

**Frito-Lay, Inc. and Bakery, Confectionery and Tobacco Workers International Union, Local 149.**  
Cases 26-CA-18235 and 26-CA-18682

May 3, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS  
LIEBMAN AND HURTGEN

On July 29, 1998, Administrative Law Judge George Carson II issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs, and the Respondent filed a brief in opposition to the General Counsel's exceptions and brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions<sup>1</sup> and to adopt the recommended Order.

We agree with the judge that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide information reflecting the average wage rate and racial makeup of the workforces at the Respondent's other facilities, i.e., those other than the unit facility in Jackson, Mississippi. There is no dispute that the Union's information request pertains to matters outside of the scope of the currently represented bargaining unit. It is well established that when a union seeks information concerning matters outside the bargaining unit, the union is required to make a showing of relevancy and necessity. See, e.g., *Public Service Electric & Gas Co.*, 323 NLRB 1182, 1186 (1997), *enfd.* 157 F.3d 222 (3d Cir. 1998). But the Board has made it clear that the burden of establishing relevancy and necessity in this context "is not an exceptionally heavy one, requiring only that a showing be made of a 'probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities.'" *Id.*, quoting *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). Thus, we disagree with our colleague that the Respondent should only have to provide the Union with the requested information if the Union can show how the information would "aid the bargaining process." The Board has never required a union requesting nonunit information from an employer to meet an "aid the bargaining process" standard, which is different from the well-

<sup>1</sup> The judge concluded that the Respondent did not violate the Act by ceasing to deduct union dues after it lawfully cancelled the contract. We agree. See *Hacienda Resort Hotel & Casino*, 331 NLRB 665 (2000). For the reasons set forth in the *Hacienda* dissent, *supra*, Member Liebman would find that the Respondent violated Sec. 8(a)(5) and (1) of the Act.

established standard articulated by the Supreme Court in *NLRB v. Acme Industrial Co.*, *supra*.

In the instant case, the Union made several relevant assertions in support of its information request: Jackson wages appear to be the lowest among the Respondent's plants; Jackson has a past history of some racial discrimination; Jackson is "90% black"; some other of the Respondent's plants appeared to be "less black" in the observation of employees who visited them. Unlike our dissenting colleague, we find the Union satisfied its burden of showing "probability that the desired information is relevant—and would be of use to the union in carrying out its statutory duties and responsibilities." Certainly, knowing the average wage rate of the workforces at the Respondent's other production facilities would allow the Union to bargain intelligently for wages based on parity within the Respondent's company rather than by comparison to local wage rates in the geographic area, as done currently. See, *E. I. Du Pont & Co.*, 264 NLRB 48 (1982), *enfd.* 744 F.2d 536 (6th Cir. 1984). Similarly, information about the racial makeup of the workforces at the Respondent's other production facilities would allow the Union to bargain knowledgeably about the Respondent's wage policy as applied in Jackson, especially if the information confirmed the perception that the Jackson unit has the highest percentage of black employees and a lower average wage rate than other plants. Indeed, it is the nexus between the information sought by the Union and its statutory duty to bargain about employee wages that satisfies the test of relevancy here. Our colleague loses sight of this relevancy standard in arguing that, because the Respondent has decided to base its wage scales on the local wage scale, the Union is not entitled to information which might enable it to bargain intelligently in support of a demand for wage parity for unit employees.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Frito-Lay, Inc., Jackson, Mississippi, its officers, agents, successors, and assigns shall take the action set forth in the Order.

MEMBER HURTGEN, concurring in part and dissenting in part.

The judge found that the Respondent violated Section 8(a)(1) and (5) of the Act by failing to provide the Union with information reflecting the average wage rate and racial makeup of the workforces at the Respondent's other production facilities, i.e., those other than the unit facility in Jackson, Mississippi. My colleagues agree with the judge. I disagree.

As my colleagues note, there is no dispute that the information request pertains to matters outside of the bargaining unit. As my colleagues further note, it is well established that when a union seeks information concerning matters outside the bargaining unit, the union is required to make a showing of relevance and necessity. See, e.g., *Public Service Electric & Gas Co.*, 323 NLRB 1182, 1186 (1997), *enfd.* 157 F.3d 222 (3d Cir. 1998). The union must show a “probability that the desired information is relevant—and . . . would be of use to the union in carrying out its statutory duties and responsibilities.” *Id.*, quoting *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967).

There is no dispute about the facts. The Union represents the Respondent’s employees at its Jackson, Mississippi plant. The Union and the Respondent began negotiations for a new collective-bargaining agreement in February 1997.<sup>1</sup> In connection with those negotiations the Union sought information concerning the average wage and racial makeup of Respondent’s facilities other than the Jackson unit. The Respondent refused.

The Union asserts that the information would show that Jackson has a higher percentage of black employees and has a lower average wage as compared to the other plants. Assuming that the information would establish this, the Union has not shown how this information would aid the bargaining process. The Respondent asserted in bargaining that it bases its wage scales on the prevailing wages in a particular geographic locale. If the union had disputed the fact that wages are so based, it would likely be entitled to examine any written analyses which show how the employer arrived at a given wage at a given locale. However, the Union does not dispute the fact that wages are geographically based. It simply says that Respondent *should not* base its wages on geographic differentials, i.e., there should be parity among all plants. The bargaining issue is thus joined, and each party is free to bargain hard and to use economic weaponry to accomplish its goal. In sum, the Union has not shown how the nonunit information would aid the bargaining process.

My colleagues quarrel with my use of the phrase “aid the bargaining process.” Under *Acme Industrial*, the information must be shown to be “of use to the union in carrying out its statutory duties and responsibilities.” In the instant case, the specific duty and responsibility involved is to negotiate a contract. Thus, in the context of this case, the information, in order to be relevant, must be in aid of the bargaining process.

Moreover, the mere fact that a party wishes to make a certain contention in bargaining does not necessarily mean that the party is entitled to nonunit information to support the contention. Thus, for example, if a union wishes to contend that unit employees are inequitably treated as compared to nonunit employees, that does not mean that the union is automatically entitled to information concerning the nonunit employees. The union can make the contention in bargaining, and can support it with such information as it has, but that does not mean that the employer must furnish the nonunit information to support the union’s contention. Accordingly, in the instant case, the Union can argue that there is an inequitable disparity in wage rates (as between unit and nonunit employees), but that does not mean that Respondent must furnish the nonunit information to support the Union’s argument.

Further, the Union is not alleging, in any forum, a title VII violation. As noted above, it does not dispute the Respondent’s claim that the wage differential is geographically based. Although there may have been two cases in which racial discrimination was found, there is no adjudication that the wage differential is discriminatory.

*Rosalind Thomas, Esq.*, for the General Counsel.  
*R. Slaton Tuggle III, and Peter G. Golden, Esqs.*, for the Respondent.  
*Chokwe Lumumba, Esq.*, for the Charging Party.

#### DECISION

#### STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in Jackson, Mississippi, on June 3 and 4, 1998. The charge in Case 26–CA–18235 was filed August 29, 1997,<sup>1</sup> and was amended on September 2. The complaint issued on January 29, 1998. The charge in Case 26–CA–18982 was filed on April 23, 1998, and was amended on April 27, 1998. The complaint issued on May 21, 1998. These cases were consolidated for hearing on May 28, 1998.<sup>2</sup> The complaint in Case 26–CA–18235 alleges that Respondent violated Section 8(a)(5) of the National Labor Relations Act (the Act) by failing to furnish the Union with requested information relating to nonunit employees that was necessary for, and relevant to, the Union’s performance of its bargaining obligations. The complaint in Case 26–CA–18682 alleges that Respondent violated Section 8(a)(5) of the Act by ceasing to deduct union dues from its employees and failing to remit them to the Union. The Respondent’s answers deny any violation of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed

<sup>1</sup> All dates are in 1997 unless otherwise indicated.

<sup>1</sup> All dates are 1997 unless otherwise indicated.

<sup>2</sup> These cases were both filed in Region 15. Case 26–CA–18235 was formally 15–CA–14461 and Case 26–CA–18682 was formally 15–CA–14799.

by the General Counsel and Respondent and the argument made by the Charging Party, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent, Frito-Lay, a corporation, is engaged in the production of packaged snack food products at various locations throughout the United States, including its facility in Jackson, Mississippi, from which it annually sells and ships products valued in excess of \$50,000 directly to points located outside the State of Mississippi. The Respondent admits, and I conclude and find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I conclude and find, that Bakery, Confectionery and Tobacco Workers International Union, Local 149 (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### *A Background*

Frito-Lay manufactures snack food products at 40 locations in the continental United States, including its Jackson, Mississippi facility. The employees at about 12 of these locations are represented by a labor organization. The employees at Jackson have been represented by the Union since 1979, and the parties had, prior to 1997, entered into successive collective-bargaining agreements. The Jackson facility employs approximately 350 unit employees, of whom some 300, 85.7 percent, are black.<sup>3</sup> The appropriate unit is:

All production and maintenance employees, including shipping and receiving employees, sanitation department employees and quality control employees at the Employer's Jackson, Mississippi, facility; excluding all other employees, including office clerical employees, over-the-road truck drivers, route sales employees, hostlers, garage employees, watchmen and/or guards and supervisors as defined in the Act.

In the early 1990s, black employees had accused Respondent of racial discrimination. Two employees who had been terminated instituted legal action that was adjudicated in their favor in 1994. In 1993 employee Ervin Bradley drafted a letter that accused Respondent of racial discrimination in regard to the pay rates of employees at the Jackson facility, lack of appointment of black managers, and unfair treatment of black employees by white managers. At the time these issues were raised in 1993, Respondent had a total of 47 managerial or supervisory positions, only 6 of which were held by black employees. Bradley's letter, signed by a significant number of employees, was sent to Respondent's management. Thereafter, Bradley and others, including representatives of the NAACP and Frito-Lay management, met together. At the instant hearing, Bradley did not concede that things had "completely changed," but he did acknowledge that "they had made a start." Bradley became the business agent for the Union in January 1997.

<sup>3</sup> On June 2 there were 350 unit employees; on July 2 there were 345.

In 1993, during negotiations for a collective-bargaining agreement, the Union had presented Respondent with a document that purported to reflect the average hourly wage at the 40 Frito-Lay production plants. That document showed that the average hourly wage of employees at the Jackson plant was \$8.49 an hour, the lowest of all of the production facilities. Although the source of this document was never established or acknowledged, Respondent did not dispute its accuracy. The parties ultimately agreed to a collective-bargaining agreement effective from January 16, 1994, until January 18, 1997.

On January 15, the parties agreed to a 1-month extension, until February 18, of the agreement that was to expire on January 18. A subsequent extension, entered into on February 12, extended the agreement to April 18, after which either party could cancel the agreement upon 96 hours notice. Negotiations for a new collective-bargaining agreement began in February. Harold Moore, business manager of the Union in Memphis, Tennessee, served as the chief spokesman for the Union, assisted by Bradley. The chief spokesman for Respondent was Adam Sussman, senior group manager for labor relations in Dallas, Texas. He was assisted by various members of Respondent's Jackson management team, including Al Kirksey, human relations manager. Prior to negotiations beginning, the Union forwarded a partial list of proposals to Respondent. Included among the proposals was a request for a "substantial across the board wage increase" and a separate proposal that "Jackson Frito-Lay plant wage [be] brought up within the top ten (10) Frito-Lay plant wages." The parties agreed to discuss non-economic items first. Thus, there was no discussion relating to wages until May.<sup>4</sup>

#### *B. Facts*

In an early June bargaining session, Bradley requested that Respondent provide information reflecting the average pay rate for all Frito-Lay facilities. He gave no explanation as to why this information regarding nonunit employees was relevant.<sup>5</sup> He testified that he also requested the racial breakdown for all Frito-Lay facilities; however Moore was unaware of this alleged request. On June 16, Moore wrote Sussman requesting "the racial breakdown for your Jackson, MS, location [and] the national pay rate average for all Frito-Lay plants."

On June 23, Sussman wrote Moore a letter in which he stated that, of 352 bargaining unit employees at the Jackson facility, there were 303 "of color."<sup>6</sup> Sussman's letter continues:

You have also asked for "the national pay rate average for all Frito-Lay plants." We do not routinely calculate or maintain a national average pay rate, nor in any event do we see the relevance of this figure. As we have explained at the bargaining table, the wage scale in Jackson is the result of many years of collective bargaining at the local level. Our view is that the wage scale at the Jackson plant should be competitive with

<sup>4</sup> Negotiations were not tranquil. There were various incidents of finger pointing regarding the alleged misconduct of one party that are not alleged as unfair labor practices.

<sup>5</sup> This finding is based upon Bradley's initial testimony regarding the early June meeting.

<sup>6</sup> Two employees are identified as Asian.

wages available for comparable work in the same general geographic area. Labor market conditions that may influence wage rates in other states would not appear to be relevant to our negotiations in Jackson.

Thereafter, by letter dated June 23, Moore repeated his request for the national pay rate average and also asked for data reflecting the racial makeup of all of Respondent's production facilities. The Union believed, as a result of observations made by Jackson employees who had visited other plants, that there was a larger proportion of black employees in the Jackson workforce than at other Frito-Lay plants. Moore did not, however, state this in his letter. Sussman responded to this request by a letter dated July 1, stating as follows:

You have made an additional information request concerning "the racial breakdown for all Frito-Lay facilities." We have already provided you with local demographic information for the plant which you represent. The racial composition of other facilities which you do not represent would not appear to be relevant to our negotiations in Jackson.

Moore repeated his request for a racial breakdown of all Frito-Lay facilities in a letter dated July 3, but it appears that he sent this letter before receiving Sussman's July 3 letter. In a letter dated July 11, Moore responded to Sussman's statement regarding the racial composition of other facilities not being relevant. That letter states: "The relevancy of information that the Union needs for negotiations is not determined by you or anyone else, except the committee."

The preceding exchange of correspondence took place during a hiatus in negotiations that lasted from early June until August 25, during which Respondent furnished the Union with information regarding employee benefits. As reflected above, the Union never stated why it was requesting information regarding nonunit employees. In the course of negotiations, when the Union questioned Respondent about the low wages at Jackson, Sussman, at the bargaining table, responded by stating, "You're paid what you're paid because [of] the history of collective bargaining. . . . [E]very time you as a Union had an opportunity to vote on the offer, you voted on it and ratified it, and you chose to accept the offers." At the hearing, Sussman noted that there were some years in which there was no increase in base wage rates because the Union agreed to lump sum payments, similar to bonuses, instead of across the board wage increases.

Sussman recognized, both from the Union's initial proposals and a proposal at the bargaining table for a \$5-per-hour increase in wages each year over the prospective 3-year contract, that the new business agent, Bradley, was seeking a significant increase in employee compensation. In negotiations, Sussman pointed out to the Union that Respondent recognized the Union had a new administration, but "if their perception was that they were going to make up what they thought they should have received in this one contract, they probably weren't going to get there in one fell swoop." He consistently stated that "any increases . . . [are] going to be based on the local market here in Jackson, to be competitive." He also commented, apparently based on documents comparing the Jackson plant with other plants that Respondent had shown to the Union at the outset of

negotiations, that the Jackson plant was not competitive from a performance standpoint.

Negotiations resumed on August 25. The Union again requested the pay rate averages and racial breakdown at all Frito-Lay plants. Respondent repeated its contention that this was not relevant.

Although the parties met on August 26, no substantive negotiations were held. The Union presented Respondent with a letter in which it argued that the Board's decision in *Westinghouse Electric Corp.*, 239 NLRB 108 (1978), established that Respondent was obligated to provide the requested information regarding the wage rates and racial breakdown for all Frito-Lay plants. Respondent replied in writing on the same day, noting that *Westinghouse* had not required the production of such information as to nonunit employees. Near the end of the day, the Union presented Respondent with a second letter. The letter notes that the Union had presented its earlier letter "in support of our request for statistics about the wage and racial make-up of other Frito-Lay facilities." The letter then refers to the language in the *Westinghouse* decision that, with regard to nonunit employees, "the union must ordinarily demonstrate more precisely the relevance of the data requested." The letter then states:

In the present case we are prepared to demonstrate precisely the relevance of the data requested. Enclosed is an outline of [the] Frito-Lay national pay rate average. The outline in question shows the Jackson Frito-Lay plant at the bottom of the list. In other words, the Jackson plant which has about a 90 percent black workforce and a workforce which is over 80 percent female is dead last in pay. Given Frito-Lay's recently documented history of invidious discrimination in hiring management personnel, disciplining workers and in other areas[,] it is reasonable to suspect that the lowly position of the Jackson workforce with respect to pay rate average is at least in part based on race or sex.

The outline of the national pay rate average to which the letter referred was attached. That outline was a retyped list of the plants and pay rates reflected on the document that the Union had presented to Respondent in the 1993 negotiations.

The final paragraph of the letter amends the Union's information request to include identification by gender of employees at the Jackson plant and the following national information:

We are also asking for statistics on gender make up and wages in other Frito-Lay plants in the country. We are also requesting statistics of job classification and wages by sex and race at all Frito-Lay plants.

The Union already had the gender information for the Jackson plant. Respondent had provided the Union an employee census when responding to a request for information regarding benefits. That census identified each employee by sex. The Union appears not to have analyzed that information which reflects that there were 345 unit employees on July 2, of whom 165 were female, 47.8 percent of the workforce.

On August 27, there were no negotiations. Shortly after 1 p.m., Sussman and Kirksey arrived at the motel in which the parties were scheduled to resume negotiations. Sussman no-

ticed several people in the vicinity who did not represent the Union, including an individual with a video camera going into the room in which negotiations were scheduled to take place. Realizing that “[i]t was a set up,” Sussman called to Moore and requested to speak with him outside the meeting room. Moore, Attorney Chokwe Lumumba, who had joined the negotiations as spokesman on behalf of the Union on August 26, and several individuals representing organizations other than the Union, came to Sussman and Kirksey.

Lumumba informed Sussman that the Union was recessing the negotiations until the information the Union had requested had been provided. He stated that “this company here in Jackson had a history of racial discrimination and that a lawsuit had been recently tried . . . and he [the judge] had ruled that there was a pattern of discrimination and racism within Frito-Lay.” Lumumba referred to other Frito-Lay plants, noting that employees had visited plants around the country and could see that the other plants were predominantly white. He then referred to a copy of the list that had been attached to the Union’s second letter of August 26, reflecting that Jackson had the lowest average hourly wage of any Frito-Lay production facility.

Following his remarks to Sussman, Lumumba repeated his remarks in front of the camera of a local television station that had arrived on the scene.

Negotiations have not resumed. On April 15, 1998, Respondent wrote the Union. That letter, among other matters, advises that Frito-Lay was providing the written notice required to terminate the extension of the contract and that, since the contract was cancelled, it would, effective April 28, cease deducting employee union dues and remitting those dues to the Union.

### C. Analysis and Concluding Findings

The complaint alleges that the Union orally requested information “concerning racial and gender breakdown statistics of all Respondent’s facilities, as well as wage and job classification information for all Respondent’s facilities,” as of June 11. The evidence adduced at the hearing reveals no request regarding gender or job classification statistics until August 26, when the Union stated it was amending its previous request.

It is well established that a union’s request for information regarding bargaining unit employees is presumptively relevant, and that a request for information regarding nonunit employees does not enjoy that presumption. *F. A. Bartlett Tree Expert Co.*, 316 NLRB 1312, 1313 (1995). With regard to information concerning nonunit employees, “an articulation of general relevance is insufficient,” a specific need must be established. *Id.*, citing *E. I. du Pont & Co. v. NLRB*, 744 F.2d 536 (6th Cir. 1984). An employer’s obligation to provide information regarding nonunit employees to a union does not arise until the union makes “some showing of probable or potential relevance of the information.” *Adams Insulation Co.*, 219 NLRB 211, 214 (1975). Information relating to alleged discrimination because of race or sex is a proper subject of bargaining. *Westinghouse Electric Corp.*, 239 NLRB 108 (1978); *General Motors Corp.*, 243 NLRB 186 (1979). Once a specific need has been established, the standard for relevancy “is a ‘liberal discovery-type standard’ requiring only that there exists ‘a probability such data . . . will be of use to the union . . .’” *Children’s Hospital*,

312 NLRB 920, 930 (1993), citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967).

Respondent argues that the information sought by the Union regarding the wages of nonunit employees at its other plants is not relevant because wage rates at Jackson were determined by the local market. I disagree. When it suited Respondent’s purposes, as when criticizing performance at the Jackson plant, Respondent used statistics from other facilities for comparison. Neither an employer nor a union may unilaterally establish the realm of relevance. The Union was entitled to seek to have Respondent change its position that disregarded the wages paid at its other facilities and to give consideration to those wage rates in establishing its wage structure in Jackson. See *E. I. du Pont & Co.*, 264 NLRB 48, 51 (1982). The Union placed Respondent on notice as early as January that it was seeking a substantial wage increase, an increase that would place it among Respondent’s top ten plants. Thus, Respondent knew that the Union considered wages paid at other locations to be a factor that should be included in the wage equation at Jackson. The fact that the Union made a wage proposal prior to making its request for the average wage paid at Respondent’s other facilities does not render the information sought irrelevant. It is true, as Respondent points out, that the Union gave no reason for its request until August, some 2 months after its initial request, but it is undisputed that, at that time, the Union did give reasons for its request. I also agree with Respondent that the Union’s choice of tactics, suspending bargaining at an orchestrated media event, precluded any substantive discussion on August 27. This, however, does not affect the relevance of the information sought.

The Union possessed a 1992 document reflecting that the Jackson employees had the lowest average wage rate among Respondent’s production facilities. Although the source of that document was not established, Respondent had not disputed its accuracy when it was presented to Respondent in negotiations in 1993, nor did Respondent dispute its accuracy in 1997. On August 26, in its second letter, the Union asserted that the average wage at Jackson was “dead last” and that the Union suspected this was “at least in part” based on race or sex. On August 27, Lumumba told Sussman that Jackson employees who had visited other plants perceived that the racial makeup of those plants was more diverse than at Jackson where, as the letter states, “about 90 percent” of the employees were black. Whether correct or not, the reports of those employees provided a factual basis for the Union’s claim. The information sought by the Union would, as the August 26 letter states, “[T]ell the story,” by revealing whether the Jackson workforce was less diverse than at other facilities and whether it was the lowest paid.

Respondent argues that the Union’s assertion of discrimination does not establish the relevance of the information sought. I agree that the assertion of discrimination does not establish relevance; however, the merit or lack of merit of the Union’s assertion of discrimination is not dispositive of the issue of relevance. *Island Creek Coal Co.*, 292 NLRB 480, 487 (1989). The Union had a document suggesting that the Jackson facility had the lowest average wage rate and Lumumba informed Sussman that employees had observed that the workforces at

other facilities appeared to be more diverse. The Union sought the actual data that would establish whether its information was correct. The Union argues that such information would reveal discrimination. Respondent argues that there is no evidence that wage rates at Jackson were the product of discrimination, that the wage rates are explained by the parties' bargaining history and the Union's agreement to successive contracts, some of which included lump sum payments instead of across the board wage increases. Notwithstanding the foregoing arguments, the only issue herein is whether information linking the wage level of Jackson employees to the racial makeup of the workforce would be relevant. The record establishes that Respondent is not insensitive to allegations of inequity. The Respondent did not ignore the charge of racial discrimination that Bradley made in 1993, in which he cited instances of alleged inequity. It met with representatives of the employees and addressed the employees' concerns. If the information sought established that the Jackson workforce was the least diverse and lowest paid, the presentation of that information in negotiations, although not necessarily persuasive, would certainly be a fact that the Union could argue in support of its wage demands. I find that the Union, in its letter of August 26 and remarks on August 27, established a specific need for the average wage rate and racial makeup of the workforces at Respondent's other production facilities, and that this information is relevant to the Union's performance of its bargaining obligations.

The Union, in its letter of August 26, amended its request and asked for statistics on gender at the Jackson plant and "statistics on job classification and wages by sex and race at all Frito-Lay plants." No instance of discrimination against female employees was stated. The letter simply stated that the Jackson plant was "over 80% female," a statistic that was demonstrably false. In her brief, counsel for the General Counsel, without mentioning that less than 50 percent of the Jackson workforce is female, asserts that the requested information "would assist the Union in intelligently assessing its claim of sex discrimination." Except for the erroneous assertion that over 80 percent of the workforce at Jackson was female, the Union never articulated any basis for a claim of sex discrimination. An unsupported suspicion does not establish relevance. *Bohemia, Inc.*, 272 NLRB 1128, 1129 (1984). All of the reasons cited in support of the request for the average wage rate and racial makeup of the workforces at Respondent's other production facilities, except for the erroneous 80-percent figure, related to perceived racial discrimination. Lumumba mentioned nothing about sex discrimination when he spoke with Sussman on August 27.

Regarding the amended request for "statistics on job classification and wages," the Union did not articulate or demonstrate a need for such information. From June 23 until August 26, the Union had been seeking information which it expected would reflect that the average wage at Jackson was the lowest of all of the production facilities. The August 26 letter refers to the Union's prior request and the "national pay rate average." It mentions no reason for expanding the request to include "statistics on job classification and wages," and it cites no need for such information. On August 27, Lumumba said nothing about any need for gender identification or information relating to job

classification and wages of nonunit employees. The Union neither articulated nor demonstrated a specific need for data relating to the gender of the workforces at other facilities or information relating to statistics on nonunit job classifications and wages. *F. A. Bartlett Tree Expert Co.*, supra at 1313; *Adams Insulation Co.*, supra at 214; cf. *Hertz Corp.*, 319 NLRB 597 (1995), enf. denied 105 F.3d 868 (3d Cir. 1997).

The complaint alleges that Respondent violated Section 8(a)(5) of the Act by unilaterally ceasing to deduct union dues from its employees and remitting them to the Union. Respondent terminated its contract with the Union in accordance with the terms of the extension agreement. Effective April 28, 1998, it ceased deducting union dues, an action privileged by a long line of Board precedent. *Bethlehem Steel Co.*, 136 NLRB 1500 (1962); *Valley Stream Aluminum, Inc.*, 321 NLRB 1076 (1996). The General Counsel argues that the absence of a union-security clause, prohibited by Mississippi law pursuant to the provisions of Section 14(b) of the Act, should result in different treatment of the contractual provision relating to dues deduction. The General Counsel cites no precedent for this novel proposition. Regardless of the presence or absence of a union-security clause, the provision for the deduction of dues is a creature of the contract that is extinguished with the expiration thereof. *Bethlehem Steel*, supra at 1502. Respondent did not violate the Act by ceasing to deduct union dues after it lawfully cancelled the contract.

#### CONCLUSION OF LAW

By failing to provide information reflecting the average wage rate and racial makeup of the workforces at Respondent's other production facilities, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having unlawfully failed to provide the Union with the relevant information it requested reflecting the average wage rate and racial makeup of the workforces at Respondent's other production facilities, it must provide that information. I am mindful that Sussman testified that there was "no such term [as national pay rate average] that we calculated . . . at that time." I note, however, that in his letter of June 23, before stating that Respondent considered the request not to be relevant, he stated that Respondent did not "routinely calculate or maintain a national average pay rate." (Emphasis added.) I am fully satisfied that Respondent can comply with my recommended order. If it contends that it cannot, the parties can, through additional good-faith bargaining, determine what records the Respondent would need to provide in order to comply with the Union's request.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>7</sup>

<sup>7</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended

## ORDER

The Respondent, Frito-Lay, Inc., Jackson, Mississippi, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to bargain with Bakery, Confectionery and Tobacco Workers International Union, Local 149 as the exclusive representative of the employees in the appropriate unit described below, by refusing to furnish the Union the information it requested relating to the average wage rate and racial makeup of the workforces at Respondent's other production facilities. The appropriate unit is:

All production and maintenance employees, including shipping and receiving employees, sanitation department employees and quality control employees at the Employer's Jackson, Mississippi, facility; excluding all other employees, including office clerical employees, over-the-road truck drivers, route sales employees, hostlers, garage employees, watchmen and/or guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Provide the Union with the information it requested relating to average wage rate and racial makeup of the workforces at Respondent's other production facilities.

(b) Within 14 days after service by the Region, post at its facility in Jackson, Mississippi, copies of the attached notice marked "Appendix."<sup>8</sup> Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to

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.

<sup>8</sup> If this Order is enforced by a judgment of the 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."

all current employees and former employees employed by the Respondent at any time since August 26, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

## 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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively with Bakery, Confectionery and Tobacco Workers International Union, Local 149, your exclusive collective-bargaining representative in an appropriate unit, by refusing to furnish the information it requested relating to the average wage rate and racial makeup of the workforces at our other production facilities. The unit is:

All production and maintenance employees, including shipping and receiving employees, sanitation department employees and quality control employees at our Jackson, Mississippi, facility; excluding all other employees, including office clerical employees, over-the-road truck drivers, route sales employees, hostlers, garage employees, watchmen and/or guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information it requested relating to the average wage rate and racial makeup of the workforces at our other production facilities.

FRITO-LAY, INC.