

Paccar, Inc. d/b/a Peterbilt Motors Company and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and UAW, Local 1832. Case 26–CA–023225

July 15, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER
AND HAYES

On October 28, 2010, Administrative Law Judge Keltner W. Locke issued the attached decision. The Respondent filed exceptions and a supporting brief. The Acting General Counsel and the Charging Parties filed answering briefs, and the Respondent filed a reply brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings,¹ and conclusions only to the extent consistent with this Decision and Order, to amend his remedy, and to adopt his recommended Order as modified and set forth in full below.

The judge found and concluded (1) that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing, since July 16, 2008, to furnish UAW Local 1832 (the Union) with requested relevant information; and (2) that this violation rendered unlawful, beginning that same date, the Respondent’s ongoing lockout of unit employees. For the reasons that follow, we agree with the judge that the Respondent unlawfully refused to provide the requested information, but we conclude that this violation did not make the lockout unlawful.

I. FACTS

The Union has represented employees at the Respondent’s Madison, Tennessee facility since 1973.² The most recent collective-bargaining agreement between the parties was effective from June 22, 2003, to June 20, 2008. The parties began negotiating for a successor agreement on April 30, 2008.³ The Respondent sought significant changes to the agreement, including a tiered wage system

¹ The Respondent has excepted to some of the judge’s credibility findings. The Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² The facility is alternately referred to as the “Madison” and the “Nashville” plant or facility in the record. For clarity, we use “Madison facility” throughout this decision.

³ All dates hereafter are in 2008.

that would provide different wage rates for existing employees, new hires, and workers recalled from layoff; changes to the seniority system, including designating some workers “key operators” and protecting them from layoff through superseniority; and changes to the existing outsourcing language. The Union emphatically rejected these proposals and presented proposals of its own that deviated sharply from the Respondent’s.

During a bargaining session on June 13, the Union described its proposals as a “package deal.” Larry Vessels, assistant general manager of PACCAR’s Winch Division and a member of the Respondent’s bargaining committee, replied that the Madison plant had the highest operating costs in the company. Union Representative Michael Brown asked whether Vessels meant costs per hour or costs per truck, and Vessels replied, “Both.”

At a bargaining session on June 16, Kären White, director of employee and labor relations and the Respondent’s chief spokesperson during negotiations, reiterated that the Madison facility had the highest operating costs. During the same bargaining session, Vessels also expressed concerns that a lockout, a strike, or working without a contract might put the Madison facility in jeopardy. Vessels said that if work was ever transferred to the Respondent’s facility in Denton, Texas, the work likely would not come back to Madison.

On June 19, the Union asked the Respondent for wage, overtime, and benefits information for the three other PACCAR production facilities in the United States. The information requested included hourly wage rates by job classification and the number of employees working in each job classification, the total number of hours and overtime hours worked in 2007 and 2008, and the total cost of all benefit programs.⁴ The Union’s information request stated that it was made “[i]n the spirit of good faith bargaining and in the interest of reaching a timely settlement,” and was based on the Respondent’s assertion that the Madison facility had the highest operations costs of all of Respondent’s four domestic facilities. Additionally, when Timothy Bressler, the Union’s lead negotiator, handed over the information request, he explained that the Union needed the information to make a proposal.

The 2003–2008 contract expired on June 20. On June 22, the Union held a meeting with its members to discuss the status of negotiations. A document handed out at the meeting said that over 150 issues were “open with no resolve [sic].” The document also identified several major open issues, including tiered wages and superseniority.

⁴ The full particulars of the information request are set forth in the attached judge’s decision.

ty for key operators, but nowhere claimed that the Respondent was refusing to provide relevant information.

The Respondent locked employees out beginning on June 23.⁵ The Union again requested comparative labor-cost information by letters dated June 30 and July 8.⁶ The Union's letter of July 8 explained that "[b]efore we can make an informed decision about the concessions that you've proposed, we need to know if the costs at Madison are in fact comparatively high."

At a bargaining session on July 16, the Respondent refused to provide the requested information. The Respondent told the Union that information about wages and benefits at its other plants was not relevant because the Respondent had based its economic proposals on the wages and benefits that other employers in the Nashville area provided their workers, not on wages and benefits at other PACCAR facilities.

The parties met three times after July 16. On July 29, they discussed major issues, including key operators, outsourcing, tiered wages, and medical insurance. On August 19, the Union identified every open issue. The parties did not reach agreement on any issues at these meetings, and there is no evidence that the parties discussed the information request. At the final bargaining session on August 20, the Union withdrew a comprehensive proposal it had made, but there is no evidence that the Union claimed that it needed the requested information in order to make new proposals or assess the Respondent's proposals. The lockout continued, and the Madison facility permanently closed in April 2009.⁷

II. DISCUSSION

A. Did the Respondent Violate Section 8(a)(5) by Refusing to Furnish Requested Relevant Information?

The Union sought information concerning matters outside the Madison bargaining unit. Information concerning extra-unit matters is not presumptively relevant, and the requesting union bears the burden of establishing its relevance.⁸ *Shoppers Food Warehouse*, 315 NLRB 258,

⁵ The General Counsel does not allege that the lockout was unlawful at its inception.

⁶ The judge found that the Respondent knew, on June 19, that the Union was actually requesting comparative labor-cost information. The Respondent excepts to that finding, claiming that on June 19 the Union referred to the document it gave the Respondent as a "sample" or "example" and said that it was not requesting the items listed. We need not pass on this exception. It is undisputed that the Union requested comparative labor-cost information no later than June 30. The precise date of the request is immaterial.

⁷ There are no unfair labor practice allegations pertaining to the closing of the Madison facility.

⁸ Information concerning wages, hours, and terms and conditions of employment of bargaining unit employees is presumptively relevant. See, e.g., *E. I. du Pont de Nemours & Co.*, 276 NLRB 335 (1985). The

259 (1994). That burden is not exceptionally heavy. *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enf. 715 F.2d 473 (9th Cir. 1983). The Board applies a broad, discovery-type standard to determine relevance, and potential or probable relevance is sufficient. *Shoppers Food Warehouse*, supra. Moreover, an employer may make information relevant by its assertions during the course of bargaining. See *Caldwell Mfg. Co.*, 346 NLRB 1159, 1160 (2006); *Allison Corp.*, 330 NLRB 1363, 1367 (2000).

We agree with the judge that the requested information concerning labor costs at the Respondent's other facilities was relevant, and that the Respondent made it so by its own assertions at the bargaining table. The Respondent twice stated that the Madison plant had the highest operating costs of any of its facilities, while seeking significant concessions during bargaining. Not surprisingly, the Union responded by requesting information needed to evaluate the accuracy of the Respondent's claim and, if the claim proved accurate, to assist the Union in shaping its bargaining proposals accordingly. That was, in essence, what Bressler told the Respondent on June 19 when he submitted the Union's information request and said that the Union needed that information to make a proposal.

Even assuming, as the Respondent contends, that it based its specific wage-and-benefit proposals on wages and benefits provided by Nashville-area employers, the Respondent's repeated assertions during bargaining that Madison was the costliest facility to operate—together with Vessels' June 16 warning that the Madison facility might be "in jeopardy" and that work transferred from that facility would likely never come back—reasonably suggested that comparative operating costs played a role in its bargaining strategy and that the Union would be wise to similarly take the comparative costs into account in formulating its strategy. Put differently, the Respondent *itself* apparently deemed Madison's comparative operating costs material to the negotiations, or it would not have raised the subject twice. By doing so, the Respondent made the requested information at least potentially relevant to the Union's duties as unit employees' bargaining representative.⁹ That is all our cases require to establish relevance.

Union, therefore, did not need to demonstrate relevance with respect to wage and benefit information of employees at the Madison plant. Although the Union requested labor cost information for every PACCAR production facility in the United States (presumably including the Madison facility itself), the General Counsel does not allege that the Respondent failed to provide this information with respect to the Madison facility, and there are no exceptions to the judge's finding that the information the Union asked for was not presumptively relevant.

⁹ As the Supreme Court observed in *NLRB v. Truitt Mfg. Co.*:

The Respondent argues that the Union's request for information about comparative *labor* costs was not tailored to the Respondent's statements about comparative *operating* costs. Labor costs are only part of overall operating costs. Therefore, the Respondent argues, the requested information was not relevant because it would not have enabled the Union to verify the accuracy of the Respondent's statements.

The Respondent's argument assumes too exacting a standard of relevance. Under the applicable test, the Board asks merely whether the information was probably or potentially relevant to the Union's duties as bargaining representative. Typically, labor costs are a significant component of operating costs and they were likely a critical element here. Thus, even if the requested information would not have enabled the Union to confirm or refute the Respondent's statements definitively, it might have cast considerable light on the statements' veracity. If the information showed that labor costs were lower elsewhere, the Union could conclude that Respondent's claims about Madison's high operating costs were trustworthy in the most relevant respect, and it might have decided to moderate its wage and benefit demands accordingly. Or the information might have shown that labor costs at other facilities were comparable to or higher than those at Madison. Either way, the requested information would have been informative and useful to the Union in responding to the Respondent's demands for concessions and carrying out its duties as bargaining representative.¹⁰

The Respondent also argues that even if its statements about operating costs made the requested information relevant initially, it "retracted" those statements on July 16 when (according to the R. Exceptions Br.) Director of Employee and Labor Relations White "advised the Union that none of the Company's bargaining proposals were premised on the comparative costs at other Peterbilt

facilities." We find it unnecessary to decide whether and under what circumstances an employer may retract statements that make requested information about non-bargaining unit employees relevant.¹¹ Here, there was no "retraction," as the Respondent never disavowed its twice-stated claim that Madison had the highest operating costs. Moreover, the Respondent asserted that its proposals were not based on comparative costs only after retreating from its initial position that the Union had not tendered an information request at all. Under the circumstances, the Union was entitled to view the Respondent's belated assertion with skepticism.

Finally, the Respondent argues that the Union did not meet its burden of demonstrating the relevance of the information at the time the request was made. We disagree. The requesting union need only indicate the reason for its request. See, e.g., *Contract Flooring Systems*, 344 NLRB 925, 925 (2005). The Union did inform the Respondent of the reason for the request by explaining, on June 19, that the information was requested based on the Respondent's assertion that the Madison facility had the highest operating costs. The Union reiterated this reason on July 8, telling the Respondent that "[b]efore we can make an informed decision about the concessions that you've proposed, we need to know if the costs at Madison are in fact comparatively high."

For the foregoing reasons, we affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish requested relevant information.¹²

B. Did the Respondent's Refusal to Furnish the Requested Information Render the Lockout Unlawful?

The General Counsel alleged that the Respondent's failure and refusal to provide the requested information converted what had been a lawful lockout into an unlawful one on July 16, when the Respondent expressly refused to provide the requested information. The judge agreed, finding that the Respondent's failure to provide

Good-faith bargaining necessarily requires that claims made by either bargainer should be honest claims. This is true about an asserted inability to pay an increase in wages. If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy.

351 U.S. 149, 152–153 (1956). Although the Court specifically referred to a claim of inability to pay, the Board has applied this "honest claims" principle in a wide range of information request cases, including those not involving inability-to-pay claims. E.g., *Caldwell*, supra, 346 NLRB at 1159 fn. 5; *A.M.F. Bowling Co.*, 303 NLRB 167, 170 (1991), enf. denied on other grounds 977 F.2d 141 (4th Cir. 1992). We agree with the Ninth Circuit's view that the "principle announced in *Truitt* is not confined to cases where the employer's claim is that he is unable to pay the wages demanded by the union." *NLRB v. Western Wirebound Box Co.*, 356 F.2d 88, 90–91 (9th Cir. 1966).

¹⁰ The Respondent has not argued that the Union sought the requested information for any improper purpose.

¹¹ The Board has held that an employer may retract an "inability to pay" claim in certain circumstances, and thereby avoid an obligation to provide requested financial information supporting the claim. See, e.g., *Central Management Co.*, 314 NLRB 763, 769 (1994).

¹² Member Hayes agrees with the Respondent's arguments that two sidebar discussion comments by its negotiators about high operating costs at the Madison facility were not sufficient to trigger a statutory obligation to provide information about comparative wage, overtime, and benefit information for employees at all PACCAR facilities nationwide. This information was not relevant to the Respondent's economic proposals. It is clear from the totality of record evidence that these proposals were based on the wages and benefits provided by other Nashville-area employers, not on wages and benefits at other PACCAR facilities (indeed, the Respondent so advised the Union on multiple occasions). Accordingly, Member Hayes dissents from his colleagues' finding of a violation.

the requested information had a substantial adverse impact on the negotiating process and rendered the lockout unlawful as of that date. The Respondent excepts and argues that its failure to provide the information did not materially motivate or prolong the lockout. The Respondent argues that the parties' positions were so polarized and involved so many fundamental disputes that its failure to provide the requested information did not preclude meaningful bargaining or prolong the lockout. We agree with the Respondent that the lockout remained lawful.

The parties do not cite, and we have not found, a case in which the Board addressed the specific issue presented here: whether an unlawful failure to furnish requested relevant information converted an ongoing lawful lockout into an unlawful one. But the Board has decided when an unlawful failure to furnish information renders a lockout unlawful from its inception,¹³ and neither law nor logic suggests that a different standard should apply in "conversion" than in "inception" cases.

For a lockout to be lawful at its inception, its sole purpose must be to bring economic pressure to bear in support of an employer's legitimate bargaining position. *American Ship Building Co. v. NLRB*, 380 U.S. 300, 318 (1965). Unremedied unfair labor practices can "taint" an employer's bargaining position and render a lockout in support of that position unlawful. See *Allen Storage & Moving Co.*, 342 NLRB 501, 501 (2004). But the mere fact of an unremedied Section 8(a)(5) failure to furnish information does not necessarily *compel* a finding that a subsequent lockout was unlawful. Although nowhere expressly stated, the standard consistently, if implicitly, applied by the Board is that where the unlawful withholding of the information did not materially affect the progress of negotiations, the ensuing lockout is lawful notwithstanding the unremedied violation.¹⁴ We see no

reason why a like analysis should not apply in a case where, as here, a lockout lawful at its inception is alleged to have become unlawful due to a postlockout refusal to furnish requested relevant information. Thus, if the withholding of that information did not materially affect the progress of negotiations, a lawful lockout will not be converted into an unlawful lockout by that unfair labor practice.¹⁵

Applying this test here, we cannot find that the Respondent's unlawful failure to provide comparative wage and benefit information caused the ongoing, lawful lockout to become unlawful. As in *Delhi-Taylor*, supra, the parties were far apart in bargaining on issues both parties deemed to be fundamentally important. The parties continued to meet and bargain after the lockout began and after the Respondent refused to provide the requested information. There is no evidence that the outstanding information request was a stumbling block to bargaining. Although the Union reiterated its request on July 8, there is no evidence that it ever claimed, after the Respondent refused on July 16 to provide the requested information, that it was precluded from evaluating the Respondent's proposals or formulating its own counterproposals because it lacked the requested information. In fact, the parties held three additional bargaining sessions after July 16, and there is no evidence that the Union even raised the outstanding information request as an issue at any of these sessions. In a communication to its members after the lockout began, the Union claimed there were over 150 issues that remained to be resolved, but it did not claim that the Respondent was failing to provide necessary information. In sum, there is no evidence in the record demonstrating that the withholding of the requested information materially affected the progress of bargaining.

¹³ See *infra* fn. 14.

¹⁴ See *Brewery Products*, 302 NLRB 98, 98 fn. 2 (1991) (finding lockout lawful where "the parties' bargaining positions were so polarized at the time of the lockout" that the employer's failure to furnish relevant requested information "did not preclude meaningful bargaining"); see also *Delhi-Taylor Refining Division*, 167 NLRB 115, 116-117 (1967) (finding that employer's unlawful insistence on excluding certain employees from the bargaining unit did not render unlawful an ensuing lockout, where employer and union were far apart in bargaining on issues both parties deemed to be fundamentally important, and the unlawful insistence did not contribute to the impasse over those issues), *enfd.* sub nom. *Hess Oil & Chemical Co. v. NLRB*, 415 F.2d 440 (5th Cir. 1969), cert. denied 397 U.S. 916 (1970).

Conversely, where the unlawful withholding of the information materially affects bargaining, the lockout has been found unlawful. See, e.g., *Clemson Bros.*, 290 NLRB 944, 944-945 (1988) (finding lockout unlawful where, if employer had furnished information substantiating its claim of inability to pay, it "likely would have furthered the bargaining process"); *Globe Business Furniture*, 290 NLRB 841, 841 fn. 2

(1988) (finding lockout unlawful where employer unlawfully withheld "crucial information central to bargaining"), *enfd.* 889 F.2d 1087 (6th Cir. 1989); *Bagel Bakers Council*, 174 NLRB 622, 630 (1969) (finding lockout unlawful in part because failure to furnish information "protracted the bargaining negotiations between the parties and substantially contributed to a stalemate in [their] negotiations") (internal quotations omitted). Although the issue in each of these cases was whether the lockout was unlawful at its inception, a postlockout refusal to furnish requested relevant information would convert a lawful lockout to an unlawful one where the same "materially affects bargaining" test is met.

¹⁵ We emphasize the narrowness of our holding, which is limited to the issue of whether an unlawful failure to furnish, or delay in furnishing, requested relevant information renders unlawful an ensuing or ongoing lockout. We do not address here lockouts that may be rendered unlawful by other types of unfair labor practices, including other violations of Sec. 8(a)(5). In a separate category altogether are lockouts the lawfulness of which is analyzed under the framework set forth in *NLRB v. Great Dane Trailers, Inc.*, 388 U.S. 26 (1967), to determine whether they were motivated by antiunion animus.

As stated above (supra at fn. 14), we do not foreclose the possibility that an employer's unlawful failure to provide information may cause an ongoing, lawful lockout to become unlawful. An employer cannot, after all, lock out employees for failing to accept its bargaining proposals while simultaneously refusing to provide information necessary to assess those proposals. See *Clemson Bros.*, supra, 290 NLRB at 945; *Globe Business Furniture*, supra, 290 NLRB at 841 fn. 2. In the circumstances of this case, however, there is an insufficient link between the Respondent's refusal to turn over the requested information and the continuation of the ongoing lockout.¹⁶

AMENDED REMEDY

Because we find that the Respondent's violation of Section 8(a)(5) and (1) did not cause the ongoing, lawful lockout to become unlawful, we will omit the make-whole remedy recommended by the judge.

We will not require the Respondent to furnish the information that it has unlawfully refused to provide. Although the right of a union to requested information is determined by the situation that existed at the time the request was made, *Mary Thompson Hospital*, 296 NLRB 1245, 1250 (1989), enfd. 943 F.2d 741 (7th Cir. 1991), subsequent events can affect the determination of the appropriate remedy for a violation of that right. An employer's duty to provide information is tied to the union's role as the unit employees' bargaining representative. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). Here, that role no longer exists. The Madison facility is closed. There are no unfair labor practice allegations pertaining either to the Respondent's decision to close that facility or to the effects of that closure. There are no longer any unit employees to represent, and there is no continuing bargaining relationship between the Union and the Respondent. In these circumstances, the requested information could serve no useful purpose to the Union, and requiring the Respondent to provide the unlawfully withheld information would not serve the purposes of the Act. See *Lansing Automakers Federal Credit Union*, 355 NLRB 132, 132 (2010); *Sands Hotel & Casino*, 324 NLRB 1101, 1101 fn. 2 (1997), enfd. 172 F.3d 57 (9th Cir. 1999).

¹⁶ As stated above, Member Hayes would not find that the Respondent unlawfully refused to turn over requested information. However, even assuming that the refusal was unlawful, he agrees with his colleagues that this conduct did not materially affect the parties' negotiations and that the ensuing lockout was not unlawful. He expresses no opinions about the standard for determination whether other types of unfair labor practices render a lockout unlawful.

ORDER

The National Labor Relations Board orders that the Respondent, PACCAR, Inc. d/b/a Peterbilt Motors Company, Madison, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with UAW Local 1832 by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

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

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

(a) Within 14 days after service by the Region, duplicate and mail, at its own expense, and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix,"¹⁷ to the Union and to its former unit employees who were employed by the Respondent at its Madison, Tennessee facility on or at any time since July 16, 2008.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 26 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

¹⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT refuse to bargain collectively with UAW Local 1832 by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

PACCAR, INC. D/B/A PETERBILT MOTORS COMPANY

Susan B. Greenberg, Esq., for the General Counsel.
Joseph Torres, Esq. and Lauren Baird Neubauer, Esq. (Winston & Strawn, LLP), for the Respondent.
Deborah Godwin, Esq. (Godwin, Morris, Laurenzi & Bloomfield, P.C.), for the Charging Party.

DECISION

STATEMENT OF THE CASE

KELTNER W. LOCKE, Administrative Law Judge. By failing to provide a union representing its employees with requested information relevant to and necessary for the Union's performance of its representation duties, Respondent violated Section 8(a)(5) and (1) of the Act. This unfair labor practice rendered unlawful a lockout which had been lawful at its inception.

Procedural History

This case began on October 30, 2008, when the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (the International Union) filed an unfair labor practice charge against Paccar, Inc. doing business as Peterbilt Motors Company (the Respondent). In filing this charge, the International Union acted on behalf of itself and its constituent Local 1832 (the Local Union). For brevity, the International Union and Local Union together will be referred to as the Union or as the Charging Party.

The Union amended the charge on July 20, and again on July 30, 2009. After an investigation, the Regional Director for Region 26 of the National Labor Relations Board issued a complaint and notice of hearing (the complaint) on February 26, 2010. In doing so, the Regional Director acted on behalf of the Board's General Counsel (the General Counsel or the Government).

On June 9, 2010, a hearing opened before me in Nashville, Tennessee. The parties presented evidence on that date and on June 10, 2010.¹ After the hearing, counsel filed briefs.

Undisputed Allegations

Based on admissions in Respondent's answer, I find that the charge was filed, amended, and served as alleged in complaint paragraphs 1(a), (b), and (c).

Further, I find that at all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (the

Act). Respondent meets both the statutory and discretionary standards for the assertion of jurisdiction.

Based on Respondent's answer, I also conclude that the Government has proven that at all material times, the following individuals were Respondent's supervisors within the meaning of Section 2(11) of the Act and its agents within the meaning of Section 2(13) of the Act:

Human Resources Manager Brenda Copeland; Plant Manager Larry Vessels; Paccar, Inc. Director of Labor Relations Kären White.

Additionally, Respondent has admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act. Based on Respondent's admissions, I further conclude that since at least 1973 and at all times material to this case, the Union has been, and Respondent has recognized the Union as being, the exclusive collective-bargaining representative, within the meaning of Section 9(a) of the Act, of a unit of Respondent's employees at its plant in Madison, Tennessee. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from June 22, 2003, through June 20, 2008 (the 2003–2008 agreement).

More specifically, the Union has been the exclusive representative of the following unit of employees, which is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All production and maintenance employees employed by Respondent at its Madison, Tennessee facility.

Excluded: All office clerical employees, technical employees, professional employees, guards and supervisors as defined in the Act.

Respondent also has admitted, and I find, that on or about April 30, 2008, Respondent and the Union began negotiations for a successor collective-bargaining agreement to the 2003–2008 agreement.

Based on the record, I also find that at the time of these negotiations Respondent operated four truck manufacturing plants. Two of them, at Denton, Texas, and Chillicothe, Ohio, were not unionized. Labor organizations did represent units of employees at the other two plants, located at Renton, Washington, and Madison, Tennessee.

This proceeding concerns only the Madison, Tennessee plant which Respondent ultimately closed. The complaint does not allege that this closing violated the Act.

It may be noted that Madison, Tennessee, is located near Nashville and sometimes in their testimony witnesses referred to this facility as the "Nashville plant." The terms "Nashville plant" and "Madison plant" refer to the same facility and are used interchangeably herein.

The Alleged Unfair Labor Practices

After the initial bargaining session on April 30, 2008, the Union and Respondent held an additional 16 meetings to negotiate a new contract. Respondent sought a number of signifi-

¹ I hereby correct, sua sponte, the following error at p. 385, L. 9, by changing "Im going to strike it" to "I'm not going to strike it."

cant changes, including the addition of language about “sourcing” to the management-rights clause. The union negotiators feared that the proposed change would give Respondent an unlimited right to outsource work performed by bargaining unit employees.

Respondent also proposed a multitiered wage and benefit system which would provide different wage rates for existing employees, for new hires, and for workers recalled from layoff. The Union, noting that laid-off workers already had suffered, objected to paying them lower wages and benefits when they were recalled.

Respondent sought changes in the seniority system which, it argued, would provide more flexibility in the assignment of employees. It also proposed designating certain workers “key operators” and protecting them from layoffs by giving them “superseniority.” The Union strongly opposed changes in the seniority system.

The parties’ bargaining sessions consisted of meetings in which all of the negotiators on each side took part, and smaller meetings in which only the principal negotiators took part. The latter meetings, called “sidebars,” were not off-the-record or confidential.

At such a sidebar meeting on June 13, 2008, Plant Manager Vessels remarked that the Nashville plant had the highest operational costs in the Company. During his testimony, Vessels explained what prompted him to make this comment. Vessels had believed that, as the June 20, 2008 contract expiration date approached, the parties were making progress towards a new agreement. However, at the June 13 sidebar meeting, a union negotiator, Mike Brown, described the Union’s proposals as a “package deal” which must be accepted in toto. Brown’s statement dashed Vessels’ hopes of reaching a new agreement in the remaining week before the existing contract expired.

In apparent frustration, Vessels responded that the Nashville plant had the highest operational costs in the company. Brown then asked whether Vessels was talking about costs per hour or costs per truck. Vessels replied, “Both.” There was no further discussion about the matter.

One of Respondent’s negotiators made a similar statement about operating costs during a meeting with the Union on June 16. According to Union Representative Timothy Bressler, Respondent’s director of labor relations, Kären White, said that “the Madison facility was the highest cost facility in the Peterbilt chain.” To some extent, the testimony of Union Representative Terry Bolte corroborates Bressler’s, but vagueness reduces the value of Bolte’s testimony as corroboration.

White testified that she believed Vessels was the one who, during the June 16 meeting, commented that the Madison facility had the highest operating costs. It is not clear from Vessels’ testimony whether he made such a statement at the June 16 meeting. Similarly, his testimony does not rule out the possibility that White made the remark at the June 16 meeting.

As discussed above, Vessels did remark at the June 13 meeting that the Madison plant had the highest operating costs. While cross-examining Vessels, the General Counsel asked whether White also had said that the Madison plant had the highest labor costs, Vessels answered “Not in my presence.” However, the General Counsel’s question asked whether White

had made a statement about *labor* costs, not operating costs. Respondent took pains to draw a distinction between the term “labor costs,” which Vessels and White deny using, and “operating costs.” Therefore, Vessels’ answer on cross-examination, denying that White had made a statement that the Madison plant had the highest labor costs, does not rule out the possibility that White said that this plant had the highest operating costs.

White did not flatly deny telling the Union that the Madison facility had the highest operating costs, but only said that she *believed* that Vessels made this statement at the June 16 meeting. Crediting Bressler’s testimony, I conclude that she did tell union negotiators, on June 16, that the Madison plant had the highest operating costs.

When the negotiators met on June 19, the Union gave Respondent the information request referred to in complaint paragraph 10(b), and a copy of which is attached to the complaint as appendix. The information request states as follows:

In the spirit of good faith bargaining and in the interest of reaching a timely settlement, the Union is requesting the following information based on the Employer’s assertion during this round of collective bargaining that the UAW represented PACCAR/Peterbilt facility in Madison, TN was the highest cost facility operationally.

For every PACCAR production facility in the United States, please provide the following information for production and skilled trades employees. Please provide the information separately for each facility.

1. Hourly wage rates by job classification as of the most recent pay period available. Please note the pay period from which the information was derived.
2. Number of employees working in each job classification as of the most recent pay period available. Please note the pay period from which the information was derived.
3. Total number of hours worked in 2007 and year-to-date 2008. Please note the date range from which the year-to-date data was derived.
4. Number of 1.5x overtime hours in 2007 and year-to-date 2008. Please note the date range from which the year-to-date data was derived.
5. Number of 2x overtime hours worked in 2007 and year-to-date. Please note the date range from which the year-to-date data was derived.
6. Number of employees working on each production shift.
7. Amount of shift premium (if applicable) paid to employees working on each shift.
8. Number of paid holidays observed each calendar year.
9. Number of vacation days used in 2007.
10. Total cost of all medical (hospital, dental, vision, Rx) insurance programs in 2007.
11. Amount of 401(k) or other pension program costs or contributions by the Employer in 2007.

12. Total worker's compensation cost in 2007 and year-to-date 2008. Please note the date range from which to year-to-date data was derived.

13. Total cost of all other benefit programs (long term and short term disability, tuition/education assistance, tool/shoe allowance, etc.)

14. Total "all-in" hourly labor cost for production employees.

15. Number of temporary employees and total hours worked by temporary employees in 2007 and year-to-date 2008. Please note the date range from which year-to-date data was derived.

16. Hourly rate paid to temporary workers.

My observations of the witnesses lead me to resolve any conflicts in the testimony by crediting that of Union Representatives Bressler and Bolte. Based on that testimony, I find that when Bressler gave Respondent's negotiators the information request on June 19, he explained that the Union needed the information to make a proposal.

Director of Labor Relations White testified that Bressler said the information request was a "sample" or "example" of the type of information request the Union had directed to other employers. Several reasons, including the credited testimony of Bressler and Bolte, cause me to reject White's account.

For one thing, the information request did not look like a sample. The document did not carry any notation indicating it was a sample. (For example, the word "Sample" was not stamped or written on the information request.) Moreover, the very first paragraph of the information request made clear that it pertained specifically to Respondent and that it was a result of statements made by Respondent's negotiators. Thus, it explained that it was based on Respondent's "assertion during this round of collective bargaining that the UAW represented PACCAR/Peterbilt facility in Madison, TN was the highest cost facility operationally."

If the document had been a sample of information requests the Union had made to other employers at other times, it would not have begun with a statement that it was predicated on Respondent's assertions about Respondent's plants. A sample likely would have borne the name of some other employer or have been blank.

The specific language at the beginning of the information request left little doubt that it was addressed to Respondent and that it pertained to current matters raised during bargaining. That language, by itself, reasonably would have put Respondent on notice that the Union representatives were not simply talking about an information request but actually making one.

Moreover, one of Respondent's documents revealed that management understood the Union to be making an information request. Management staff prepared, and Director of Labor Relations White reviewed, a daily chronology which included a summary of each bargaining session. The entry for the June 19, 2008 session included the following:

Larry [Vessels] and Karen [White] had a side-bar with Tim Bressler, Terry Bolte, Mike Pardue and Mike Brown. Bressler accused the Company of ghost bargaining *and requested*

comparative wage data from other Paccar facilities. The Union could be preparing for multiple ULPs. (Italics added.)

Rather than making any mention of a sample, Respondent's summary clearly and unequivocally states that the union representative *requested* the wage information. The further observation that the Union could be preparing for multiple unfair labor practice charges also buttresses the conclusion that management understood Bressler's document to be an actual information request rather than a sample of one. An initial and necessary element of a refusal-to-provide information unfair labor practice is a request for information, not the tendering of a sample.

Although White only reviewed, and did not author, the bargaining session chronology described above, she did write another document which referred to the information request. In a June 19, 2008 email to various management officials, White wrote that the union officials "are positioning themselves for several ULPs. This is a 'head's up' as to where they will come from." White's email then listed "Failure to respond to information requests on" a number of matters, including "Comparative wage data from other PACCAR facilities."

Thus, on the very day the Union made the information request, Director of Labor Relations White viewed it as a predicate to the filing of unfair labor practice charges. Additionally, her phrase "information requests" clearly includes the Union's asking for comparative wage data from other plants. I conclude that when White wrote this email she already regarded the Union's June 19 information request as precisely that, an information request.

For all these reasons, I find that from the time it received the information request on June 19, 2008, Respondent knew that the Union seriously was seeking information. Although White characterized the information request as a sample, and indeed wrote the word "sample" on her copy, I conclude that this action was disingenuous and does not enhance her credibility.

On Friday, June 20, 2008, the collective-bargaining agreement expired. Respondent notified its workers not to show up for work on Monday, June 23. Although some employees did arrive at the plant, they left after learning of the lockout.

Director of Labor Relations White testified that Respondent has a policy that bargaining unit employees only were allowed to work if a collective-bargaining agreement were in effect at the time. The General Counsel does not dispute the lawfulness of the lockout at its inception, but argues that it became unlawful later when Respondent failed to provide the information requested by the Union.

Although I have concluded that Respondent knew from the outset that the Union's June 19, 2008 information request was the real McCoy, even were I to assume that management really believed the document was just a sample, such confusion could not have lasted long. A June 30, 2008 letter from an International Union vice president to Plant Manager Vessels included the following:

On June 19th, we reiterated our request for information about the labor costs at non-union truck facilities (to which you've compared the Madison plant). We ask that you provide this information without further delay.

On July 3, 2008, Plant Manager Vessels replied to the Union's letter. This reply included the following:

Your letter references a June 19, 2008 request for information about the labor costs at other PACCAR facilities. The Company did not compare the wages and benefits at Nashville with those of other PACCAR facilities. In a side-bar, the union presented a document listing 17 items regarding wages, hours, overtime and benefits at other facilities. In response to Company inquiries regarding the reason for this request, the union stated it was a "sample" that is typically requested. The union stated it was not requesting the items listed. The Company marked it as a sample and did not view it as a request for the information listed.

For the reasons discussed above, I do not find that Respondent ever considered the information request to be a "sample." Moreover, I do not credit the testimony of White or Vessels to the extent it indicates that any union representative or negotiator characterized the document as a "sample." To the contrary, I find that neither Bresser nor any other union representative made such a statement.

One of the Union's International representatives, Michael E. Brown, replied to Vessels' July 3, 2008 letter. Brown's July 8, 2008 response stated, in part, as follows:

First, as you know, on June 19th, the Union requested information related to labor costs at other PACCAR plants. Your most recent letter makes a number of statements about this request that are incorrect.

You assert that the data requested is irrelevant because the Company has allegedly not "compare[d] the wages and benefits at Nashville with those of other PACCAR facilities." This is untrue. More than once, Peterbilt has claimed that the per hour labor costs at the Madison facility are higher than those at other plants. Before we can make an informed decision about the concessions that you've proposed, we need to know if the costs at Madison are in fact comparatively high. For this reason, we made the data request on June 19th.

Frankly, we're surprised that you didn't view the document we provided to you that day as a demand for information. During the discussion mentioned in your letter, Tim Bressler made it clear that we needed data about the labor costs at other plants in order to evaluate the Company's proposals. In response [to] this request, management representatives stated that it would be difficult for them to get all of information immediately. Bressler told them that, while he understood that it might take some time to gather all of the data, the Union would ultimately need it to validate the Company's claims. In light of these facts, the assertion that the Union "stated that it was not requesting the items listed" is just plain wrong. We expect to receive a response to the June 19th request without further delay.

Plant Manager Vessels replied by letter dated July 16, 2008. It stated, in pertinent part, as follows:

The Company did not compare the wages and benefits at Nashville with those of other PACCAR facilities. We will clarify the basis for the Nashville wage and benefit proposal at

the bargaining table on the 16th so we can resolve any misunderstanding.

At its July 16 meeting with the union negotiators, Respondent took the position that information about wage and benefit rates at other plants was not relevant because Respondent based its proposals on the wages and benefits which other employers in the Nashville area paid to their workers. In a July 16 email, White summarized what management told the union negotiators:

We closed the meeting with a statement that we have complied [sic] with all the requests for information except the comparative data on the other facilities. They were told that any reference to other plants was not the basis for any proposals. Further, we recalled only one reference on our part, which was in a confidential sidebar discussion, and another time when the Union made mention of a 401(k) "that the other plants have." We used local competitive data to formulate our proposals.

The complaint alleges that Respondent's refusal to provide the requested information made the lockout unlawful as of July 16, 2008. From the record as a whole, the record does not establish that Respondent, thereafter, furnished the Union with the requested information and I conclude that it did not.

Analysis

When a union is the exclusive bargaining representative of a unit of an employer's workers, the employer has a duty to provide requested information relevant to the union's representation duties and necessary for that purpose. The Board presumes to be relevant information about the wages, benefits, and other terms and conditions of employment of bargaining unit members. *U.S. Information Services*, 341 NLRB 988 (2004); *International Protective Services*, 339 NLRB 701 (2003); *Zeta Consumer Products Corp.*, 326 NLRB 293 (1998).

Information about persons outside the bargaining unit does not enjoy a presumption of relevance. *Caldwell Mfg. Co.*, 346 NLRB 1159 (2006). However, the burden to establish relevance is "not exceptionally heavy" *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), *enfd.* 715 F.2d 473 (9th Cir. 1983), and "[t]he Board uses a broad, discovery-type of standard in determining relevance in information requests." *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994).

Respondent, in its answer, raised as a defense that "the Complaint fails to state a claim because the requested information was not relevant to the parties' bargaining proposals." Essentially, Respondent argues that the requested information—about wages and benefits received by employees at other plants—lacks relevance because Respondent did not use such information in formulating its proposals. That argument misses the point.

The duty to provide the requested information does not depend on whether Respondent used the information in formulating its own proposals. Rather, the issue of relevance here focuses on a claim Respondent's negotiators made at the bargaining table. The Union sought the requested data to determine whether this claim was valid or invalid. The relevance of the

requested information turns on whether the information might substantiate or debunk the claim.

Moreover, it is important to take the entire context of negotiations into account. At the bargaining table, Plant Manager Vessels made statements suggesting that the fate of the Madison facility hung in the balance. Union Negotiator Bressler credibly testified about remarks made by Plant Manager Vessels at a June 16, 2008 meeting:

Mr. Vessels was—very concerned with the future of the plant. In that meeting, he said that a—a lockout, a strike, or—or working without a—a contract would be—put the plant in potential jeopardy, and he stated that if—if the work had ever went to the Denton facility and most likely it wouldn't come back.

Plant Manager Vessels' remark that the Madison facility had the highest operating costs of any of Respondent's truck plants must be considered together with his expressed concerns about the future of this factory. Vessels clearly communicated to the union negotiators that more was at stake than merely the final wage or benefit package. The continued existence of this factory, and the bargaining unit jobs it provided, might turn on the concessions made by the Union at the bargaining table.

In this light, an observation that the Madison plant had the highest operating costs was particularly ominous and might lead the Union to make concessions which otherwise would be unacceptable. Before agreeing to concessions to keep the plant open, the Union reasonably needed to verify whether this facility did, in fact, have the highest operating costs. Accordingly, I conclude that the information about labor costs at other plants was relevant to the Union's responsibilities to protect the jobs of bargaining unit employees and, at the same time, to negotiate a satisfactory contract. Further, I conclude that the requested information was necessary for that purpose.

The second defense raised in Respondent's answer also must fail because it is based on the same misapprehension concerning what makes the requested information relevant. Again, Respondent incorrectly assumes that to be relevant the requested information must pertain directly to Respondent's bargaining proposals. Thus, Respondent's second defense states that "Assuming the request for information . . . was made in response to Respondent's bargaining proposals or the Union's perceived understanding of the Respondent's bargaining proposals, the Complaint fails to state a claim because the Respondent clarified its position and/or retracted any purported reliance upon the subject matter of the information request in connection with Respondent's bargaining proposals."

The information certainly does have relevance to Respondent's bargaining proposals, most notably the multitiered wage structure which Respondent sought to establish. However, the Union's primary reason for requesting the information related to Respondent's claim that the Madison facility had the highest operating costs. The Union needed the information to confirm or invalidate that claim.

Whether or not Respondent relied on wage and benefit data from its three other truck plants or, as it claimed, used information from other factories in the Nashville area as a basis for formulating its proposals, does not affect the relevance of the

information sought by the Union. Rather, the requested information is relevant to Respondent's asserted basis for making substantial changes in pay and benefits.

Respondent has noted that its negotiators never said that the Madison facility had the highest *labor* costs rather than the highest *operational* costs of any of its four truck plants. This fact does not make the information any less relevant. Plant Manager Vessels acknowledged that labor costs are part of overall operational costs. Moreover, labor costs, both the direct costs associated with wages and benefits and indirect costs associated with working conditions, are the only part of operational costs subject to modification by the collective-bargaining process. In these circumstances, the requested information is highly relevant.

I conclude that the requested information was relevant and necessary and that the Respondent had a duty to furnish it. I further conclude that by failing to do so, Respondent violated Section 8(a)(5) and (1) of the Act.

Citing *Central Illinois Public Service*, 326 NLRB 928 (1998), Respondent argues that even if it violated the Act by failing to provide the requested information, that violation did not render the lockout unlawful. Considering the somewhat unusual facts in that case, the Board held that there was no evidence that respondent's failure to provide the union information concerning some relatively minor matters adversely affected the negotiations. Therefore, the Board did not find that this violation rendered the lockout unlawful.

However, in the present case, the information requested related to a quite central matter, whether the Union would make wage concessions. Indeed, Respondent proposed changing the wage structure to a multitiered system which would adversely affect employees returning from layoff. The Union had a very substantial need to determine the accuracy of the claim that the Madison facility's operating expenses were the highest of all four truck plants. Without the requested information, the Union lacked the means to evaluate what concessions it needed to make and what concessions would be unnecessary.

Accordingly, I conclude that Respondent's failure to provide the requested information had a substantial adverse impact on the negotiating process and placed an obstacle in the way of settlement. Therefore, I further conclude that, as of July 16, 2008, Respondent's failure to provide the requested information rendered the lockout unlawful. *Globe Business Furniture*, 290 NLRB 841, 841 fn. 2 (1988).

REMEDY

As stated in the complaint, the General Counsel "seeks an Order requiring Respondent to: (1) make whole the affected Unit employees for loss of earnings and other benefits resulting from the unlawful lock out; and (2) pay interest compounded on a quarterly basis for all backpay owed in this matter."

Respondent certainly must make the affected employees whole, with interest, for the losses they suffered, beginning on July 16, 2008, when the lockout became unlawful. Respondent's closure of the Madison facility adds a complicating factor. The present record is insufficient to establish whether, and under what circumstances, Respondent's employees at a facility being closed would be allowed to transfer to work at other fa-

cilities. Matters relating to the effect of the plant closure and the duration of the backpay period must be left to the compliance stage of this proceeding.

With respect to the compounding of interest, I am bound to follow existing Board precedent. Accordingly, the recommended Order does not include a requirement that interest be compounded.

Because the Madison plant, where the unfair labor practices occurred, is no longer in operation, Respondent should be required to mail a copy of the notice attached hereto as appendix to all current employees and former employees who had been employed at the Madison plant at any time since July 16, 2008, the date of the unfair labor practice.

CONCLUSIONS OF LAW

1. The Respondent, Paccar, Inc. d/b/a Peterbilt Motors Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and its affiliated Local 1832 are labor organizations within the meaning of Section 2(5) of the Act.

3. At all times material to this case, the Charging Party has been the exclusive collective, bargaining representative, within the meaning of Section 9(a) of the Act, of an appropriate unit of Respondent's employees, described more fully in paragraph 4, below.

4. The following unit is appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by Respondent at its Madison, Tennessee, facility, EXCLUDING all office clerical employees, technical employees, guards and supervisors as defined in the Act.

5. On June 19, 2008, the Charging Party requested that Respondent furnish it with certain information, described more fully above, pertaining to employees at Respondent's other truck manufacturing plants.

6. The information requested by the Charging Party, described above in paragraph 5, was relevant to the Charging Party's duties as exclusive bargaining representative, and was necessary for the Charging Party to perform those duties.

7. Since July 16, 2008, and continuing to date, Respondent has failed and refused to furnish the Union with the requested information described above in paragraph 5, and thereby has violated and is violating Section 8(a)(5) and (1) of the Act.

8. On June 23, 2008, Respondent locked out its bargaining unit employees at its Madison, Tennessee facility. This lockout continued until about April 6, 2009.

9. Beginning July 16, 2008, and continuing to date, the lockout described in paragraph 8 above was prolonged and rendered unlawful by Respondent's unfair labor practices described in paragraph 7, above.

10. Respondent did not violate the Act in any other manner alleged.

[Recommended Order omitted from publication.]