Hondo, Incorporated d/b/a Coca-Cola Bottling Company of Chicago *and* Beer, Soft Drink, Water, Fruit Juice, Carbonic Gas, Liquor Sales Drivers, Helpers, Inside Workers, Bottlers, Warehousemen, School, Sightseeing, Charter Bus Drivers, General Promotional Employees and Employees of Affiliated Industries, Maltsters, Laborers, Syrup, Yeast, Food, Vinegar, Brewery, Recycling and Miscellaneous Workers, Local Union No. 744, affiliated with the International Brotherhood of Teamsters, AFL–CIO.[1] Case 13–CA–28896

May 28, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On March 21, 1991, Administrative Law Judge Robert M. Schwarzbart issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in answer to the Respondent's exceptions.

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 only to the extent consistent with this decision.

Background

The following undisputed facts are based on the stipulated record. The Respondent had been a contributing member of the Chicago Soft Drink Industry Employers-Local Union No. 744 Pension Fund. Contributing employers of the fund signed collective-bargaining agreements with the Union in 1988. In May 1989, after the Respondent withdrew from participation in the fund, the Respondent and the Union executed two 7-year collective-bargaining agreements effective through April 30, 1996. These agreements covered units of the Respondent's inside and outside workers. Among other matters, these contracts provided for the Respondent's cessation of participation in the fund and permitted the Respondent to provide certain retirement benefits to unit employees under its own company-sponsored and administered single-employer pension and savings plans.

A month after execution of the Respondent-Union contracts, two fund participants and competitors of the Respondent, Kemmerer and Canfield, invoked most-favored-nation provisions in their contracts with the Union, and demanded that the Union furnish them with information concerning the Respondent's costs for providing new retirement benefits.[2] These competitors also requested that the Union use the Act, if necessary, to obtain the desired information from the Respondent for them so that they could assess whether the Respondent's retirement benefit expenditures justified a reduction in their own retirement-fund contributions. On June 13, 1989,[3] when the Union's response was not forthcoming, Kemmerer and Canfield filed refusal-to-bargain charges against the Union.

By letter dated July 11, the Respondent advised the Union that it had no obligation to provide confidential and proprietary information for use by its competition, and that the Union's request on its face established that the information was not needed for the purpose of contract administration. Accordingly, the Respondent stated that it would not be providing the information requested by its competitors and enclosed with the Union's letter. Also by letter dated July 11, the Union, having not yet received the Respondent's July 11 answer, specifically requested that the Respondent provide it with the following information claimed to be relevant and necessary to its bargaining responsibilities: data on the cost per employee of pension plan coverage, or actuarial estimates or projections of such costs.

Thereafter, by letter to the Respondent dated June 28, the Union brokered Kemmerer's and Canfield's information requests by asserting that the information they requested ''is relevant and necessary to the Union's responsibilities as collective bargaining representative.''[4] The Union, enclosing Kemmerer's and Canfield's demand letters, wrote and asked the Respondent to provide the information requested by Kemmerer and Canfield and to direct any questions to them or to the Union as ''intermediary.''

By letter to the Respondent dated July 12, after having received the Respondent's July 11 letter, the Union claimed that the requested information was relevant and necessary for contract administration. The Union also offered to negotiate appropriate provisions to protect confidential and proprietary information. On July 17, the Respondent replied that the obvious purpose of the information request was as originally stated in the

[1] The name of the Charging Party has been changed to reflect the new official name of the International Union.

[2] Specifically, these employers requested that the Union provide them with the costs per employee of coverage under the Respondent's pension plan; or, alternatively, the name, age, years of service, and amount due under the multiemployer fund, for each of the Respondent's employees; the name, bargaining unit, last two calendar year earnings, and percentage of pay contributed, for each employee who elected to contribute to the Respondent's savings plan; and the actuarial cost estimates and underlying assumptions or the Respondent's projections of the costs of its retirement plans.

[3] All dates hereafter are in 1989.

[4] The Union did not indicate that the information requested by the Respondent's competitors was relevant and necessary to the Union's representation of bargaining unit employees of the Respondent.

Union's June 28 letter, i.e., to provide the Respondent's retirement cost data directly or as intermediary to the Respondent's competitors. Moreover, the Respondent asserted that the cost data is not relevant to the Union's interest in ensuring that contractual benefits are being provided; therefore, there is no reason to meet and negotiate.

On September 7, the Union filed the instant unfair labor practice charge against the Respondent. The Union's charge followed notice from the Board's Regional Office that an 8(b)(3) refusal-to-bargain complaint would issue against the Union pursuant to Kemmerer's and Canfield's pending charges if the Union did not file its own charge against the Respondent here, Coca-Cola.

The Judge's Decision

The judge found that the requested information was presumptively relevant because it involved wages and benefits paid to unit employees. He rejected the Respondent's defense that the cost information was irrelevant because contract negotiations had just been completed. He found that the information *could* be useful to the Union's continuing responsibilities as bargaining representative during the contracts' terms. The judge also rejected the Respondent's defense that the Union's sole reason for the request was to pass the cost data on to the Respondent's competitors. He relied on the Union's correspondence, which stated that the information was relevant and necessary to its collective-bargaining responsibilities. Finally, the judge concluded that the Union's need for the information—which might assist it in evaluating the fund's stability, formulating future contract proposals, and suggesting improvements in plan administration—outweighed the Respondent's legitimate concern for the confidentiality of cost data that would be provided to two of its competitors.

Discussion

Contrary to the judge and our dissenting colleague, we view this case essentially as an attempt by two competitors of the Respondent, who are contributing members of a multiemployer pension fund to which the Respondent formerly contributed, to use the Union as a vehicle to force the Respondent to provide competitive cost data to them. For the reasons that follow, we find that the Respondent has proven that the information, as requested, is irrelevant to any legitimate collective-bargaining responsibility of the Union as representative of the employees, and that the Respondent did not violate its statutory duty to bargain in good faith by refusing to provide the Union with the information requested.

Section 8(a)(5) of the Act makes it an ''unfair labor practice for an employer . . . to refuse to bargain collectively with the representatives of his employees,'' subject to the bargaining unit provisions of Section 9(a). The duty to bargain in good faith requires an employer to furnish information requested and needed by the employees' bargaining representative for the proper performance of its duties to represent unit employees of that employer. *NLRB v. Acme Industrial Co*., 385 U.S. 432, 437 (1967). Thus, an employer's statutory obligation to provide information presupposes that the information is relevant and necessary to a union's bargaining obligation vis-a-vis its representation of unit employees of that employer.

The obligation to supply information is determined on a case-by-case basis, and it depends on a determination of whether the requested information is relevant and, if so, sufficiently important or needed to invoke a statutory obligation on the part of the other party to produce it. *White-Westinghouse Corp*., 259 NLRB 220 fn. 1 (1981). In making this determination, the Board has repeatedly reiterated the following principles enunciated by the Third Circuit in *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61, 69 (3d Cir. 1965):

> [W]age and related information pertaining to employees in the bargaining unit is presumptively relevant, for, as such data concerns the core of the employer-employee relationship, a union is not required to show the precise relevance of it, *unless effective employer rebuttal comes forth; as to other requested data*, however, such as employer profits and production figures, a union must, by reference to the circumstances of the case, as an initial matter, *demonstrate more precisely the relevance of the data it desires*.

(Emphasis added and omitted from original.)

Thus, if the requested information goes to the core of the employer-employee relationship, and the employer refuses to provide that requested information, the employer has the burden to prove either lack of relevance or to provide adequate reasons why it cannot, in good faith, supply the information. If the information requested is shown to be irrelevant to any legitimate union collective-bargaining need, however, a refusal to furnish it is not an unfair labor practice. *Emeryville Research Center v. NLRB*, 441 F.2d 880 (9th Cir. 1971).

In this case, even assuming that the retirement benefit cost data concerning unit employees is presumptively relevant to the Union's bargaining responsibilities, the Respondent has shown that substantial record evidence rebuts the presumptive relevancy of the information, as requested, and that it is irrelevant to any legitimate collective-bargaining need of the Union as

representative of the Respondent's employees.[5] The Respondent has proven lack of relevancy *and* provided adequate reasons why it cannot in good faith supply the requested information. To this end, the Respondent initially advised the Union that the request on its face was unrelated to contract administration of the collective-bargaining agreements between the Union and Coca-Cola, and that the Respondent has no obligation to provide sensitive cost data for use by its competitors. More importantly, the timing and circumstances surrounding the request clearly support the legitimacy of the Respondent's defense that the Union is acting as a mere conduit for the Respondent's competitors to whom no bargaining obligation is owed by the Respondent.

First, the information requested by the Union from the Respondent, which forms the basis for the complaint allegations, is the same as that originally requested by the Respondent's competitors from the Union. In fact, Kemmerer's and Canfield's demand letters to the Union, enclosed with the Union's initial demand to the Respondent, form the precise basis for the information requested.

Second, only after these competitors urged the Union to use the Act to obtain the desired information from the Respondent, and then filed refusal-to-bargain charges over the Union's intransigence, did the Union demand that the Respondent provide the information requested. The Union's demand clearly conveyed its intent to furnish the data to the Respondent's competitors. In addition, the Union requested that the Respondent direct any questions concerning the information requests to these competitors or to the Union as their acknowledged ''intermediary.''

Finally, when the Respondent challenged the Union's alleged need for the requested information, the Union merely reiterated its conclusory statement that the information was relevant and necessary for its use as bargaining representative. It did not specify supporting facts or otherwise articulate how this was so. Thus, it did not ''demonstrate more precisely the relevance of the data it desires.'' *Curtiss-Wright*, supra.

In these circumstances, where it is obvious that the Union is seeking the information from the Respondent because of its separate bargaining obligation under contractual most-favored-nation provisions executed with the Respondent's competitors, the Union must do more than provide general avowals of relevance in order to establish its need for the information. Rather, the Union must articulate how it would use the information to fulfill its duties as the collective-bargaining representative of the Respondent's employees. As the Supreme Court explained in *NLRB v. Truitt Mfg. Co*., 351 U.S. 149, 152–153 (1956), ''[g]ood-faith bargaining necessarily requires that claims made by either bargainer be honest claims'' and if a need is important enough to present in bargaining, it is important enough to require some sort of proof of its accuracy. As noted above, the Union here failed to substantiate its purported need for the information.

The cases relied on by the judge for the proposition that the Union need not articulate a legitimate purpose for requesting presumptively relevant wage and benefit information (see *Marshalltown Trowel Co*., 293 NLRB 693 (1989)), or for the principle that a legitimate request may also be made for other purposes (see *Associated General Contractors of California*, 242 NLRB 891, 894 (1979), enfd. 633 F.2d 766 (9th Cir. 1980); *Utica Observer-Dispatch*, 111 NLRB 58, 63 (1955), enfd. 229 F.2d 575 (2d Cir. 1956)), are inapposite. In those cases, unlike here, the presumption of relevancy had not been rebutted, and more importantly the record clearly established that the information was requested to fulfill a bargaining responsibility of the union vis-a-vis the employees of the respondent employer, and the union established that it had a legitimate need for the requested information for ongoing contract negotiations or to administer its collective-bargaining relationship with the respondent employer. It was in that factual context that the Board iterated the foregoing general principles relied on by the judge and our dissenting colleague.

In this case by contrast, the record does not even suggest that the Union's request was made for a proper and legitimate bargaining purpose vis-a-vis unit employees of the Respondent. Rather, as demonstrated above, substantial record evidence indicates that the Union was motivated by concerns unrelated to its statutory bargaining relationship with the Respondent; concerns that arose from contractual most-favored-nation provisions pertaining to other bargaining units. There is no indication in the record that employees are not being paid negotiated benefits or that the Respondent is unable or will be unable to pay negotiated benefits during the present contract. There is no evidence that negotiations or relevant grievances are pending between the parties, and more than 6-1/2 years remain under the current contract. In sum, there is no basis in the record to conclude that the requested information is relevant and necessary for performance of the Union's function as statutory bargaining representative

[5] Although the costs per employee of retirement benefits received or likely to be received is presumptively relevant and reasonably necessary to the Union in carrying out its collective-bargaining function, particularly during ongoing negotiations, see *Borden, Inc*., 235 NLRB 982, 983 (1978), enfd. in relevant part *NLRB v. Borden, Inc*., 600 F.2d 313 (1st Cir. 1979), the Respondent's statutory obligation to provide information does not extend to financial data regarding projections of its future ability to compete, absent a claim of inability to pay. *Neilsen Lithographing Co*., 305 NLRB 697 (1991). Given the context in which the instant information request arises, i.e., framed by the Respondent's competitors so that they may assess possible competitive disadvantage, it is clear to us that we are actually dealing with some variant of the latter situation.

of the Respondent's employees. We are left with the judge's conjecture on behalf of the Union, as to how it could validly use the data for bargaining purposes.

Nor is there any evidence, apart from the Union's self-serving correspondence, that the Union initiated any contact with the Respondent in any bargaining context regarding the matters contained in the information request. The fact that the Union ostensibly and generally proclaimed in its correspondence that the information was ''relevant and necessary to its collective bargaining responsibilities'' does not make it so. *Machinists Lodge 78 (Square D Co.)*, 224 NLRB 111 fn. 6 (1976). As the Supreme Court recognized in *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 314–315 (1979):

> A union's bare assertion that it needs information . . . does not automatically oblige the employer to supply all the information in the manner requested. The duty to supply information under [Section] 8(a)(5) turns upon ''the circumstances of the particular case'' *NLRB v. Truit Mfg. Co.*, 351 U.S. 149, 153, and much the same may be said for the type of disclosure that will satisfy that duty. *See, e.g., American Cyanamid Co.*, 129 NLRB 683, 684 (1960).

In the circumstances of this case, we find that no disclosure was necessary because no statutory duty to provide information was triggered. *Chicago Typographical Union 16 (Chicago Sun-Times)*, 296 NLRB 180 (1989), relied on by our dissenting colleague, is not to the contrary. The Board there reasoned that where employer A is attempting to monitor a union's compliance with a most-favored-nation clause, it should be entitled to know the *terms and conditions of employment* which the union has negotiated with employer B. However, in the instant case, Kemmerer and Canfield were not simply seeking from the Union information on the amount of the retirement benefits which the Union had negotiated with the Respondent. Rather, they were seeking information on the underlying costs to the Respondent of those benefits. That cost data is not part of the terms and conditions of the Union's contract with the Respondent.[6]

Thus, *Chicago Sun-Times* at most suggests that there is some correlation between what employer A would be entitled to know from the union, under the most-favored-nation clause, and what the union may be entitled to know from employer B, under the relevance standard of *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). It did not purport to redefine the relevance standard so as to make it a function of whether the union seeks the information in order to comply with terms of a bargaining agreement with a third party.

ORDER

The complaint is dismissed.

MEMBER OVIATT, concurring.

For the reasons set forth above, I join the Chairman in finding that the Respondent was not required to turn over the requested information because it has not been shown to be relevant to the Union's representation of the Respondent's employees. Even were I to find a statutory duty to provide the requested information, however, I would not adopt the judge's order requiring the Respondent to turn over all the information as originally requested. I am not convinced that the Union's need for all the information in the exact form requested by the Respondent's competitors outweighs the Respondent's confidentiality and proprietary interests. An employer is not obligated to furnish information in the exact form requested; rather, it has an obligation to bargain in good faith. *NLRB v. Borden, Inc.*, 600 F.2d 313 (1st Cir. 1979). The Supreme Court has clearly rejected ''the proposition that union interests in arguably relevant information must always predominate over all other interests, however legitimate.'' *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 318 (1979).

Here, the Respondent has asserted legitimate confidentiality and proprietary concerns regarding the cost data at issue, which privilege nondisclosure. In finding a violation, the judge acknowledged the Respondent's concern for confidentiality. Thus, even had the Union's request established legitimate entitlement to the information, it would have, at most, warranted conditional disclosure. Cf. *Kelley-Springfield Tire Co.*, 266 NLRB 587 (1983). As the judge recognized, ''I agree with the Respondent that the confidential nature of the requested information is a matter of legitimate concern, particularly here where the data, if furnished, would be provided to two of the Respondent's competitors.''[1]

[6] This is so because the Union and the Respondent had negotiated a defined-benefit plan, under which the Respondent promised to pay a determinable monthly benefit based on a formula (a specific dollar amount per years of service) set forth in the bargaining contract and the pension plan. The cost of those benefits to the employer (in the form of periodic contributions to the plan) is calculated on the basis of a number of actuarial factors, whose values may vary over time depending on changed circumstances (as examples, the life expectancy of the participants and the rate of return on investment). Yet, an employer's obligation under the collective-bargaining contract is defined (and remains fixed) in terms of benefits payable to the participant employees, not in terms of the employer's cost of funding those benefits.

It may well be that during the course of contract negotiations over the level of benefits in a defined-benefit pension plan, a union can establish the relevance of projected cost data which the employer may have. However, that question is not before us, and our holding that the Respondent need not provide that information to the Union under the circumstances here should not be understood as resolving that question.

[1] Contrary to my dissenting colleague's suggestion otherwise, the judge did recognize the Respondent's showing that its proprietary cost data was confidential. The Respondent has excepted to the

Continued

Obviously, disclosure of the Respondent's retirement benefit cost structure, including the names, ages, earnings, projected earnings, and percentage of pay of each contributing employee, as well as actuarial cost estimates, projections, and underlying assumptions, may compromise employee privacy concerns and competitive position. Knowledge of this confidential proprietary information concerning the underlying cost data that a competitor bases its payment of retirement benefits on is itself a business advantage.

The Union itself recognized the legitimacy of the Respondent's concerns in its July 11 and 12 correspondence. That correspondence narrowed the original competitor employers' requests for individual identifying data to aggregate cost data, and it contained an offer to bargain about confidential and proprietary information. The Respondent was priviledged to reject the Union's offer to bargain here because the threshold showing of a legitimate need for relevant information was never established.

Clearly, therefore, some accommodation must be made to the Respondent's legitimate interests. *General Dynamics Corp*., 268 NLRB 1432, 1433 (1984). Thus, even were I to find that the Respondent had a statutory obligation to provide the requested information, which I do not, I would limit the remedial order to one which requires the parties to bargain in good faith in an attempt to reach a mutually satisfactory accommodation of their respective interests. *Minnesota Mining Co*., 261 NLRB 27, 32 (1982), enfd. sub nom. *Oil Workers Local 6-418 v. NLRB*, 711 F.2d 348 (D.C. Cir. 1983); *General Dynamics Corp*., supra.

If conditions can be negotiated to accommodate the Respondent's confidentiality and proprietary concerns and the Union's putative interest (which I caution, I have not found) in obtaining relevant information necessary for bargaining, a continuing refusal to disclose may violate the Act. In those circumstances, I would find that the appropriate remedy is limited to the aggregate cost data that *the Union asked for* on July 11, as modified by negotiations; not the individually identifiable data on earnings and contributions that was requested by the Respondent's competitors and ordered by the judge.

As the judge recognized, however, negotiations ''well might not lead to a resolution of confidentiality that would be satisfactory to the Respondent since disclosure [to its competitors] may be unavoidable.'' See also *Chicago Typographical Union 16 (Chicago Sun-Times)*, 296 NLRB 180 (1989) (most-favored-nation clause created duty on the part of the union to disclose requested information on competitor employer's employment conditions). If no satisfactory conditions could be devised, the Respondent's refusal to disclose might well be permissible.

MEMBER DEVANEY, dissenting.

Contrary to my colleagues, I would find that the Union was entitled to the information it requested concerning the cost of the retirement benefits provided under the parties' agreement. This information is presumptively relevant to the Union's role as representative of the Respondent's employees. I take exception to my colleagues' finding that this presumption of relevance is rebutted simply because the Union indicated that it would disclose the information to other employers pursuant to a most-favored-nation clause. Such a finding is contrary to established Board precedent and will seriously undermine the utility of such clauses in stabilizing collective-bargaining relationships.

In 1989, the Respondent and the Union entered into separate collective-bargaining agreements covering ''inside'' and ''outside'' workers, effective until April 30, 1996. Both agreements provided, inter alia, that the Respondent would cease participating in the Chicago Soft Drink Industry Employers-Local Union No. 744 Pension Plan effective May 1, 1989, and thereafter would provide retirement benefits under its own, single-employer plan.

The Union also has collective-bargaining agreements, covering the same classifications of employees, with two of the Respondent's competitors, Kemmerer Bottling Group, Inc., and A. J. Canfield Co. These agreements provided that these employees would participate in the Chicago Soft Drink Industry Employers-Local Union No. 744 Pension Plan for the life of the agreement, and contribute a specified sum of money each month on behalf of each covered employee. These agreements also contained a ''most-favored nation'' clause, which provided, inter alia, that if the Union entered into an agreement allowing any other employer to provide retirement benefits under a single-employer plan, then the signatory employer could lower its contribution rate to an amount equal to the cost to the other employer of providing retirement benefits under the single-employer plan.

Kemmerer and Canfield both demanded that the Union provide them with information sufficient to determine the Respondent's cost of providing retirement benefits under its single-employer plan. On June 13, 1989, both employers filed identical unfair labor practice charges alleging that the Union had failed and refused to provide the requested information. Both employers repeated their requests for the information in letters dated June 16, 1989. On June 28, 1989, the

judge's finding of a violation and his finding that the Union was actually seeking the information for its own use. Consequently, I find the issue of confidentiality to be inherent in the issues before us. I would resolve the balancing of respective interests differently from the judge, however, because the Union has shown no legitimate need for the information, as requested. As explained below, if the Union had established a legitimate need for relevant information, I would first require the parties to bargain about accommodating their competive interests before evaluating the weight to be given them.

Union formally requested that the Respondent provide it with the information Kemmerer and Canfield had demanded. The Union's information request indicated that the information was sought for disclosure to the other employers; it incorporated by reference and included copies of the employers' June 16, 1989 letters to the Union; and it advised the Respondent that it could contact Kemmerer, Canfield, or the Union if it had any questions.

On July 11, 1989, the Respondent refused to provide the information requested by the Union. The Respondent asserted that the information sought was ''confidential and proprietary,'' and that it would not provide that information to the Union for disclosure to its competitors. The Respondent also refused the Union's subsequent offer to negotiate ''appropriate provisions to protect any information the Company claims is confidential and proprietary.'' Subsequently, on September 7, 1989, the Union filed the instant charges against the Respondent alleging that it had violated Section 8(a)(5) and (1) by refusing to provide the requested information. These charges were only filed after the Regional Office advised the Union that it would issue a complaint against the Union pursuant to Kemmerer's and Canfield's pending 8(b)(3) charges, if the Union did not file its own charge against the Respondent.

My colleagues do not dispute the judge's finding that the information requested by the Union is presumptively relevant to its bargaining responsibilities. See *Borden Inc*., 235 NLRB 982 (1978), enfd. in pertinent part 600 F.2d 313 (1st Cir. 1979). Rather, they find that the presumptive relevance of the requested information is rebutted by the Union's disclosure that it will provide the information to Kemmerer and Canfield.

It is well settled that the presumption of relevance is not rebutted by a showing that the union also seeks the information for a purpose unrelated to its representative function. *E. I. du Pont & Co*., 264 NLRB 48, 51 (1982), enfd. 744 F.2d 537 (6th Cir. 1984) (union also had interest in companywide wage data for disclosure to second union seeking to organize those facilities). The Union here has asserted that it needs the requested information for the purpose of administering its collective-bargaining agreements with the Respondent. Under these circumstances, ''it is well established that, where a union's request for information is for a proper and legitimate purpose, it cannot make any difference that there may be other reasons for the request or that the data may be put to other uses.'' *Associated General Contractors of California*, 242 NLRB 891, 894 (1979). See also *Utica Observer-Dispatch v. NLRB*, 229 F.2d 575 (2d Cir. 1956). Thus, as the Union has requested the information for a legitimate purpose, i.e., contract administration, the Respondent cannot rebut the presumptive relevance of the information by showing that it may be put to other uses as well.[1]

My colleagues' focus on the Union's statement that it would disclose the requested information to Kemmerer and Canfield is misplaced for other reasons as well. In *Chicago Typographical Union 16 (Chicago Sun-Times)*, 296 NLRB 180 (1989), the Board recognized that a union which is party to a most-favored-nation clause has a duty to disclose information in its possession necessary for the employer to determine its rights under that clause. This is so even though the employer is seeking information relating to employees of another employer. The Board also observed, at footnote 7 of its decision, that this duty included the obligation to provide information concerning the terms and conditions of employment of strike replacements hired by the Chicago Tribune: ''the Respondent [union] would be entitled to receive information from the Tribune regarding those employees, and therefore has the duty . . . to provide *such information* to the Sun-Times.'' (Emphasis added.) Id. at 181 fn. 7. Thus, the Board has implicitly recognized that it is not improper for a union to request information from one employer in order to disclose it to another employer in furtherance of its obligations under a most-favored-nation clause.[2]

I would also find, in agreement with the judge, that the Respondent has not shown that the information the Union requested on June 28, 1989, is confidential and proprietary. In this regard, the judge balanced the Respondent's confidentiality concerns against the Union's need for the information and found that the balance favored disclosure. The Respondent has not excepted to this finding. Accordingly, I suggest that the issue of confidentiality is not before us.

Even if I were to conclude that the judge's finding in this regard is before us, I believe that the Respondent has not established sufficient confidentiality concerns to preclude disclosure. In this regard, I note that aggregate wage and benefit information is routinely disclosed as part of any employer-sponsored wage sur-

[1] My colleagues' suggestion that *Associated General Contractors* is distinguishable because the presumption of relevancy had not been rebutted misses the point. The Board held in that case that a showing that information is requested for both legitimate and nonlegitimate purposes does not affect the information's relevancy. I also note that the information requested in *Associated General Contractors*, the names of nonunion affiliated contractors, was not—like the information sought here—presumptively relevant, as it did not concern unit employees' conditions of employment. The Board found that evidence that the Union also sought the information for organizing purposes did not diminish its relevance even under these circumstances.

[2] My colleagues attempt to distinguish *Chicago Sun-Times* on the grounds that the information request there dealt with actual terms and conditions of employment and not, as here, the cost to the employer of providing a particular benefit. However, nothing in the Board's decision in that case supports the judicial gloss my colleagues now seek to place on it.

vey, and an employer is required to disclose such information to the union on request even in the face of an agreement with the surveyed employers to keep it confidential. *General Electric Co.*, 192 NLRB 68 (1971), enfd. 466 F.2d 1177 (6th Cir. 1972).[3] Concededly, the individual identifying information sought by the Union raises additional issues. However, the judge found that any privacy concerns were outweighed by the Union's need for the information.[4] Accordingly, I dissent from the dismissal of the complaint.

[3] It is not clear from the record how Kemmerer and Canfield would gain any business advantage by knowing the Respondent's cost figures for retirement benefits, nor has the Respondent articulated how this would be so. While the Respondent may lose a competitive advantage if the other employers are able to reduce their retirement benefit levels after obtaining the information, this does not negate the underlying policy reasons which require its disclosure.

[4] Likewise, cases in which the remedy for failure to disclose information is limited to an order requiring the Respondent to bargain with the Union over disclosure are also distinguishable. Such orders are appropriate in cases in which an employer has raised substantial confidentiality concerns and the Board in its discretion finds that ordering the parties to bargain is the best means to resolve those concerns. Compare *Minnesota Mining Co.*, 261 NLRB 27, 32 (1982), enfd. sub nom. *Oil Workers Local 6-418 v. NLRB*, 711 F.2d 348 (D.C. Cir. 1983). Those circumstances are not present in this case, as noted above. Moreover, the Respondent previously rejected the Union's offer to engage in precisely this sort of bargaining.

Emilie Schrage, Esq., for the General Counsel.
Lawrence L. Summers, Esq. (Vedder, Price, Kaufman & Kammholz, P.C.), of Chicago, Illinois, for the Respondent.
Susan Brannigan, Esq. (Asher, Gittler, Greenfield, Cohen & D'Alba, Ltd.), of Chicago, Illinois, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT M. SCHWARZBART, Administrative Law Judge. This case was heard in Chicago, Illinois, on November 30, 1990, on a complaint issued May 16, 1990, pursuant to a charge filed on September 7, 1989,[1] by Beer, Soft Drink, Water, Fruit Juice, Carbonic Gas, Liquor Sales Drivers, Helpers, Inside Workers, Bottlers, Warehousemen, School, Sightseeing, Charter Bus Drivers, General Promotional Employees and Employees of Affiliated Industries, Maltsters, Laborers, Syrup, Yeast, Food, Vinegar, Brewery, Recycling and Miscellaneous Workers, Local Union No. 744, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. AFL–CIO (the Union). This decision is based on a stipulated record, the parties having waived the testimony of witnesses and resolutions of credibility.

The complaint, as amended at the hearing, alleges that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act), by refusing to furnish the Union, as duly recognized bargaining representative of certain of its employees, with specifically requested information concerning the Respondent's costs in providing retirement benefits to those employees in accordance with the terms of recently signed collective-bargaining agreements, and by refusing to provide the Union with other requested data concerning the contractual savings plan. The Respondent, in its answer, denies the commission of unfair labor practices.

All parties appeared at the hearing represented by counsel. Briefs thereafter submitted by the General Counsel and the Respondent, have been carefully considered.[2]

[1] All dates hereinafter are within 1989 unless stated to be otherwise.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Niles, Illinois, is engaged in the manufacture and wholesale distribution of soft drinks. During the calendar year preceding issuance of complaint in this matter, the Respondent, in the course and conduct of its business operations, sold and shipped from its Niles facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Illinois.

From the foregoing undisputed facts, I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

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

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Parties' Positions*

As noted, the principal issues are whether the Respondent unlawfully refused to furnish the Union, as bargaining representative of the Respondent's employees in two units, with requested data concerning the Respondent's costs in providing noncontributory retirement benefits to employees covered under its contracts with the Union, and with certain information concerning the contractual contributory savings plan.[3]

The Respondent argues that in the circumstances of this case it should not be required to furnish such pension cost information because the Union was not seeking it in furtherance of its bargaining responsibilities, but was attempting to obtain the data in order to turn it over to two outside corporations with which the Union also had bargaining relationships and which were the Respondent's competitors in the same industry and geographic area. It is undisputed that if the Union should receive the pension cost information, it would share the same with these companies to fulfill its own bargaining obligation to them. The Respondent contends that the requested pension cost data is not necessary nor was it requested for contract negotiations for contract enforcement. New collective-bargaining agreements had been signed with the Union only shortly before receipt of the Union's initial information request and the only specifically stated purpose

[2] The Union waived submission of a brief before the end of the extended filing period.

[3] While the Respondent did not concede an obligation to provide the savings plan information, in stating its position this issue was subordinated to its stance against furnishing the disputed pension cost data.

for the request was so that the data be given to the two corporations.

The Union's obligation to furnish the disputed data to these other employers stemmed from the inclusion in its labor contracts with both firms of substantially identical ''most favored nation'' provisions which could enable these companies to reduce the costs of their contractual retirement programs for employees to correspond to the costs of any less expensive pension program that the Union might negotiate with any other employer in that industry and area. As these outside employers had reason to believe that the Respondent had negotiated a less costly employee retirement plan than those set forth in their contracts with the same Union, they had demanded that the Union meet its bargaining obligations by obtaining and conveying to them the cost data for the Respondent's retirement plan so that they could determine whether their own pension plan costs might be reduced.

The General Counsel and Union contend that the Union's information requests were expressly made on the Union's own behalf in its capacity as bargaining agent for the Respondent's employees, as well as for any other purpose; that the information sought is that to which bargaining representatives are entitled; and that its dual purposes in requesting this data do not affect its entitlement. These parties point out that if the Union did not share the information sought with the two outside companies, it would be faced with a pending refusal-to-bargain proceeding that had been brought by the two other employers.

B. *The Facts*

On May 6, the Respondent and Union, as duly recognized bargaining representative, entered into two collective-bargaining agreements, both effective through April 30, 1996, for units of the Respondent's inside workers and outside workers, respectively. Until January 30, 1990, these units were as follows:

Inside Workers

> All production, maintenance and vending service employees in Respondent's plants, but excluding all office, clerical, administrative and professional employees, all employees presently represented by other labor organizations, and guards and supervisors as defined in the Act.

Outside Workers

> All route salesmen, coin route salesmen, helpers, route sales general labor, qualified helpers, special events workers, route sales trainees, transport drivers and utility helpers in the Respondent's plants, but excluding all office, clerical, administrative and professional employees, all employees presently represented by other labor organizations, and guards and supervisors as defined in the Act.

As of January 30, 1990, the inside workers' unit was expanded to include service technicians and warehousemen employed by the Respondent's Chicago Syrup Distributors Division, and the outside workers unit was enlarged to also include truckdrivers employed by the Respondent's Chicago Syrup Distributors Division. In agreement with the parties, I find the two units to be appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act as constituted both before and since January 30, 1990.

The two collective-bargaining agreements between the Respondent and the Union, in differently numbered articles, contain identical retirement benefits and savings plan provisions which, in relevant part, follow:

Retirement Benefits

> 1. *744 Pension Fund*. Effective May 1, 1989, participation in the Soft Drink Industry Employers-Local Union No. 744 Pension Fund shall c(e)ase.
>
> 2. *Employer Plans*. Effective May 1, 1989, the Employer shall agree to cover regular full-time employees represented under this Agreement with benefits under its Pension Plan, known as the Coca Cola Bottling Company of Chicago/Indianapolis Bargaining Employees' Savings/Retirement Plan and its 401 (k) Savings Plan, known as the Coca-Cola Bottling Company of Chicago/Indianapolis Bargaining Employees' Savings/Retirement Plan. Generally, benefits shall be as follows:
>
> 3. *Pension Plan*.
>
> . . . .
>
> (e) Benefit—Provide coverage under the Company Pension Plan at a benefit level of $7.50 per month per year of service. Such benefit would apply both to past service (date of hire to April 30, 1989) and to future service (from May 1, 1989 forward), *except* that the past service benefit shall be reduced by the amount due under the Soft Drink Industry Employers-Local Union No. 744 Pension Fund.
>
> (f) Employee contribution—none.
>
> 4. *Saving Plan*. Provide coverage under the Coca-Cola Bottling Company of Chicago/Indianapolis Bargaining Employees' Savings Retirement/Plan as follows:
>
> (a) An employee may elect to contribute two percent (2%), four percent (4%), six percent (6%) or eight percent (8%) of pay which shall be matched by the Employer at a rate of fifty cents (.50) on the dollar to a maximum Employer contribution of 2% of pay.
>
> (b) Employee contributions shall always be 100% vested. Employer contributions shall vest at the rate of twenty percent (20%) per year with respect to the year contributions are made. Effective January 1, 1991, the vesting schedule for Employer contributions shall change to five (5) year cliff vesting.
>
> . . . .

On June 28, Roy Chamberlin, the Union's president, sent the following letter to Robert T. Palo, the Respondent's vice president, personnel and industrial relations, with the two enclosures noted therein:

> Enclosed are copies of letters sent to Mr. Marvin Gittler, Counsel for Local 744, International Brotherhood of Teamsters, by attorneys representing Kemmerer Bottling Group, Inc. and A. J. Canfield Co. [T]he let-

> ters request that the Union provide certain information regarding the Coca-Cola Pension Plan under the recently negotiated collective-bargaining agreement.
>
> As the information requested by Kemmerer and A. J. Canfield is relevant and necessary to the Union's responsibilities as collective-bargaining representative, I demand that you provide the information requested to the Union. Should you have any questions concerning the information requests, please contact Joel H. Kaplan, representing Kemmerer Bottling Group, and Richard L. Marcus, representing A. J. Canfield directly, or the undersigned as intermediary.

As indicated in Chamberlin's letter, enclosed with his June 28 correspondence to Palo, were copies of two letters, both dated June 16 and addressed to Marvin Gittler as union counsel, from Joel H. Kaplan and Richard L. Marcus, attorneys, respectively, for Kemmerer Bottling Group, Inc. (Kemmerer), and A. J. Canfield Co. (Canfield). The Union then had current collective-bargaining agreements with both Kemmerer and Canfield who, like the Respondent, were employers in the soft drink bottling industry in the Chicago area. Like the Respondent, the Union's relationship with Kemmerer and Canfield was embodied in two contracts with each company covering units analogous to those of the inside workers and outside workers units it represented among the Respondent's employees.

In their respective contracts with the Union, Kemmerer and Canfield subscribed to pension fund benefit provisions for employees that were identical to each other but different from what the Respondent had negotiated with the Union. Both companies agreed to pay monthly contributions in the amount of $104.54 to the Chicago Soft Drink Industry Employers–Local Union No. 744 Pension Fund (the Fund), for each regular employee who worked on 11 or more workdays during the calendar month, effective after such employee has been employed by the contracting employer for 30 days. However, under the pension fund provision in the Kemmerer and Canfield contracts, their obligations to pay the $104.54 monthly contribution shall be reduced if during the term of their respective agreements, the Union entered into or renewed any contract/agreement, either voluntary or imposed, covering the same type of work which permitted some other employer to provide pension benefits for its employees under a single-employer retirement plan sponsored by that employer rather than by contributing to the Fund. Should that occur, the contribution rate of Kemmerer and Canfield to the Fund ''shall immediately and prospectively be reduced to an amount equal'' to that of any such other employer's retirement benefit costs under its self-sponsored single-employer retirement plan.[4]

> As indicated in the above-quoted pension fund provisions of the Respondent's collective-bargaining agreements with the Union, the Respondent having just discontinued participation in the Fund, had negotiated and established a self-sponsored and administered single-employer retirement plan for its employees. This created the possibility that the Respondent's costs under its new plan might differ from the apparently uniform contributions required by the Fund. To take advantage of ''the most favored nation'' provisions of their respective labor agreements, both Canfield and Kemmerer pressed the Union to obtain and provide them with the Respondent's pension costs so that they could learn whether the Respondent's retirement benefit expenditures for employees were less than their own and, thus, whether their own contributions to the Fund might be reduced.

Kaplan's June 16 letter to Gittler from Kaplan on Kemmerer's behalf, enclosed with Chamberlin's June 28 correspondence to the Respondent, criticized the Union for its delay in furnishing the Respondent's pension plan costs, which Kemmerer had sought since May 12, and, in relevant part, iterated the following:

> We request that you provide us with the following information for each Coke employee in each bargaining unit (inside and outside) represented by the Union:
>
> 1. (a) The cost per employee of coverage under the Coke pension plan at the benefit level of $7.50/month per year of service with appropriate reductions for prior service . . . .
>
> (b) If this information is not available, the name, age, years of service, and amount due under the Soft Drink Industry-Local Union No. 744 Pension Fund for every Coke employee.
>
> 2. The name of each employee who elected to contribute to such savings plan, which bargaining unit he/she is in, his/her 1988 calendar year earnings, his/her expected 1989 calendar year earnings and the percentage of pay each such employee has elected to contribute.

Marcus' June 16 letter to Gittler, also enclosed with Chamberlin's June 28 letter to the Respondent, in stern terms similarly requested cost data pertaining to the Coca-Cola pension plan to enable that Company to calculate any reduced contributions to the Fund. Marcus' letter included the following demand:

> (5) Actuarial estimates of the costs to Coca-Cola of its retirement plans and the underlying assumptions for such estimates . . . . If Coca Cola does not presently have such estimates, . . . Coca Cola's own projections of the costs which it attributed or attributes to the plan . . . .

The complaint allegations in this matter setting forth the information that the General Counsel contends the Respondent has unlawfully refused to provide reflect almost *verbatim* the above-quoted requests in the June 16 letters from counsel for Kemmerer and Canfield. In those letters, both attorneys urged the Union, if necessary, to use the Act to obtain the desired information from the Respondent.

Earlier, on June 13, both Kemmerer and Canfield, in pursuit of the above data, had filed identically framed unfair labor practice charges alleging that the Union, since respective dates in May, had violated its bargaining obligation to them under Section 8(b)(3) of the Act. Accordingly, the

[4] This ''most favored nation'' provision appears in identical form in the articles dealing with pensions in the respective above-referenced collective-bargaining agreements between Kemmerer, Canfield, and the Union.

Union's June 28 information request was sent to the Respondent at least, in part, in response to both the enclosed correspondence from Kemmerer and Canfield and the pending charges filed by those companies.

By letter, dated July 11, Palo, the Respondent's vice president, personnel and industrial relations, replied to Chamberlin, in relevant part, as follows:

> Please be advised that the Company has no obligation to provide such confidential and proprietary information for use by its competition. The request on its face shows that the information is not requested for purposes of administering the Labor Agreements between the Union and the Coca-Cola Bottling Company.
>
> Accordingly, we will not be providing the information requested in the correspondence from the attorneys for Kemmerer and A. J. Canfields [sic] enclosed with your letter of June 28, 1989.

Chamberlin, also on July 11, again wrote to Palo that he had not received a response to his June 28 information request. Threatening that the Union would pursue its legal remedies if the Respondent failed to reply to this demand within 7 days from receipt, Chamberlin reiterated the Union's position as follows:

> I am again requesting and demanding that Coca-Cola Bottling Company of Chicago provide the Union with the following information, which information is relevant and necessary to the Union's responsibilities as collective-bargaining representative. Specifically, please provide:
>
> (a) data on the cost per employee of coverage under the Coca-Cola Pension Plan or, if such cost data is not available,
>
> (b) actuarial estimates or projections of such costs to Coca-Cola under its Pension Plan.

On July 12, Chamberlin sent the following response to Palo's July 11 correspondence:

> I disagree with your contention that the Company has no obligation to provide the information requested. The Union maintains that such information is relevant and necessary for administering its collective-bargaining agreements with the Company. We are prepared to meet with you and negotiate appropriate provisions to protect any information the Company claims is confidential and proprietary.

The Respondent's final stance, restated in Palo's July 17 correspondence to Chamberlin, in relevant part, follows:

> Please be advised that the position of the Coca-Cola Bottling Company of Chicago remains as set forth in my correspondence of July 11, 1989. Obviously, the purpose of your request for information is as set forth in your letter of June 28, 1989. I have been advised by legal counsel that our Company has no obligation to provide the information requested under these circumstances. The Union has an interest in the administration of our Labor Agreements to ensure that benefits are being provided. Information you have requested that relates to certain costs is not relevant to that interest. Therefore, there is no reason to meet and negotiate over information that is not necessary for the administration of the Labor Agreement. Furthermore, providing information on our costs that will be utilized by competition in any manner or form is totally unacceptable.

As correspondence, dated July 13 and September 20, from Susan Brannigan, associated with Gittler as union counsel, to the Board's Regional Director makes clear, the Union's September 7 charge against the Respondent, which underlies this proceeding, was filed reluctantly in response to advice from the Regional Office that complaint would issue against the Union pursuant to the pending charges by Kemmerer and Canfield if the Union did not file its own charge against the Respondent.

This matter has proceeded to hearing solely pursuant to the Union's charge against the Respondent.

C. *Discussion and Conclusions*

As Administrative Law Judge Julius Cohn noted in his Board-approved decision in *Stephen Oderwald, Inc.*:[5]

> [T]he duty of an employer to bargain in good-faith includes the obligation to disclose to its employees' collective-bargaining representative data relevant and reasonably necessary to its role as bargaining agent. The Supreme Court has stated: ''There can be no question of the general obligation of an employer to provide the information that is needed by the bargaining representative for the proper performance of its duties.'' *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435 (1967). Of course an employer's disclosure obligation relates not only to issues that may be raised at the bargaining table, but also to those raised during the administration of the collective-bargaining contract.[2]
>
> It is necessary to determine whether the Union's request for information pertains to a bargaining issue. Then, according to the Supreme Court, the scope of the employer's disclosure obligation is measured by a ''discovery type standard'' of relevance, which requires only 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.'' *NLRB v. Acme Industrial Co.*, supra at 437. In *NLRB v. Yawman & Erbe Mfg. Co.*, 187 F.2d 947, 949 (2d Cir. 1951), the Court stated ''any less lenient rule in labor disputes would greatly hamper the bargaining process, for it is virtually impossible to tell in advance whether the requested data would be relevant except in those infrequent instances in which the inquiry is patently outside the bargaining issue.''
>
> As to relevance it has been held that ''wage and related information pertaining to employees in the bargaining unit is presumptively relevant, for, as such data concerns the core of the employer-employee relationship, a union is not required to show the precise relevance of it,[3] while as to other matters, considered outside the unit, a showing of relevance must be made. In this connection it is not necessary that the information

[5] 284 NLRB 277, 278–279 (1987).

be shown to be accurate or even admissible in court, so long as there is some relationship to a subject of collective bargaining.[4]

[2] *Detroit Edison Co. v. NLRB*, 440 U.S. 303 (1979); *NLRB v. Acme Industrial Co.*, supra; *Westinghouse Electric Corp.*, 239 NLRB 106 (1978).

[3] *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61 (3d Cir. 1965).

[4] See *AGC of California*, 242 NLRB 891 (1979).

In *Solar Turbines International*,[6] it is noted that:

> The Board has held that information concerning pensions health benefit(s), and insurance are encompassed within the concept of wages and that both premiums paid and benefits granted under noncontributory plans constitute ''wages.'' *East Dayton Tool Co.*, 239 NLRB 141 (1978); *Nestle Co.*, 238 NLRB 92 (1978).[7]

As the Board held in *WCCO Radio*:[8]

> The burden of establishing that presumptively relevant wage and benefit information is not relevant falls on the employer. [Citations omitted.]

In accordance with the above authority, the pension cost information requested by the Union in this matter, as affecting employees the Union represents, is presumptively relevant wage and benefit information of the type traditionally mandated for production,[9] and the burden of establishing that it is not relevant falls on the Respondent. Contrary to the Respondent where, as in the present situation, the wage and benefit information sought is presumptively relevant, the Union was not required to articulate a purpose for its request.[10]

There is no foundation for the Respondent's argument that cost information ''as a matter of established law'' would not be relevant to the Union here where negotiations have been completed and new labor agreements are in effect. Since, as noted, collective bargaining is a continuing process, even after negotiations are ended and the contracts are signed, information concerning actual pension costs could enable the Union to ascertain whether the Respondent, in fact, was making necessary contributions to the pension fund and whether such contributions, if paid as scheduled, were adequate to ensure the fund's stability, continued viability, and capacity to provide retirement benefits at contracted levels. Such data also could be useful to the Union where, during the labor agreement term, an employer should contend an inability to continue its business or to meet its contractual obligations because of asserted high labor costs.[11] *Schaeff Namco, Inc.*,[12] and *NLRB v. Goodyear Aerospace Corp.*,[13] cited by the Respondent, are not supportive.

[6] 244 NLRB 175, 178 (1979).

[7] Also see *NLRB v. Borden, Inc.*, 600 F.2d 313 (1st Cir. 1979), enfg. in pertinent part 235 NLRB 982 (1978).

[8] 282 NLRB 1199, 1204 (1987), enfd. 844 F.2d 511 (8th Cir. 1988).

[9] See, e.g., *Borden, Inc.*, supra.

[10] *Marshalltown Trowel Co.*, 293 NLRB 693 (1989).

[11] *Kurz-Kasch, Inc.*, 238 NLRB 804, 806 (1978).

[12] 280 NLRB 1317, 1319 (1986).

[13] 497 F.2d 747, 751–752 (6th Cir. 1974), enfg. in part 204 NLRB 831 (1973).

In *Schaeff Namco*, supra, the Board found that the employer had lawfully refused to honor the union's request for financial information to aid its evaluation of the company's wage reduction proposal because the union's request had been made for a specific, since-expired purpose and, therefor, no longer was relevant to the bargaining process. There, the union's information request, made in connection with wage reopener negotiations during the contract term, was delivered to the respondent appropriately 2 days after the end of the 14-day period during which such wage reopener negotiations could occur and at a time when the respondent was contractually obligated to implement its prior wage offer. As the company was found to have bargained in good faith during the reopener period and as the negotiations for which the data had been requested had ended by the time the information request was received, the Board found that the data sought by the union was irrelevant to its bargaining duties. Here, unlike *Schaeff Namco*, the Union's demand for information did not relate solely to a limited situation, rendered moot, but to the Union's continuing responsibilities as bargaining representative.

In *NLRB v. Goodyear Aerospace Corp.*, supra, also cited by the Respondent, the U.S. Court of Appeals, Sixth Circuit, refused to enforce part of a Board Order requiring the employer to make available certain financial information (superseded by a request for an audit) to enable verification of the respondent's claim of noncompetitiveness on the ground that the union's request had not been made in furtherance of negotiations. This was because the union's request, made during the contract term while attending a series of company-requested meetings to consider management's problems, was found to have been in the context of its originally stated intent to merely listen and to exercise its right not to renegotiate while the labor agreement still was in effect. The court found that the respondent was not required to provide information the union had requested during those sessions, to which it otherwise would have been entitled, because ''since neither party was required to negotiate (during the contract term), Goodyear was not compelled to supply information when the Union was willing only to listen.''[14] The Board, however, had found that after an initial reluctance, the union, in fact, had negotiated with company representatives concerning company-proposed contract changes during five sessions within a 2-month period; had promised to fully consider the company's problems; and had requested an audit after receiving a written company proposal that employees forego a scheduled wage increase because the employer assertedly had been rendered uncompetitive by its labor costs. The Board, also finding that the company thereafter had pursued an pursued an aggravated course of conduct that undermined the union and was rejective of the bargaining process, held that the respondent was obliged to produce the financial data necessary to meaningful collective bargaining.[15] I, of course, am bound by the Board's determination in that matter.

I would distinguish *WXON-TV, Inc.*,[16] cited by the Respondent in support of its argument that the requested information should not properly be required because sought by

[14] 497 F.2d at 752.

[15] 204 NLRB 831–832 (1973).

[16] 289 NLRB 615 (1988).

the Union, not for bargaining purposes, but as a discovery device to support the Union's unfair labor practice charge against the Respondent. In *WXON-TV*, supra, unlike the present matter, the union had not requested the disputed information in the context of its bargaining relationship with the company but to facilitate an unfair labor practice proceeding. The union had signed the information request and the related charge on the same day and had filed the charge on the following day. In denying the requested information, the Board noted that the charge had been filed before the respondent ever knew of the information request, let alone had opportunity to respond, and that the union had not initiated any contact for bargaining purposes regarding the matters contained in the information request before filing its charge. Here, the Union, in its June 28, July 11 and 12 correspondence to the Respondent, had repeatedly requested the disputed data in a bargaining framework. Even after Kemmerer and Canfield had filed the June 13 unfair labor practice charges against the Union, the record indicates that the Union resisted filing its own corresponding charge against the Respondent until September 7, and then did so only after having been informed by the Board's Regional Office that it must do so to obtain dismissal of the charges against itself that had been filed by Kemmerer and Canfield. Union Counsel Brannigan's September 20 letter to the Regional Director requesting dismissal of the charges against the Union because of compliance with this dictate, sets forth an expression of regret at having been compelled to so proceed. Here, unlike *WXON-TV*, in spite of the pressures on the Union to charge the Respondent with violating the Act, the Respondent was given more than 2 months within the bargaining process to furnish the requested information before being compelled to answer an unfair labor practice charge.

The Union's entitlement to the disputed information is not diminished because it also was sought to enable the Union to comply with its own bargaining obligations to Kemmerer and Canfield. While the Union was open about the need to provide requested data to Kemmerer and Canfield, in all its relevant correspondence to the Respondent, the Union made plain that it also was seeking the information for its own use as bargaining representative. It is settled that where, as here, ''a union's request for information is for a proper and legitimate purpose, it cannot make any difference that there may also be other reasons for the request or that the data may be put to other uses.''[17]

Implicit in the Respondent's position is its concern for confidentiality. I agree with the Respondent that the confidential nature of the requested cost information is a matter of legitimate concern, particularly here where the data, if furnished, would be provided to two of the Respondent's competitors. However, since, in such circumstances, the Board has recognized the importance of a free flow of information between the parties to encourage the amicable resolution of collective-bargaining disputes,[18] and as the Union could validly utilize the data sought here for necessary bargaining purposes, the Board is required to balance the Union's need for the information against the Respondent's legitimate interest in confidentiality.[19] Here, acknowledging the germane concerns, I conclude that the Respondent's desire for confidentiality does not outweigh the Union's statutory right to relevant pension information. In furnishing the requested data, the Respondent will not be required to compromise any production techniques, patents, copyrights, or professional secrets basic to its business, or will it be required to divulge personal information concerning its employees. On the other hand, the requested cost factors affecting the Respondent's privately sponsored pension fund, when furnished, may assist the Union in evaluating the fund's stability and its capacity to provide the benefit levels required under the contract. It also might enable the Union to formulate both future contract proposals and near-term suggestions that could lead to improvements in the pension plan's quality and administration, perhaps at no cost increases to the Respondent. In so concluding, I recognize that here where, in addition to the Union, the relevant information also is being sought specifically on behalf of of the Respondent's competition, Chamberlin's offer in his July 12 letter to ''negotiate appropriate provisions to protect any information the Company claims is confidential and proprietary,'' well might not lead to a resolution of confidentiality that would be satisfactory to the Respondent since disclosure may be unavoidable.[20] Nonetheless, the Union's fundamental right to this basic information concerning the Respondent's single-employer pension plan for employees must prevail over the Respondent's concern for the confidentiality of its costs in this circumscribed area.

Finally, while not contested to the same extent as the pension cost data, I find that the Respondent also is required to furnish the information requested by the Union concerning employee contributions to the contractual savings plan and the other savings plan-related data sought in the above Kemperer enclosure to the Union's June 28 correspondence.[21]

For the above reasons, I find that at least since July 11, the Respondent has failed and refused to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act by refusing to provide the Union with the data requested in its June 28 and July 11 information requests, as renewed on July 12, to the extent reflected in paragraphs VII (a) and (b) of the complaint in this matter.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

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

[17] *Associated General Contractors of California*, 242 NLRB 891, 894 (1979); *Utica Observer-Dispatch v. NLRB*, 229 F.2d 575 (2d Cir. 1956).

[18] *General Dynamics Corp*., 268 NLRB 1432, 1433 (1984).

[19] *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 314–320 (1979); *Minnesota Mining Co*., 261 NLRB 27, 30 (1982); *General Dynamics Corp*., supra.

[20] Cf. *General Dynamics Corp*., 268 NLRB at 1433.

[21] *NLRB v. Laredo Coca Cola Bottling Co*., 613 F.2d 1338, 1343–1344 (5th Cir. 1980), enfg. 241 NLRB 167 (1979), cert. denied 449 U.S. 889 (1980).

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(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. The units described above, both before and since their January 30, 1990 modifications, constitute units appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material, the Union has been the exclusive bargaining representative of the employees in the aforesaid units within the meaning of Section 9(a) of the Act.

5. By failing and refusing to furnish the Union with the information requested in the Union's June 28 and July 11 and 12, 1989 information requests to the extent reflected in paragraphs VII (a) and (b) of the complaint in this matter, the Union has violated Section 8(a)(5) and (1) of the Act.

6. 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 Respondent has engaged in certain unfair labor practices, it will be recommended that the Respondent be required to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has unlawfully failed and refused to furnish the Union with certain requested information relevant and necessary to its functions as bargaining agent for the Respondent's employees in two collective-bargaining units, the Respondent should be required to provide the Union with the information requested in its June 28 and July 11 and 12, 1989 letters to the Respondent to the extent specified in paragraphs VII (a) and (b) of the complaint in this matter and to post an appropriate notice to employees.

[Recommended Order omitted from publication.]