

**The Nestle Company, Inc. and United Food and Chocolate Workers, Local 1974, affiliated with Retail, Wholesale and Department Store Union, AFL-CIO. Case 3-CA-8063**

September 12, 1978

**DECISION AND ORDER**

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

On April 19, 1978, Administrative Law Judge Michael O. Miller issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, The Nestle Company, Inc., Fulton, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

**APPENDIX**

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

WE WILL NOT refuse to bargain collectively and in good faith with United Food and Chocolate Workers, Local 1974, affiliated with Retail, Wholesale and Department Store Union, AFL-CIO, by refusing to furnish said Union with information necessary and relevant to the Union's performance of its collective-bargaining functions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed under

Section 7 of the National Labor Relations Act, as amended.

WE WILL, upon request, furnish the Union with information concerning the cost of premiums and the benefits paid under our group health insurance plan.

THE NESTLE COMPANY

**DECISION**

**STATEMENT OF THE CASE**

MICHAEL O. MILLER, Administrative Law Judge: Upon a charge filed by the United Food and Chocolate Workers, Local 1974, affiliated with Retail, Wholesale and Department Store Union, AFL-CIO, herein the Union, on August 10, 1977, and a complaint issued by the Acting Regional Director for Region 3 of the National Labor Relations Board on September 16, 1977, a hearing was held before me in Fulton, New York, on January 3, 1978.

At issue herein was whether The Nestle Company, Inc., herein the Respondent, violated Section 8(a)(5) and (1) of the National Labor Relations Act, herein the Act, by refusing to furnish the Union with requested information concerning costs and claims experience under the group health insurance plan covering unit employees. Respondent's timely filed answer admitted the refusal to furnish the requested information but denied that by such conduct it had violated the Act.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally. Briefs, which have been carefully considered, were filed by General Counsel and the Respondent.

Upon the entire record, I make the following:

**FINDINGS OF FACT**

**I. RESPONDENT'S BUSINESS AND THE UNION'S LABOR ORGANIZATION STATUS—PRELIMINARY CONCLUSIONS OF LAW**

Respondent is engaged in the manufacture, sale, and distribution of chocolate and related products, with a plant located in Fulton, New York, and its principal office and place of business in White Plains, New York. The Fulton plant is the only plant involved herein. The complaint alleged, Respondent admitted, and I find and conclude that Respondent is an employer, engaged in commerce, within the meaning of Section 2(6) and (7) of the Act.

The complaint alleged, Respondent admitted, and I find and conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. THE UNFAIR LABOR PRACTICES**

**A. Current Negotiations**

The facts herein are not in dispute. For over 30 years, Respondent has recognized the Union as the exclusive col-

lective-bargaining representative of the employees at the Fulton plant.<sup>1</sup> The current collective-bargaining agreement has a term of May 16, 1975, until May 19, 1978. Pursuant to that agreement, Respondent provided a group insurance plan, the premiums and costs of which were entirely borne by Respondent. The description of the insurance plan and its benefits, set forth in a booklet distributed to the employees, was incorporated into the collective-bargaining agreement by reference.

On February 21, 1977 (all dates hereinafter are 1977 unless otherwise specified), Myron Johnson, the Union's International representative, wrote Respondent's personnel manager, Hugh MacKenzie, as follows:

Local Union #1974 is looking into cost figures of several Insurance Companies so that they can present same to The Nestle Company at our next Contract Negotiations.

As you know the Union is very dissatisfied with the coverage we are now getting with Continental Assurance Company.

In order for the Union to obtain proper cost figures we must have the following information.

1. Names of all hourly employees
2. Date of birth
3. Sex
4. Occupation
5. Marital Status
6. Earnings information—Hourly grade is sufficient.

We also need experience figures on premiums versus claims over the past three (3) years on a year to year basis for the Fulton plant.

On March 29, Respondent furnished all of the requested information except the occupation status of the employees and the experience figures. The latter information, it promised, would be provided after it received "the complete GHI experience report for 1976 from the Carrier." The Union subsequently waived its request for information on the employees' occupation status.

Respondent did not furnish the requested insurance information, i.e., claims and premiums paid from 1974 to 1976. On June 17, Johnson again wrote MacKenzie, repeating the request. His request stated: "The Union needs these figures in order to continue its preparation for our 1978 negotiations." The information was also requested telephonically and in person on June 8 and August 3 and 4. At all times, Respondent has refused to furnish the requested data.

### B. 1975 Negotiations<sup>2</sup>

The Union had made similar requests in the course of the negotiations which culminated in the 1975-78 agreement.

<sup>1</sup> The appropriate bargaining unit consists of:

All production and maintenance employees employed by the employer at its Fulton, New York plant, excluding all office clerical employees, professional employees, laboratory employees, foremen, foreladies, assistant foremen, inspectors who have the authority to reject work, and all other guards and supervisors as defined in the Act.

<sup>2</sup> Evidence thereon was adduced by Respondent.

Thus, in a conference conducted on April 22, 1975, Union International Vice President Kirkwood related an offer by a representative of a competing insurance carrier to present proposals for group health coverage which that representative believed would offer superior benefits to those of the present carrier at less cost. Cummings, Respondent's director of industrial relations, informed the Union that although the level of benefits were to be determined in negotiations Respondent maintained that, "with respect to insurance carriers it has always been the Company's prerogative to designate who it wants as insurance carrier." Cummings stated that "he was quite conversant with the fact that the Union has a right to make a proposal relative to the insurance carrier but the Company is not inclined in any manner, shape or form to change the insurance carrier." Cummings compared the coverages offered, generally, and related the benefits to Respondent of securing its insurance carrier through an insurance broker. He reiterated that Respondent would not negotiate over the identity of the insurance carrier but would listen to the Union's proposals on group health insurance benefits.

Similar positions were espoused by the parties in a meeting on May 6, 1975. In that meeting, Cummings suggested that if the other insurance carrier wanted to make a proposal it should do so through Respondent's insurance broker. Kirkwood acknowledged that Respondent had the right to determine who the insurance carrier would be but asserted that if the Respondent was going to charge the Union with excessive costs for group health insurance they would not accept the figure attributed by the Employer to the cost of such insurance.

The 1975 negotiations were concluded on May 16, 1975, with acceptance of an agreement which did not include a change in the insurance carrier.

### C. Analysis and Conclusions

Respondent, acknowledging its obligation under Section 8(a)(5) to furnish upon request information necessary and relevant to the Union's discharge of its statutory duty to represent the unit employees (see *N.L.R.B. v. Acme Industrial Company*, 385 U.S. 432 (1967), and *N.L.R.B. v. Truitt Manufacturing Company*, 351 U.S. 149 (1956)), contended that General Counsel has failed to demonstrate the relevance or necessity of the information requested by the Union. As pointed out by Respondent, General Counsel introduced no evidence, beyond the Union's bare assertion of dissatisfaction with present coverage and a need for the information in order to prepare for negotiations, to establish either necessity or relevance.

Respondent further recognized that, as to information which was presumptively relevant and necessary to the fulfillment of the Union's statutory role, General Counsel would be relieved of establishing specific relevance and necessity. That role includes both policing the administration of existing agreements and preparing for negotiation of future agreements. Wage and related information pertaining to employees in the bargaining unit is presumptively relevant to that role and obligation "and must be produced because it goes to the very core of the employer-employee relationship." *Western Massachusetts Electric Company*, 234

NLRB 118 (1978); *Andy Johnson Co., Inc.*, 230 NLRB 308 (1977); *Curtiss-Wright Corporation, Wright Aeronautical Division v. N.L.R.B.*, 347 F.2d 61 (C.A. 3, 1965). Respondent contends, however, that information pertaining to premiums and claims experience under a group health insurance plan is not presumptively relevant, whether or not that plan is wholly funded by the employer.

Contrary to the contentions of the Respondent, I conclude that pertinent authority establishes the presumptive relevance of the requested information. Thus, it is clear that insurance plans are mandatory subjects of bargaining. *McDonnell Douglas Corporation*, 224 NLRB 881 (1976); *Beryl Chevrolet, Inc.*, 221 NLRB 710 (1975). Moreover, the Board has held that both the premiums paid and the benefits granted under a noncontributory insurance program constitute "wages." *Inland Steel Company*, 77 NLRB 1 (1948), *enfd. Inland Steel Company v. N.L.R.B.*, 170 F.2d 247 (C.A. 7, 1948); *Sylvania Electric Products, Inc.*, 127 NLRB 924 (1960).<sup>3</sup> As "wages," this information is presumptively relevant. *Western Massachusetts Electric Company, supra*. As Respondent has not rebutted the presumption of relevance, I find that its refusal to furnish the requested information violated Section 8(a)(1) and (5) of the Act.

Additionally, I am satisfied that the record herein establishes the actual relevance of the information sought to the Union's role in collective bargaining. Thus, as early as 1975, the Union raised the question of the relationship of Respondent's costs for the insurance plan to the cost of the remainder of its offer and indicated that if the insurance costs were excessive (compared to the cost of similar coverage by another insurance carrier), it would not accept the Employer's figures. Implicit in such a position is the assertion that if the Employer could have secured the same coverage for less but did not, the Union would seek the difference elsewhere in the contract. A similar implication is found in Johnson's blanket assertion on June 17 that the Union needed the information to prepare for negotiation.

#### CONCLUSIONS OF LAW

By refusing to furnish the Union with the requested information concerning claims and premiums paid in regard to the group health insurance plan for the years 1974, 1975, and 1976, the Respondent has refused to bargain in good faith with the Union and has interfered with, restrained, and coerced its employees in the exercise of the rights guar-

<sup>3</sup> The First Circuit Court of Appeals denied enforcement of the Board's first *Sylvania* order, concluding that the costs of such a plan, as distinguished from the benefits derived therefrom were not "wages." *Sylvania Electric Products Inc. v. N.L.R.B.*, 291 F.2d 128 (C.A. 1, 1961) (Emphasis supplied). The Board has declined to follow the court's rationale therein. See *Sylvania Electric Products, Inc.*, 154 NLRB 1756 (1965), *enfd.* 358 F.2d 591 (C.A. 1, 1966); *The Electric Furnace Co. and Salem Fabricating & Machine Co.*, 137 NLRB 1077, 1080 (1962); and *Curtiss-Wright Corporation*, 193 NLRB 940 (1971). See also *N.L.R.B. v. General Electric Company*, 418 F.2d 736, 750 (C.A. 2, 1969), wherein the Second Circuit Court of Appeals held the union entitled to pension and insurance cost information. The court therein also pointed out that in its second *Sylvania* decision, the First Circuit had distinguished its initial *Sylvania* decision "almost to the point of extinction by permitting the Union to demand cost information wherever the Union sought to weigh the value of different possible wage-benefit packages."

anteed in Section 7 of the Act, thereby engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain actions designed to effectuate the policies of the Act. Specifically, I shall recommend that it be required to furnish certain information to the Union, which information is necessary and relevant to the Union's administration of its statutory obligations as collective-bargaining representative.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I issue the following recommended:

#### ORDER<sup>4</sup>

The Respondent, The Nestle Company, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to furnish the United Food and Chocolate Workers, Local 1974, affiliated with Retail, Wholesale and Department Store Union, AFL-CIO, with information pertaining to the premium costs and benefits paid under its group health insurance plan at its Fulton, New York, plant.

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

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

(a) Upon request, furnish the above-named Union with information concerning the premium costs and benefits paid under its group health insurance plan at its Fulton, New York, plant.

(b) Post at its plant, copies of the attached notice marked "Appendix." Copies of said notice on forms provided by the Regional Director for Region 3, after being duly signed by the Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

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

<sup>4</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>5</sup> In the event that 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."