functions which would normally be performed by the steward. I have no reason to question her assertion. Diana Singer testified that Zukiewicz did not indicate any hostility toward her in her role as steward. However, as previously discussed, Zukiewicz' testimony concerning her knowledge of the appointment, reflects adversely on her credibility.

On the basis of the Company's knowledge of and outspoken hostility toward Singer by reason of her protected activity, the timing of the Company's actions, and the false and pretextural reasons advanced by the Company for suspending Singer, the General Counsel presented a prima facie case that the Company suspended Singer because she sought union aid in support of her grievance, including the unfair labor practice charge filed on her behalf. As the Company's explanation for suspending Singer was not credible, it follows that the Company failed to meet its burden of establishing that it would have suspended her in the absence of such activity. Therefore the Company violated Section 8(a)(1), (3), and (4) of the Act.

On October 19 the Union withdrew its unfair labor practice charge. Singer asked Business Representative Brophy when she could take her vacation. By letter dated November 18, Brophy, noting there were about 6 weeks left in the calendar year, asked Zukiewicz to notify the Union and Singer, by November 24, when ''union steward'' Diana Singer could take her vacation. Singer and Brophy testified in sum that they understood Singer had to take her vacation by the end of 1992. The Company did not reply to the letter. On December 14 Singer placed a note to Zukiewicz in the cash drawer, requesting to take her paid vacation from December 27 to January 2. Singer received no response. In January Singer attended contract negotiations in her capacity as steward. At that time Singer again raised the matter of her vacation. Zukiewicz explained that Singer could take her accrued vacation time in 1993. Singer testified that this was the first time she was so informed. By letter dated January 26 to union counsel, with a copy to Singer, company counsel explained Singer's vacation rights. Company counsel stated in sum as follows: Vacation time accrued from anniversary date to anniversary date. However, scheduling of vacations was done on a calendar-year basis in accordance with the contract. Singer delayed in selecting vacation times in late 1992, and such times were not available. However, she did not lose her accrued 1992 vacation time, but could schedule such time, up to her next anniversary date, to be used before September 1, 1993. Similarly she had until September 1, 1994, to use her 1-week vacation time accrued as of September 1, 1993. Singer should make her request as soon as possible, to ensure maximum likelihood that her preference would be available.

Singer took her accrued vacation in April 1993 and arranged to take a second vacation in late August 1993 (time accrued in 1993). Joan Zukiewicz testified that in September she told Singer that she would not lose her vacation time, but would ''get it from her one year of employment to the second year of employment.'' The General Counsel contends that the Company violated Section 8(a)(5) by failing and refusing from November 18 to January 26 to furnish the Union with the information requested by the Union in its November 18 letter.

The collective-bargaining contract was silent as to the timespan during which employees could take their accrued paid vacation. Determination of vacation times was left to the Company's discretion, subject to certain contractual limitations. The contract stated that ''the time of vacation shall be fixed by the Employer at any mutually convenient time during the calendar year,'' thereby leaving open the possible interpretation that ''calendar year'' meant the year in which leave accrued. The Company's posted eligibility list, which the Company never sent to the Union, did not make clear whether it referred to accrual or use dates, and did not make clear whether and during what period of time employees were required to use or otherwise lose paid vacation leave. I credit Singer's testimony that she did not learn until the January negotiations, that she could use her accrued leave after January 1, 1993. Even on the basis of Zukiewicz' testimony (which I do not credit), it is evident that Zukiewicz did not make clear to Singer when she could take her vacation.

The matter of when Singer could take her paid vacation pertained to the wages and working conditions of a unit employee. Therefore, the Union was entitled to such information. Nevertheless the Company intentionally delayed for more than 2 months before giving a simple answer to a simple question. It is a violation of Section 8(a)(1) and (5) for an employer to fail or refuse to furnish to a union any information which is relevant and necessary for the Union to have in order to fulfill its duty as bargaining representative. It is also an unfair labor practice for an employer to fail or refuse

to furnish such information in a timely manner. See in particular, *Postal Service*, 308 NLRB 547, 551 fn. 1 (1992). See also *EPE Inc*., 284 NLRB 191, 200 (1987), enfd. in pertinent part 845 F.2d 483 fn. 2 (4th Cir. 1988); *Seiler Tank Truck Service*, 307 NLRB 1090 at 1101 (1992); *FMC Corp*., 290 NLRB 483, 489 (1988).[5]

I find that the Company delayed unreasonably and arbitrarily in giving the Union the requested information. Singer did not lose her accrued vacation time. However the Company kept both Singer and the Union in the dark, forcing Singer to request alternative and possibly unwanted vacation times because she believed that otherwise she would lose her accrued time. The Company had no valid reason for waiting over 2 months to furnish the requested information. The Company thereby violated Section 8(a)(5) and (1) of the Act.

B. *Other Union Requests for Information*

1. Requests pertaining to actual or asserted nonunit personnel

In addition to the unit description previously quoted, the collective-bargaining contract (both 1990–1993 and 1993–1996) provided in pertinent part (art. 14.1) that: ''The owners and/or the managers can perform their work as in the past. . . . Supervisors, contact men or professional employees are permitted to instruct, supervise, advise and check operations and perform other related duties within the stores, however, they shall not do the production work of the bargaining unit.''

On November 12, 1991, the Company and the Union executed a ''Dispute Resolution Agreement,'' in conjunction with an informal Board settlement of consolidated Cases 6–CA–23409 and 6–CA–23737. The unfair labor practice proceeding involved, in part, allegations that the Company failed or refused to deduct or transmit union dues and initiation fees pursuant to their union-security agreement. The Dispute Resolution Agreement included the following pertinent provisions:

> 8. The Union payroll checker shall be given access to the following:
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> (1) Payroll records of Union employees and employees awaiting Union membership;
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> (2) Payroll records of management employees, limited solely to the records' identification of the names of said employees and specifically not including any other information with regard to said management employees, and specifically further not including any financial information with regard to said management employees;
>
> (3) No information concerning family members of the owners except that the Union will be notified, upon request, of the number of family members employed and, in the event a new family member works at the store, who has not previously been so employed, then, and only then, the Employer will provide to the Union payroll checker the name of this family member and the family relationship.
>
> By providing this information, the Employer specifically reserves all rights with regard to past practices and the Collective Bargaining Agreement; however, the Employer agrees to proceed in the manner identified above as a settlement of the dispute.
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> . . . .
>
> 10. This Agreement is acknowledged by the parties to resolve specified issues and disputes which have occurred and does not establish any precedent with regard to any future issues which may arise.
>
> 11. This entire Agreement is entered into by the parties for the purpose of promoting present and future amicable relations, and the parties acknowledge that any future issues will be seriously addressed to achieve amicable resolution.

The Dispute Resolution Agreement did not purport to define the terms ''management employees'' and ''family members.'' Testimony and documentary evidence adduced in the present proceeding indicates that ''family members'' were excluded from the bargaining unit, although their exact status was not made clear on the record. The General Counsel states in its brief that: ''It is undisputed that according to the past practices of the parties, these family members were excluded from the bargaining unit.''

The complaint alleges that since about October 26 the Union has requested and the Company has failed and refused to furnish the Union with the following information: ''The status of Jill Klelgrowski as to whether she is part-time, full-time or student and her address, social security number and starting date.''[6] The complaint also alleges that since about November 30, the Union has requested and the Company has failed and refused to furnish the Union with the status, hire date, social security number, and address for Artie Devine. In its brief, the General Counsel moved to amend the complaint to allege a delay in production of the information concerning Klelgrowski and Devine until about late January. The complaint further alleges that about February 2, the Union by letter requested the Company to furnish the following information:

> 1. Names of all persons who are on the payroll of or regularly perform work for Baldwin Shop 'N Save and who the Company contends are excluded from the bargaining unit;
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> 2. the basis for their exclusion from the bargaining unit (i.e., supervisor, owner, etc.);
>
> 3. job or duties performed by each such person;
>
> 4. date that each such person began working for Baldwin Shop 'N Save;

[5] The Company argues (Br. 4) that ''a delay in providing information is not an unfair labor practice.'' The cases cited by the Company do not support that proposition. Rather, they turn on the reasonableness of the delay. In *Decker Coal Co*., 301 NLRB 729, 733 (1991), the Board found the delay to be reasonable in light of the complexity of the requested information, and a misunderstanding as to the information sought. In *Hostar Marine Transport Systems*, 298 NLRB 188, 196 (1990), the requested information pertained to contract negotiations. The Board found in sum that the delays did not disrupt negotiations, and (unlike the present case), the delays ''were not lengthy and not deliberate.''

[6] The record does not indicate the correct spelling of this name. Spelling herein is as stated in the complaint and answer.

5. total hours per week worked by each such individual during the last three (3) months; and

6. family relationship, if any, if that is the alleged basis for exclusion.

The complaint alleges that from about February 2 until about March 15, the Company failed and refused to furnish the information requested in item 1, and since February 2 the Company has failed and refused to furnish the information requested in items 2 through 6.

Jo Ann Haviland is the Union's membership service representative payroll checker. She reports to Union Secretary-Treasurer Bono. Haviland is responsible, on a monthly basis, for examining the payroll sheets of signatory employers and comparing them with the Union's record, known as a BA sheet. Haviland looks for names, addresses, social security numbers, start dates, and positions of new hires, changes in employee status, e.g., from part time to full time, and termination dates. She brings the information to the Union's office, where it is entered on the BA sheet, in order to keep union records current. Haviland has been performing this function at the Company's store since November 1990. The payroll sheets shown to Haviland do not contain information on nonunit personnel, except for the names of management personnel. The sheets contain pay rates for unit employees. However Haviland does not compile such information, and the Union does not record pay rates on its BA sheets. As indicated, Haviland is primarily responsible for obtaining information from the Company's payroll records. She also signs up new members. She is not responsible for determining or resolving the accuracy of such information. Bono is responsible for determining whether union dues and initiation fees are properly deducted and paid. Business Representative Brophy is responsible for determining whether employees are paid at the proper rate.

In June 1992 Haviland, orally and by letter, requested Joan Zukiewicz to furnish the names and positions of company management personnel. Zukiewicz responded that this was not part of the Dispute Resolution Agreement, and Haviland, as payroll checker, was ''out of line asking for this information.'' On August 20 Bono met with Zukiewicz in an effort to resolve outstanding union concerns that the Company was failing to provide accurate or complete information concerning unit members, and failing to properly deduct or remit dues and initiation fees. Bono testified in sum as follows: Zukiewicz identified only three persons as managers; specifically, George Powell as meat manager, Ralph Maeslin as produce manager, and Patricia Lombardi as deli manager, trainer, and computer operator. Zukiewicz did not mention either Jill Klelgrowski or Artie Devine. She identified four new hires. She also told Bono that on the average some 8 to 11 family members worked in the store. Bono recorded the names given to him. Zukiewicz testified in sum as follows: There are some 18 to 21 union members in the store. Family members are excluded from the unit. There are about six to eight family members working in the store. Anyone with a key to the store is a manager. When the parties negotiated the Dispute Resolution Agreement, she identified the managers and family members, but did not mention Artie Devine because ''he wasn't around that much.'' She verbally told Haviland several times that Klelgrowski and Devine were managers. Zukiewicz initially testified that she said the same thing to Bono at their August 20 meeting, but subsequently testified that she mentioned only Devine. At that meeting, she gave Bono the names of four management personnel (Powell, Maeslin, Lombardi, and Devine) without indicating their positions, and said there were about 10 family members in the store. She recorded in her notes of the meeting that she gave this information to Bono. When Bono asked for more information, she referred to the Dispute Resolution Agreement, and Bono did not inquire further.

I credit the testimony of Haviland and Bono, and I find that Zukiewicz did not identify either Klelgrowski or Devine as management personnel. As indicated, Zukiewicz testified that on several occasions she told Haviland that Klelgrowski and Devine were managers. However in her letter of May 14, 1992, to Haviland, she asserted as indicated that Haviland was ''out of line'' by asking for the names of management people. Her letter is inconsistent with her testimony. Also as indicated, Zukiewicz was inconsistent in her testimony as to whether she identified Klelgrowski. If Zukiewicz refused to identify the positions of the asserted supervisory personnel, then it is unlikely that Bono would have identified in his notes (as he did) the specific positions or duties of Powell, Maeslin, and Lombardi.

The collective-bargaining contract contains meatcutter rates of pay. Zukiewicz testified that meatcutting is bargaining unit work. Diana Singer testified in sum as follows: Artie Devine works part time as a meatcutter in the meat department. He does not work there as a manager. George Powell manages the meat department. Jill Klelgrowski worked in the store in August, September, and October 1992, was out for about 4 months, returned and is currently working in the store. Singer observed her working as a cashier in the deli department. She did not appear to be working as the manager. Nancy Zukiewicz manages the deli department. The work of a cashier, like meatcutting, is unit work. (As indicated, Singer works as a cashier.) Klelgrowski told Singer that she worked ''for the deli'' but did not have to be in the Union and would not pay union dues. Devine's daughter told Singer that Devine worked there 6 years as a meatcutter and did not have to pay union dues. After she became shop steward, Singer reported this information to Business Representative Brophy, saying she thought they should be in the Union. Brophy testified that on receiving this information, he told Secretary-Treasurer Bono and payroll checker Haviland that Klelgrowski and Devine were doing unit work but were not union members. Haviland testified in sum as follows: On October 26, after returning from her payroll check at the store, Brophy asked if she had information on Klelgrowski. Haviland did not. She called Zukiewicz and asked about Klelgrowski's status. Zukiewicz asked where she got the name. Haviland said Brophy gave her the name. Zukiewicz asked where he got the name. Haviland did not know. After checking with Brophy, she called back and told Zukiewicz that Bono requested the information. Zukiewicz responded that if she learned where Bono got the name, she might give the information, and hung up. Thereafter Haviland was unable to reach Zukiewicz. By letter dated November 3, Haviland, at Bono's direction, requested Zukiewicz to furnish the status of Klelgrowski, whether part time, full time, or student, and her address, social security number and starting date, and to do so by November 13. The Company did not respond to the letter. By letter dated November 30, Haviland,

at Brophy's direction, requested such information for Artie Devine, renewed the Union's request for the information on Klelgrowski, and requested the information by December 10. The Company did not respond to this letter. The payroll sheets furnished by the Company for Haviland's examination, did not contain the names of Klelgrowski or Devine. As indicated, I do not credit Zukiewicz' assertion that she repeatedly told Haviland that Klelgrowski and Devine were managers. I credit Haviland.

In January 1993 the Company and the Union commenced negotiations for a new contract. Joan Zukiewicz testified in sum as follows: At a negotiating session on January 24, a question was raised concerning Klelgrowski and Devine. Zukiewicz prepared and gave to Jack Lewis, the Union's chief negotiator, a memo dated January 24, stating that ''Art Devine is management'' and that: ''Jill Kiliarowski [sic] was a management employee. She is no longer employed.'' However, January 24 was a Sunday, and there were no Sunday negotiating sessions. As a courtesy to the Union, she explained their functions. Devine has been working at the store for some 20 years, but never worked on a regular basis. Devine's function is presently to train employees. That function is always performed by managers or family members. Devine sometimes cuts meat, because he is training two employees. They are David Kineer, Zukiewicz' son-in-law, and Robert Staniszewski, a cousin but a union member. However the only personnel presently in the meat department are Manager George Powell and trainee Kineer. Devine has also substituted for persons ''doing management work'' when they were out sick or on vacation. Any involvement with money or inventory is handled by management people. Jill Klelgrowski was also a management employee who trained employees. She also assisted in office work, specifically, in pricing, which was never done by nonmanagement personnel. She left the Company in December 1992. The Union negotiators did not ask any further questions about Klelgrowski or Devine. Union Chief Negotiator Lewis initially testified that he did not recall discussion of Klelgrowski and Devine, but subsequently admitted that the Company gave an explanation. He told the Company that he would not get involved in charges or grievances over exclusions. The General Counsel in its motion to amend complaint (Br. 29) indicates that it accepts Zukiewicz' testimony concerning the negotiating session. As the General Counsel's present contention is encompassed within the pertinent complaint allegations, no formal amendment of the complaint is necessary. I shall deal with the pertinent allegations as alleging that the Company failed and refused to furnish the requested information until late January 1983.

By letter dated February 2, as alleged in the complaint, Secretary-Treasurer Bono requested Zukiewicz to furnish the information (items 1–6) concerning ''persons excluded from bargaining unit.'' Jack Lewis, the Union's coordinator of collective bargaining, testified that the Union made its request because they needed verification as to whether the information they received was correct. Alluding to the matter of Klelgrowski and Devine, Lewis testified that some employees questioned why others were not paying dues, although they were not managers. Secretary-Treasurer Bono testified that at the present time, he does not have reason to believe that anyone other than Devine and Klelgrowski were not properly reported.

The Company did not respond to the Union's February 2 letter. On March 15 Haviland went to the Company's store for a monthly payroll check. Acting on Bono's instructions, she presented the Union's February 2 letter, and asked for the requested information. Zukiewicz circled certain names on the payroll sheet, and wrote an ''X'' beside each of the items 2 through 6 on the letter. She told Haviland that the Union was entitled only to the names. For the first time, Zukiewicz told Haviland that Devine was a manager. She told Haviland that Devine was no longer employed by the Company, but admitted in her testimony that this was not true. Zukiewicz testified that in her view, the Union was entitled only to the names of management personnel, in accordance with the Dispute Resolution Agreement.

As a general rule, a union as bargaining representative is presumptively entitled to information concerning the terms and conditions of employment of unit employees. The employer has the burden of showing irrelevance or other reason why such information should not be furnished. When the requested information ostensibly relates to persons outside the bargaining unit, the Union must demonstrate a reasonable basis to suspect that a contract violation has occurred, or that the information is relevant to bargainable issues or would be of use to the Union in carrying out its statutory duties and responsibilities. This ''discovery-type standard'' decides nothing about the merits of the Union's contractual claims. Actual violations need not be established in order to show relevancy. The Union's basis for its request may consist in part or even entirely of hearsay or inaccurate information, including complaints from union members. It is not necessary that the Union's information be consistent only with a contract violation. Moreover, the requesting union need not inform the signatory employer of the factual basis for its requests, but need only indicate the reason for its request. Such reason may also be self-evident or indicated by the employer's own representations. See *Corson & Gruman Co.*, 278 NLRB 329, 333–334 fn. 3 (1986), enfd. 811 F.2d 1504 (4th Cir. 1987), and cases cited therein; *AGA Gas*, 307 NLRB 201 fn. 2 (1992); *Lamar Outdoor Advertising*, 257 NLRB 90, 93 (1981).

Applying the foregoing principles to the facts of the present case, I find that the Union had and demonstrated a reasonable and proper basis for requesting the information concerning Klelgrowski and Devine, and for the general request set forth in its February 2 letter.

The Dispute Resolution Agreement, as indicated, refers to ''management employees,'' without defining that term. However, the collective-bargaining contract states that the bargaining unit consists of ''all store employees except the owners, store managers, store co-managers and produce managers.'' Therefore, the Dispute Resolution Agreement may reasonably be interpreted as referring to the contractually excluded categories, rather than, as suggested by Zukiewicz in her testimony, anyone she chooses to designate as ''management employees.'' As indicated, Zukiewicz variously testified that a management employee, in her opinion, could be anyone who has a key to the store, trains other employees, prices goods, or has any involvement with money or inventory. This, notwithstanding that cashiers, who handle money, are included in the bargaining unit. It is evident, in light of Zukiewicz' free-wheeling definitions, that a real question is

presented as to whether the Company has improperly excluded employees from the unit.

The Dispute Resolution Agreement required the Company to make available to the union payroll checker, payroll records showing the names of management employees. Nevertheless, prior to March 1993 the payroll records shown to Haviland never contained the names of Klelgrowski and Devine as either unit or management employees. The Company does not contend that either employee was or is a family member. Zukiewicz conceded in her testimony that she knowingly withheld Devine's name during the 1991 settlement negotiations, and in March 1993, falsely told Haviland that Devine no longer worked for the Company. It is undisputed that both Klelgrowski and Devine were working at the store during October and November, when the Union requested information concerning those employees. On the basis of these facts alone, it is evident that the Union had reasonable cause to believe that both were unit employees, the Company was failing to so report them to the Union, and that Zukiewicz understood this to be the basis for the Union's request.

The Union had additional information on which to base a reasonable suspicion that Klelgrowski and Devine were unit employees. Union Steward Singer informed the Union that Devine worked as a meatcutter (unit work), Klelgrowski worked as a cashier (also unit work), neither appeared nor claimed to be a manager, and both were employed at the store at the time of the present hearing. Zukiewicz testified in sum that Devine cut meat because he trained employees, that Klelgrowski also trained employees and did pricing, and that she no longer worked for the Company. At most, Zukiewicz' assertions raise a fact question which would warrant further investigation. Moreover, even on the basis of Zukiewicz' testimony, the Union has reason to believe that Devine and Klelgrowski were performing unit work. Zukiewicz did not claim that either employee was an owner, store manager, store comanager, or produce manager. She also testified that only managers or family members train employees. However, not all family members are managers. Some perform unit work, but are excluded from the unit simply on the basis of the prior practice to exclude family members. Therefore it does not follow that the work which they perform is not unit work. At least, there is a substantial question in this regard.

In light of the Union's experience in the matters of Klelgrowski and Devine, the Union had a reasonable basis for at least suspecting that the Company was failing to report the identity of unit employees under the guise of asserting (when discovered) them to be management personnel, or simply concealing their identity. Therefore, the Union was warranted in making its February 2 request (items 1 through 5) concerning ''persons excluded from bargaining unit.'' Items 1 through 5 were reasonably calculated to elicit information which would assist the Union in investigating whether such persons were improperly excluded from the unit. Such information was relevant and necessary to the Union's responsibilities in determining whether there were contract violations, and in representing such employees. The letter refers to persons ''who the Company contends are excluded from the bargaining unit.'' By using such terminology, the Union put the Company on notice that the Union was questioning whether they were properly excluded, thereby indicating the reason for its request. I further find that the Union had a reasonable basis for requesting information set forth in item 6, i.e., ''family relationship, if any, if that is the alleged basis for exclusion.'' As indicated, there is no contractual reference to family members, and the Dispute Resolution Agreement did not define that term. Zukiewicz testified that her cousin, who worked in the store, was a union member. Given these facts and the Company's shifting and vague answers as to the number of family members working in the store, the Union had a reasonable basis for requesting information concerning persons excluded on the alleged basis of family membership. Again, as the Union referred to the Company's contention and alleged basis for exclusion, the Union put the Company on notice that it was questioning whether such persons were properly excluded from the bargaining unit.

I further find that the Union did not waive its right to obtain the requested information by entering into the Dispute Resolution Agreement. The Board has long held that waiver of a bargaining right, including the right to obtain information, will not be found unless such waiver was clear and unmistakable. In the present case, there was no clear and unmistakable waiver. In their negotiations which culminated in the agreement, the parties never discussed or agreed that paragraph 8 would constitute the exclusive means and manner by which the Union could obtain personnel information. The agreement itself does not so state or infer. On the contrary, paragraph 10 indicates that the agreement was intended to resolve the then pending disputes between the parties, and ''does not establish any precedent with regard to any future issues which may arise.'' More significantly, the agreement did not give the Company the right to unilaterally determine which personnel were excluded from the unit. The Union had reason to believe that the Company was failing to properly identify unit employees, and was entitled to information which would aid in investigating the matter. I find that the procedure established in paragraph 8 applied where was no question concerning the status of personnel as ''management employees'' or ''family members,'' and did not limit or preclude the Union from questioning such alleged status. Moreover, as discussed, the Union had reason to believe that the Company was failing to comply with its obligations under paragraph 8. Therefore the Union was entitled to additional information in order to determine the accuracy of the Company's representations.

In sum, I find that the requested information was relevant and necessary to the Union's performance of its duties as bargaining representative. I also find that the Company violated Section 8(a)(5) and (1) by arbitrarily and unreasonably failing and refusing, until late January, to furnish requested information concerning the status of Jill Klelgrowski and Artie Devine, and until mid-March, to furnish the names of persons on the company payroll, who the Company contends are excluded from the bargaining unit. I further find that the Company violated and is violating Section 8(a)(5) and (1) by failing and refusing to furnish the information requested by the Union in its letter of February 2, including, if applicable, information pertaining to Klelgrowski and Devine.

2. Requests preliminary to contract negotiations

By letter dated November 5, Union Director of Collective Bargaining George Yurasko informed the Company that Jack

Lewis would be the Union's contract negotiator. Yurasko requested the Company to promptly furnish, in order ''to prepare for negotiations,'' a current seniority list of unit employees, including name, date of hire, classification (including student status, if applicable), and current rate of pay. The Union renewed its request in a followup letter dated December 22, signed by Lewis. The Company did not respond to the Union's request until the first negotiating session on January 11. At that session the Company presented Lewis with a seniority list of unit employees indicating their names, date of hire, whether full or part-time, and student if applicable, but not pay rates. The Company verbally informed Lewis of the pay rates (and whether the students were in high school or college), and Lewis wrote in the information on the list. However, Union Steward Singer informed Lewis that the information was inaccurate in that two employees were actually paid more. By letter dated the following day, Lewis informed the Company that the Union determined some information to be incorrect; and that ''subject to the Dispute Resolution Agreement,'' the Company furnish payroll records by January 18, ''to enable us to verify the aforementioned information.'' By letter dated January 13, company counsel requested Lewis to specify those classifications which he believed incorrect, rather than have the Company ''submit list after list without knowing what inaccuracies you believe exist.'' By letter dated January 22, Lewis responded that the Union wanted ''to review payroll records for all 18 bargaining unit employees, in order to determine whether each one is in fact at the proper pay rate based on their hire date and classification.'' Lewis asserted that the Union was making this request because the previous list contained two errors, and ''therefore, we want proof of the actual pay rates of all employees, to verify the accuracy of the rates previously given to us.'' Lewis requested that the information be given at the next negotiating session. Lewis testified that the Company provided the requested information, including payroll sheets, the discrepancies were resolved, and the parties resumed their negotiations. There were a total of four negotiating sessions, all in January. On January 27 or 28, the unit employees, rejecting the Union's recommendation, voted to accept a tentatively negotiated contract. The parties eventually signed the contract.

The Company contends in sum that it made the requested information available to the Union through payroll checker Haviland pursuant to the Dispute Resolution Agreement; and further provided the ''redundant information'' to Lewis without prejudice to the Union's position in negotiations. Lewis testified in sum as follows: He initially requested the information, preliminary to contract negotiations, in accordance with standard union practice, in order to ''know at what point we're starting from when we make our proposals to the employer'' and to ''have some idea of what cost factors we're dealing with.'' The Union's own records were compiled and maintained for the purpose of recording dues obligations and payments. They did not include pay rates. The records were sometimes inaccurate. For example, if an employee went on leave, the Union would remove the original hire date and enter a new date when the employee returned, in order to reflect dues obligations. However the original hire date, which no longer appeared on the Union's records, was needed to determine the employee's proper pay rate. The Union also did not always keep records current, particularly when they did not affect dues obligations.

The complaint alleges that the Company violated Section 8(a)(5) and (1) by failing and refusing, from November 5 to January 11, to furnish the Union with the information requested in its November 5 letter. I do not agree. The Company had already made all the requested information available to the Union, except with respect to persons whom the Company contended were excluded from the unit. The Company made that information available in accordance with the Dispute Resolution Agreement. The Company should not be held accountable if the Union, for its own reasons, chose not to record all payroll information, failed to keep an accurate record of such information, or used the information only for a limited purpose. The Company was not obligated to repeatedly prepare and submit the same information. The payroll records were readily accessible to payroll checker Haviland, the Union's designated representative. The Union was thereupon free to check the accuracy of that information.[7] Except with respect to excluded personnel (as previously discussed), the Union did not and does not now contend that the payroll sheets were inaccurate. Rather, the Union asserted that the list furnished on January 11 was inaccurate as to two employees, and that it needed the payroll sheets (which it could have examined and copied at any time), in order to verify accuracy of pay rates. The present case is thus distinguishable from *Safelite Glass*, 283 NLRB 929, 948 (1987), enfd. in part 890 F.2d 1573 (10th Cir. 1989), on which the General Counsel principally relies. In *Safelite*, the reports furnished by the employer on a monthly basis were probably incomplete, in that they indicated only the names of employees from whose pay dues were deducted. Therefore, the union in that case had a valid basis for requesting a list of all unit employees. In the present case, the payroll records made available to Haviland purported to contain the names of all unit employees, whether union members or ''awaiting unit membership.'' As matters turned out, the list furnished on January 11, rather than the payroll records, was inaccurate. At this point, the Union requested the same information which Haviland could have obtained when she made her monthly check. Therefore, I am recommending that the pertinent allegations of the complaint be dismissed.

By letter dated November 6, Chief Negotiator Lewis requested the Company furnish ''a copy of your current health plan, the scheduled plan description, the current cost of each level of benefits provided, by each benefit cost, and the total cost charged on a monthly basis, each employee covered, by name and their current level of coverage.'' He requested the information by November 20. Lewis testified that by ''scheduled,'' he meant ''summary.'' The Company did not respond to Lewis' letter. At the second negotiating session the Company provided the Union with a ''basic breakdown and description of benefit levels.'' The Company asserted that it was not obligated to provide the requested cost information, and refused to furnish that information. The Company had its own health coverage plan. The Union provided information concerning union plans, and they discussed comparative ben-

[7] In April 1982 Joan Zukiewicz requested that Haviland sign a verification attesting to the accuracy of the information which she received. Haviland refused. Thereafter Zukiewicz did not ask Haviland to sign a verification.

efits. The Company never indicated that it wished to change the existing plan, and never raised any question of cost or company ability to pay for health coverage. The parties did not discuss cost, and there was no discussion of changing levels of benefits in return for raising wages. The parties agreed to maintain the existing plan and health coverage.

Lewis testified that he requested cost information for two reasons. First, he wanted the information in order to know what he could propose. Thus, if the information indicated that the company plan was more expensive than the union plan, he might have proposed that the Company convert to the union plan and put the saving toward a wage increase. Second, the Union needed the information in order to inform unit employees of their COBRA rights. (Under COBRA, 26 U.S.C. § 162(K)(2)(C)(i) and 162(K)(4)(A), when an employee leaves his employment, the employee has the option of continuing his health insurance coverage for a specified period at a cost equal to the employer's cost plus a small administrative fee.)

The complaint alleges that the Company violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with the information related to costs of health coverage, and by failing and refusing until late January to furnish the other information requested in the Union's November 6 letter. I so find. The Company, with no explanation and no response whatsoever, waited over 2 months, until after negotiations had commenced, to provide the Union with basic information concerning health care coverage, i.e., as Lewis testified, a ''basic breakdown and description of benefit levels.'' The delay was arbitrary, unreasonable, inexcusable and unlawful. The Company further violated Section 8(a)(5) and (1) by failing and refusing to furnish the requested cost information. Information concerning the cost of employee fringe benefits is presumptively relevant and reasonably necessary to a union in carrying out its collective-bargaining functions, particularly during ongoing negotiations. See *Coca-Cola Bottling Co.*, 311 NLRB 45 fn. 5 (1993), citing *Borden, Inc.*, 235 NLRB 982, 983 (1978), enfd. in pertinent part 600 F.2d 313 (1st Cir. 1979).[8]

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees of the Company in the unit as set forth in article 1 of the current collective-bargaining agreement between the Company and the Union constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material the Union has been and is the exclusive representative of all of the employees in the unit described above.

5. By failing and refusing to furnish and promptly furnish the Union with requested information which is relevant and necessary to the Union's performance of its function as collective-bargaining representative, the Company has engaged, and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By discriminatorily suspending Diana Singer because of her union and concerted activities, and because she caused a charge to be filed and gave testimony under the Act, the Company has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) and (4) of the Act.

7. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, the Company has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

THE REMEDY

Having found that the Company has committed violations of Section 8(a)(1), (3), (4), and (5) of the Act, I shall recommend that it be required to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Company be ordered to revoke the suspension given to Diana Singer in October 1992, to remove from its records any reference to the unlawful suspension of Singer, to give Singer written notice of such removal, to inform her that this unlawful conduct will not be used as a basis for future personnel actions against her, and to make her whole for any loss of earnings and benefits she may have suffered by reason of such suspension, with interest. Interest shall be as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[9] I shall further recommend that the Company be ordered to promptly furnish the Union with the information requested by the Union in its letter of February 2, 1993, pertaining to persons excluded from the bargaining unit; the information to cover the period from February 2, 1993, to the date such information is given. I shall also recommend that the Company be ordered to promptly furnish the Union with current information as requested by the Union in its letter of November 6, 1992, pertaining to the costs of the Company's health coverage plan.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

[8] The Company's reliance on *Sylvania Electric Products v. NLRB*, 291 F.2d 128 (1st Cir. 1961), cert. denied 368 U.S. 926 (*Sylvania I*); and *Sylvania Electric Products v. NLRB*, 358 F.2d 591 (1st Cir. 1966), cert. denied 385 U.S. 852 (*Sylvania II*) is misplaced. In *Sylvania II*, the court modified its earlier opinion in *Sylvania I*, holding that the Board could properly find that a union was entitled to information concerning the cost of welfare benefits, where the Union sought ''better to evaluate the desirability of an increase in welfare benefits as against an equivalent increase in take-home pay.'' As indicated, in the present case Lewis testified in sum that this was a reason why he requested the information. In *NLRB v. Borden, Inc.*, supra, the First Circuit Court held in sum, without qualification, that the bargaining representative was presumptively entitled to information concerning the cost of health and other benefit plans. It is evident that *Sylvania I* is no longer viable law. See also *NLRB v. General Electric Co.*, 418 F.2d 736, 750 (1969), cert. denied 397 U.S. 965; and *NLRB v. John S. Swift Co.*, 277 F.2d 641, 645 (7th Cir. 1960); both cited with approval in *NLRB v. Borden.*

[9] Under *New Horizons*, interest on and after January 1, 1987, is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and rec-

ORDER

The Respondent, Zukiewicz, Inc. d/b/a Baldwin Shop 'N Save, Baldwin, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discriminatorily suspending or otherwise discriminating against employees because of their union or concerted activities, or because they file charges or give testimony under the Act.

(b) Failing or refusing to bargain collectively in good faith with the Union as the exclusive representative of all its employees in the above-described appropriate unit, by failing or refusing to promptly furnish the Union with information which is relevant and necessary to its function as such representative.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

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

(a) Revoke the suspension given to Diana Singer in October 1992, remove from its records any reference to the unlawful suspension of Singer, and notify her in writing that this has been done and that evidence of her unlawful suspension will not be used as a basis for future personnel actions against her.

(b) Make whole Diana Singer for any loss of earnings and benefits she may have suffered by reason of such suspension, with interest, as set forth in the remedy section of this decision.

(c) Promptly furnish the Union with the information requested by its letter of February 2, 1993, pertaining to persons excluded from the bargaining unit, the information to cover the period from February 2, 1993, to the date such information is given.

(d) Promptly furnish the Union with current information as requested by its letter of November 6, 1992, pertaining to the costs of the Company's health coverage plan.

(e) Preserve and, on 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 amount of backpay due.

(f) Post at its Baldwin, Pennsylvania office and place of business copies of the attached notice marked ''Appendix.''[11] Copies of the notice on forms provided by the Regional Director for Region 6, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt, and be maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

ommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[11] If 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.''

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discriminatorily suspend or otherwise discriminate against employees because of their union or concerted activities, or because they file charges or give testimony under the Act.

WE WILL NOT fail or refuse to bargain collectively in good faith with United Food and Commercial Workers International Union, Local Union 23, AFL–CIO–CLC as the exclusive representative of our employees in the unit set forth in our collective-bargaining agreement with Local 23, by failing or refusing to promptly furnish Local 23 with information which is relevant and necessary to its function as such representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your right to engage in union or concerted activities, or to refrain therefrom.

WE WILL revoke the suspension given to Diana Singer in October 1992, remove from our records any reference to the unlawful suspension of Singer, and notify her in writing that this has been done and that evidence of her unlawful suspension will not be used as a basis for future personnel actions against her.

WE WILL make whole Diana Singer for any loss of earnings and benefits she may have suffered by reason of such suspension, with interest.

WE WILL promptly furnish Local 23 with the information requested by its letter of February 2, 1993, pertaining to persons excluded from the bargaining unit; the information to cover the period from February 2, 1993, to the date such information is given.

WE WILL promptly furnish Local 23 with current information as requested by its letter of November 6, 1992, pertaining to the costs of our health coverage plan.

ZUKIEWICZ, INC. D/B/A BALDWIN SHOP 'N SAVE