

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: May 26, 2000

TO : Gerald Kobell, Regional Director
Region 6

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Henry Miller Spring and Mfg. Co.
Case 6-CA-31028

This Section 8(a)(5) case was submitted for advice regarding the Employer's unilateral decision to close a manufacturing facility and to consolidate the unit work with similar work at a newly-acquired facility.

We agree, for the reasons in the Region's submission, that complaint should issue, absent settlement, alleging that the Employer failed and refused to bargain about its decision to close Henry Miller Spring and to consolidate the unit work with similar work at a newly-acquired facility.¹ As further support for rejecting the Employer's argument that it had no bargaining obligation because its decision to close the facility did not turn on labor costs, as well as the Employer's potential argument that the Union could not have offered concessions sufficient to change the Employer's decision to close even if labor costs had played a role in its decision, we note: Westchester Lace, Inc., 326 NLRB No. 119, slip op. at 17 (September 30, 1998) (productivity factors are amenable to bargaining); Stroehmann Bakeries, Inc., 318 NLRB 1069, 1071, 1078 (1995), enf. den. in rel. part 95 F.3d 218 (2d Cir. 1996) ("inefficiencies" due to restrictive work rules constitute bargainable indirect labor costs under Dubuque Packing); Furniture Rentors of America, 311 NLRB 749, 750 (1993), enf. denied in rel. part 36 F.3d 1240 (3d Cir. 1994) (in subcontracting situation, employee conduct issues, such as low productivity, are amenable to bargaining process); Holmes & Narver, 309 NLRB 146, 147 (1992) (among bargainable alternatives to downsizing are modified work rules and reassignment of work and job classifications); Bob's Big Boy Family Restaurants, 264 NLRB 1369 (1982) (employer's concerns regarding efficiency and quality

¹ [FOIA Exemption 5

controls were amenable to collective bargaining). See also Owens-Brockway Plastic Products, 311 NLRB 519, 525 (1993) (despite uncontroverted assertion that excess capacity required closure of one of employer's plants, employer failed to establish that union could not have offered labor cost concessions sufficient to meet expected savings derived from closure of organized facility). Compare Nu-Skin International, 320 NLRB 385 (1995) (no bargaining obligation where employer satisfied burden of establishing that union could not have offered sufficient labor cost concessions to keep older of two plants open).

B.J.K.