Newcor Bay City Division of Newcor, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, and its Local 496. Case 7–CA–47590

November 8, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On April 26, 2005, Administrative Law Judge Paul Bogas issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations 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, and to adopt the recommended Order.[2]

AMENDED REMEDY

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, and to immediately put into effect all terms and conditions of employment provided by the contract that expired at midnight on June 10, 2004, and to maintain those terms in effect until the parties have bargained to agreement or a valid impasse, or the Union has agreed to changes. We shall order the Respondent to make whole the unit employees and former unit employees for any loss of wages or other benefits they suffered as a result of the Respondent's implementation of its final proposal on June 11, 2004, as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall order the Respondent to reimburse unit employees for any expenses resulting from the Respondent's unlawful changes to their health and dental benefits, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), affd. 661 F.2d 940 (9th Cir. 1981), with interest as set forth in *New Horizons for the Retarded*, supra. We shall further order that the Respondent make all contributions to any fund established by the collective-bargaining agreement with the Union which was in existence on June 10, 2004, and which contributions the Respondent would have paid but for the unlawful unilateral changes, including any additional amounts due to the funds in accordance with *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn.6 (1979).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Newcor Bay City Division of Newcor, Inc., Bay City, Michigan, its officers, agents, successors, and assigns shall take the action set forth in the Order.

Judith A. Schulz, Esq., for the General Counsel.
Gary W. Klotz, Esq. (*Butzel Long*), of Detroit, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

PAUL BOGAS, Administrative Law Judge. This case was tried in Bay City, Michigan, on January 11 and 12, 2005. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, and its Local 496, filed the charge on June 16, 2004 and the amended charge on August 12, 2004. The Regional Director for Region 7 of the National Labor Relations Board issued the complaint on September 28, 2004. The complaint alleges that Newcor Bay City Division of Newcor, Inc. (Respondent or Company) violated Section 8(a)(5) and (1) of the Act by implementing its final offer at a time when the parties were not at a bona fide impasse, and by failing and refusing to provide the Union with requested census data (i.e., bargaining unit employees' names, seniority dates and dates of birth) that was necessary for, and relevant to, the Union's duties as collective-bargaining representative. The Respondent filed a timely answer in which it denied that it had committed the unfair labor practices alleged in the complaint.[1]

[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), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) by unilaterally implementing its final contract proposal without bargaining in good faith to a valid impasse, Member Schaumber does not rely on the judge's alternative rationale that the parties were not at a valid impasse because the Respondent had failed to provide the Union with requested information.

[2] We have modified the judge's remedy to include appropriate remedial provisions for any loss of wages or benefits suffered by employees.

[1] In its initial answer, the Respondent admitted the complaint allegation that "[s]ince about June 3, 2004 and June 9, 2004, the Charging Union, orally . . . requested that Respondent furnish the Charging Union with census data." Immediately before the trial opened, the Respondent filed an amendment to its answer, in which it stated that it was denying that allegation. Based on the Board's regulations, Sec. 102.23, it appears likely that the Respondent had a right to amend its answer prior to the opening of the trial without the involvement of the administrative law judge. Nevertheless, counsel for the General Counsel refused to accept the amendment on behalf of Region 7. After the trial opened, but before either side had begun to present its case, the Respondent moved to make the same amendment to its answer. I granted that motion. Given that the General Counsel had not even begun to

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, designs and manufactures machinery at its facility in Bay City, Michigan, where it annually derives gross revenues in excess of $500,000 and purchases and receives goods valued in excess of $50,000 directly from points outside the State of Michigan. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Union has been the collective-bargaining representative of the Respondent's hourly employees for at least 30 years.[2] During that time, the Union and the Respondent have entered into successive collective-bargaining agreements, the most recent of which expired by its terms at midnight on June 10, 2004. Five hours before the contract was set to expire, the Respondent announced that a bargaining impasse had been reached and presented the Union, for the first time, with a final proposal that the Company stated it would implement the following day. The Respondent's final proposal made deep cuts in employees' wages, pension plan, health insurance, and numerous other benefits. At the time of the negotiations, there were approximately 40 bargaining unit members, of whom 25 to 28 were actively employed.

Prior to the Respondent's assertion of impasse, the parties had met seven times over the course of a 1-month period to bargain for a new agreement. The Union's bargaining committee consisted of Elmer Kostal (local executive president), Don Petro (international union representative), Jeffrey Ryan (local vice president and chairperson), Scott Dennis (committee member), Gary Letzgus (committee member), Bob Bean (committee member) and Dave Mance (committee member). On June 10, John Van Hurk joined as a temporary committee member after Bean and Mance retired. The Respondent was represented at the negotiations by Jim Nicoson (general manager), Scott Wright (human resources director), and Ron Conklin (operations manager).[3] Among these participants, were several who had significant prior experience negotiating contracts between the Union and the Respondent. Kostal had participated in the negotiation of seven contracts between the Union and the Respondent. Petro took part in negotiating the last two contracts, and Nicoson had taken part in the negotiations for three prior contracts.

B. Bargaining Sessions

In February 2004, prior to the start of formal negotiations, Nicoson warned Petro that because of the Respondent's "financial condition," it was going to "have to have some serious concessions" from employees in order "to keep the Company as an ongoing business." Petro responded that Nicoson should "get with the [union] committee prior to the start of negotiations and discuss the matter with them," but Nicoson did not do that. The first official bargaining session was held on May 11 and started at 9 a.m. At that session, the Respondent distributed a written statement, which Nicoson read aloud. In the statement, the Respondent claimed that cuts were necessary to "give us the opportunity to capture new business and continue on as an ongoing concern." The Respondent stated that the employees were "going to have to make sacrifices" and that salaried employees had already done so. Sales revenue, the Respondent asserted, had decreased from $18 million in 2001, to $8 million in 2002 and $7.5 million in 2003.[4] A table was attached to the opening statement, which, although somewhat unclear, appears to state that the Respondent's sales revenue for the first 4 months of 2004 was $4,122,000. The table also states that the Respondent had a backlog—i.e., orders that it had secured and was currently working on—of $4,318,000. That figure exceeds the backlog listed for each of the previous 3 years. In the opening statement, the Respondent predicted that it would "break even for the year" if it could obtain $2 million worth of additional business in 2004. According to a pie chart circulated by the Respondent, in 76 percent of instances when the Respondent lost an order to another company the deciding factor was the competitor's lower price. The written materials did not divulge whether the Respondent's profits had declined during the years of decreasing sales volume.

After going over this information, the Respondent presented an initial contract proposal. When the document was distributed, Wright warned the union committee that the proposal was "at best . . . ugly." Wright acknowledged that the Company's proposal called for "very deep cuts, rollbacks, givebacks . . . pretty severe concessions," but he asserted that the Respondent "needed these, to have a chance, for a future." The proposal distributed that day called for a wide range of cuts, including: reducing wages for all unit employees by 12 percent—from an average of $18.82 per hour to an average of $16.56 per hour—with subsequent raises "to be determined"; "freezing" the pension plan—which meant that current employees would receive

present its case, I concluded that permitting the Respondent to amend its answer would not unduly prejudice the General Counsel.

[2] The Union represents the following employees of the Respondent:

> All full-time and regular part-time hourly employees employed by the Respondent at its Bay City facility, excluding salaried employees, receiving department employees, plant protection, foreman, and supervisors as defined in the Act.

[3] The parties agree that Nicoson, Wright, and Conklin are supervisors and agents of the Company.

[4] Later in the negotiations, probably on June 10, Nicoson presented a table of sales revenue figures for each year from 1980 to 2000. According to the chart, the Respondent's sales revenues ranged during that period from a high of $45,267,000 in 1991, to a low of $12,746,000 in 1987. Nicoson presented this information as part of an argument to the Union that "you cannot take a $20 million-a-year company with an overhead structure and stick it in an $8 million-a-year company and exist." The record also shows that over the course of 20 years the size of the bargaining unit had shrunk from between 130 and 150 members to about 40 members.

no credit for future years of service, and new employees would be excluded from the plan; eliminating supplemental pension payments or "bridge money" for retirees; eliminating employer-paid dental insurance and sickness/accident insurance; switching to a less generous health insurance plan; requiring employees to pay 20 percent of their health insurance premium costs (in the past they had contributed a far smaller portion); capping the Respondent's monthly, per-employee, contributions to health insurance premiums at specific dollar amounts; eliminating the employer-subsidized "sub fund" that provided payments to laid-off unit members who were collecting unemployment compensation; reducing by three the number of paid employee holidays; reducing the number of vacation days for employees with 15 or more years of seniority; and, reducing the extent to which various benefits were available to laid-off, sick, and injured employees. The Respondent also proposed to cut the number of union-shop committee members from six to three and to eliminate all bargaining unit personnel from the service and test department.

The union committee caucused to review the Respondent's proposed cuts. When they returned to the meeting, Petro told the Respondent's representatives that the cuts they were proposing were the "most comprehensive take-away proposals that [he] had ever seen, in all [his] years of negotiating." Petro testified that before he could agree to the concessions he would need additional information. He asked the Respondent whether it was pleading poverty and Wright answered, "yes." Petro stated that in light of the Respondent's poverty plea, the Union would want to see the Respondent's books. Wright stated that he would look into providing the Union such access. Petro also asked the Respondent to agree to an extension of the current contract past the expiration date, given that it would take the Union's research department some time to evaluate the financial information relevant to the poverty plea. The Respondent denied the request for an extension.

Although the Union had prepared a proposal of its own in advance of the May 11 meeting, it did not present that proposal to the Respondent at that time. Given the Respondent's poverty plea and the extreme cuts sought by the Respondent, the union committee developed doubts about the viability of its own proposal, which called for annual wage increases of five percent and various other enhancements of benefits. Kostal testified that the Union committee needed information from the Union's research department regarding the Respondent's poverty plea in order to assess whether the Union's contract proposal should be changed.

The May 11 meeting concluded at around lunchtime. Later that day, Ryan submitted a list to Conklin of the types of information that, in Ryan's view, the Union was entitled to in light of the Respondent's poverty plea. Conklin responded that he would not "be needing" the request because the Company's legal counsel had advised him that the Respondent "made a few dollars" and therefore "wouldn't be claiming poverty." Similarly, Wright called Petro and left a voice message advising him that, after discussing the matter with legal counsel, he realized that he had made an error in saying that the Respondent was pleading poverty. As a result, Wright said, the Respondent would not provide the Union with the financial information requested by the union committee. Despite this putative recantation of its poverty plea, the Respondent continued to indicate that it could not survive without the concessions it had proposed.[5] Throughout the negotiations, the union committee orally requested that the Respondent provide documentation for its financial claims.

The parties met for a second negotiating session at 9 a.m. on May 20. At that meeting, the Union presented the initial proposal that it had prepared prior to the May 11 meeting, but which it had not previously shown to the Respondent. The Union recognized that it was seeking far more than what the Respondent had offered on May 11, but the union committee decided to present its original proposal because the Respondent had stated that it was making a profit, recanted its claim of poverty, and refused the Union's requests to review the Company's financial books and extend the current contract. The Union's initial economic proposals included: increasing the wages of all employees by five percent annually; increasing the monthly pension for retirees by $1 for every year of service; reducing the pension plan penalty for early retirement; increasing the size of the supplemental pension payments; changing the dental insurance coverage to pay 100 percent of the cost of covered procedures (it had been paying 50 or 75 percent of dental costs depending on the procedure); increasing the amount of weekly sickness/accident payments; eliminating the employees' copayment for medical expenses covered by the health insurance; increasing the hourly wage premium paid for night-shift work; increasing the size of the employer-subsidized "sub-fund" for supplemental payments to unit employees receiving unemployment compensation; adding three paid employee holidays; increasing the number of vacation days for employees with 30 or more years of seniority; increasing the duration of continuing health insurance coverage for laid-off employees from 2 months to 4 months; and, increasing employees' individual life insurance coverage from $27,000 to $35,000.

The Union also presented noneconomic proposals, which included: expanding the geographic reach of the contract's accretion provision; allowing the Union to conduct safety tours before the monthly Union-Respondent meetings, rather than after those meetings; limiting extensions of the employee probationary period to one, 60-day, period; reducing the number of hours per week that the Respondent could assign an employee to work out of his or her classification during a layoff; requiring that employees recalled from layoff be allowed to work for a minimum of 40 hours; requiring the Respondent to create a posting that would identify the supervisor for each employee; requiring that the Respondent provide layoff notices to the Union 2 hours before issuance; requiring the Union's agreement before using employees from other departments or outside help to perform emergency work; prohibiting the Respondent from using subcontractors if there were laid-off employees who had

[5] For example, at the June 9 meeting, Nicoson stated that "we are not competitive, need these concessions to be an ongoing business." At the June 10 meeting, he argued that the Respondent could not "exist" without changing its "overhead structure" to reflect the decreased volume of its business.

the skills to do the work; eliminating a contract article that provided for the special treatment of employees who the Respondent designated as department "leaders"; assigning a union machinist to operate the lab machine shop; removing language that provided John Wilkerson with a wage above his classification maximum, and requiring the resolution of all grievances.

Kostal began to explain the Union's proposal to the Respondent's representatives. Nicoson admits that he was irritated by the Union's proposal, and, according to union committee members, this irritation was apparent in Nicoson's manner. Nicoson commented that "evidently on [May] eleventh the committee was not listening to what I was saying." Petro said that the union committee had listened to the Respondent's proposal and now the Respondent should listen to the Union's proposal. Petro described the Union's proposal as a "starting point" and said that "hopefully" they could "create some good faith bargaining and meet somewhere in the middle." According to Ryan, the union committee members were hoping to settle for smaller annual raises that would be enough to keep pace with inflation. The union committee explained that its proposal was created based on input from the union's members, experience from past contracts, and "the economy in general."

At the May 20 meeting, Nicoson provided the Union with a document setting forth details of specific instances in 2003 when he said the Respondent had lost orders because its prices were higher than those of its competitors. Nicoson said that he did not know whether the Respondent would have actually obtained any of these lost orders if it had been operating under the concessions the Company was seeking from the Union, but that he believed such concessions would have made the Respondent more price competitive. Nicoson also provided a summary table entitled "2004 New Business Status" that, as with a number of summaries the Respondent gave to the Union, is not easy to interpret in some respects. It states that the Respondent had obtained new machine orders in January, February, and May of 2004, but not in March of April.[6] The total for those orders is given as $1,457,000. Nicoson stated that the Respondent did not, at that time, have any orders to work on after September 2004.

At Petro's suggestion, the parties got the negotiation "ball rolling" by considering noneconomic issues. By the end of the May 20 meeting, the parties had tentatively agreed that: the probationary period would be increased from 60 days to 120 days; safety tours would be conducted before, rather than after, the monthly meetings; the language providing a special rate of pay for John Wilkerson would be deleted from the agreement; and, all grievances would be resolved before negotiations were completed. The Union committee also agreed to withdraw a number of its other noneconomic proposals. This meeting ended at about 4 p.m.

The third bargaining session was held on May 26 and lasted, in Nicoson's words, "probably a couple of hours." The parties began by signing a tentative agreement regarding the issues they had resolved at the May 20 meeting. The Union also said it would try to find ways to create a separate department for parts orders and to limit the number of union investigative committee people who would work on a grievance at one time —both of which were changes sought by the Respondent. The Respondent's team complained about the rising cost of health insurance and the union committee acknowledged that the premiums were "getting out of hand." The Respondent stated that when bidding on jobs it had to price the union employees at $59.95 an hour, of which it claimed about $40 was attributable to wages and benefits under the contract. The Union disagreed with, or did not understand, the method the Respondent used to calculate these amounts, and argued that a much smaller amount was attributable to employees' contractual wages and benefits. Nicoson agreed to provide the Union with a breakdown of the way employees' wages and benefits under the contract contributed to the hourly figure used in bids. During the May 26 session, Petro renewed his request that the Respondent agree to extend the current contract, stating that there was a lot of information the Union needed to analyze. Wright denied the request. He stated that they "needed to work toward getting the agreement . . . done" and that "[t]here was an issue about the plant's future."

The Union and the Respondent had their fourth meeting on June 3. Nicoson provided the Union with a table that purportedly showed how much the employees' wages and benefits under the contract contributed to the hourly cost the Company attributed to union employees when bidding on new work. The table also showed what those figures would be under the concessions proposed by the Respondent. According to the table, the concessions proposed by the Respondent would lower the hourly cost of employees' wages and benefits from $41.87 per hour to $22.50 per hour—a reduction of about 46 percent. The table indicated that the Respondent's proposed 12-percent wage cut would reduce the average hourly wage of unit employees from $18.82 to $16.56 and that the Respondent's health insurance proposal would reduce the hourly, per-employee cost for that benefit from $5.20 to $2.46. According to the Respondent's table, the biggest savings of all would come from the Respondent's proposal to freeze the pension and eliminate the supplemental pension payments. The table indicated that this change would reduce the hourly, per-employee cost of the pension from $12.27 to zero. The union committee questioned whether the pension proposals would really result in such substantial savings. Nicoson answered that the $12.27 figure "can be any number we want it to be"—a response that Petro says "caused a great deal of confusion" for the union committee.[7]

[6] The document does not indicate whether "machine" orders are the only type of orders that bargaining unit employees work on. Elsewhere in the record there are references to "parts" orders.

[7] Petro testified that Nicoson made the statement that the $12.27 figure could be whatever number the Respondent wanted it to be. His testimony on this subject was given in a clear and certain matter, and his claim that Nicoson's statement "caused . . . confusion" is consistent with his subsequent actions in requesting pension information from the Respondent. When the Respondent's counsel asked Nicoson whether he made the statement, he responded, "No, I do not believe that I said that." Based on the demeanor and testimony of the witnesses, I credit Petro's account over Nicoson's somewhat less than emphatic denial. Moreover, the testimony that Nicoson made the statement was consistent with the general impression, given by the record as a whole, that Nicoson was irritated by the negotiations and, in particular, by the

At trial, Nicoson also conceded that the Respondent's pension proposal would not really have reduced the costs of the plan to "zero," and that he used that figure only because the actuary had not yet told him what the new pension benefit would cost.

At this meeting, the union committee proposed a two-tier wage system under which incumbent employees would retain their current level of compensation, but new hires would be subject to a lower pay scale, along the lines of the one proposed by the Respondent. Union negotiators believed that the Respondent would soon be hiring a significant number of new employees and therefore would realize savings from the two-tier system in the near future. The Company's team responded that the two-tier approach would not meet the Respondent's need for immediate reductions in its costs. During negotiations the Union also suggested that the Respondent might realize savings by closing one or more of the buildings at the facility given the reduced volume of its business. The Company did not respond to that proposal.

The parties met for a fifth time on June 7, in a session that lasted 5 or 6 hours. At that meeting the Union committee presented a new comprehensive proposal in which it made significant movement towards the Respondent's position on a wide range of bargaining subjects. Whereas the Union had originally sought 5-percent annual wage increases, it now proposed a $1-per-hour wage *reduction* for incumbent employees, with no increases for 4 years. This represented over a 5-percent cut in the unit's current average wage of $18.82 per hour. The Union also offered to apply wage reductions of $4 per hour to all new hires, which was a larger cut than the Respondent had proposed. The union committee had previously been seeking enhancement of the existing health plan, but now it agreed to the Respondent's proposal that the old plan be abandoned and also accepted that the Respondent's monthly per-employee contribution to premiums would be capped.[8] The Union had previously been seeking an increase in the size of sickness and accident payments, but now it withdrew that request and agreed to cut the period during which such benefits would be paid from 52 weeks to 26 weeks. Whereas the Union had been seeking an increase in the amount of the supplemental pension payments, it now withdrew that request and offered to eliminate supplemental payments entirely after January 1, 2008. The Union had been seeking increases in the monthly pension for retirees, but it withdrew that request and proposed that new employees would only be eligible for a 401(k) plan, not for the pension plan. The Union originally sought an increase in the extent to which the employer-provided insurance covered dental procedures, but now it withdrew that request and agreed to the Respondent's proposal to eliminate employer-provided dental insurance entirely. The Union had been seeking to increase the number of paid employee holidays by three, but now it agreed to *decrease* the number of paid employee holidays by three.

In the June 7 proposal, the Union also accepted outright a number of the Respondent's other proposals for benefit reductions. These reductions included the elimination of the employer-subsidized "sub fund" for employees collecting unemployment compensation and the elimination of the provision permitting employees to carry over 5 vacation days per year. Although the Union did not agree to the Respondent's proposal to eliminate bargaining unit employees from the service and test department, it did agree to the proposal to excise all contract sections that provided separate benefits for unit employees working in that department. In its new proposal the Union also deleted many of its own requests for increases in benefits. Among the requests that the Union deleted were: a reduction in the penalty for early retirement; an increase in the number of vacations days accrued by senior employees; an increase in the duration of continuing health insurance coverage for laid-off employees; an increase in night-shift wage premium; and, an increase in the amount of life insurance coverage provided by the Respondent. The Union also withdrew almost all of its noneconomic proposals.

After the Union finished explaining the proposal, Nicoson responded that the cuts the Union was offering were not "deep enough." He stated that the two-tier wage reduction offered by the union committee would not "help" the Respondent, and opined that even the deeper concessions proposed by the Respondent might "not be enough." In response to the Union's June 7 concessions, the Respondent made no reciprocal compromises at all.

The record indicates that from May 11 to June 7 the Respondent provided the union committee with a number of documents that were prepared for the negotiations and in which the Respondent summarized aspects of its financial information; however, the Respondent generally did not provide the Union with the actual business records that contained the information underlying the representations in those summary documents. Moreover, the Respondent had not opened its financial books to the Union as requested by Petro, or provided the information set forth in the list that Ryan presented to Conklin on May 11. At the meeting on June 7, Petro made a verbal request for specific types of information that would allow the Union to evaluate the Respondent's proposal to freeze the pension and eliminate the supplemental pension payments, as well as to formulate the Union's own pension proposals. Petro asked for pension documents (referred to by the parties as "5500 forms"), actuarial reports, and census data.[9] He stated that he needed to

Union's questioning of the justifications he had offered for the Respondent's proposed cuts. See also footnote 13, infra.

[8] The Union proposed premium caps that were higher than those sought by the Respondent. The Respondent set the caps at $213.92, $475.88, and $566.75 depending on whether the coverage was for an individual, two persons, or a whole family. The Union proposed caps of $250, $550, and $650. The Union also proposed that those caps be raised by 6 percent each year.

[9] Petro, Ryan, Letzgus, and Dennis (Kostal and Van Hurk did not participate in the June 7 meeting, and retirees Bean and Mance were not called as witnesses) all testified that Petro orally requested census data from the Respondent's representatives. Nicoson and Wright (Conklin was not called as a witness), on the other hand, denied that Petro asked for the census data. Also see, footnote 1, supra. Both sets of witnesses testified confidently regarding their contrary recollections. I resolve this credibility question in favor of the union witnesses based largely on the letter that Wright wrote when he transferred the census data to Petro over 3 months later on September 29, 2004. The body of Wright's letter to Petro states in its entirety: "Please note the enclosed pension census information, which I missed copying, back in June."

send the information to a person in the Union's social security department for analysis.

The parties were scheduled to have their sixth meeting on June 8, but the Respondent cancelled that meeting, stating that it was not ready. The parties met the following day, June 9, for between 5 and 6 hours. During this meeting Nicoson reiterated the Respondent's position that "we are not price competitive, need these concessions, to be an ongoing business." Nicoson stated that the Respondent had no future business and that while it had two new pending orders, neither had been confirmed as of yet. Wright presented the union committee with an envelope that contained some, but not all, of the documents Petro requested on June 7. Notably absent from the envelope was the census data. However, at that meeting, Petro did not review the contents of the envelope or inform the Respondent's representatives that any information was missing. Neither the Union nor the Respondent meaningfully changed their bargaining positions during the June 9 session. Nicoson expressed the view that the parties were not close to an agreement.

The parties met for the seventh time at 9 a.m. on June 10—the day the current contract was set to expire. At the start of the session, Nicoson stated that the parties had to get an agreement by the end of the day. The Respondent presented a summary document—prepared for the negotiations—which set forth the costs of a number of pension plan options. According to the document, the Respondent would save $295,089 in 2004 by implementing its proposal to eliminate the pension supplement (bridge money) and freeze the pension plan, assuming that the pension eligible employees stayed employed. The document states that the Respondent would save $169,632 in 2004 if, instead, it eliminated the pension supplement and froze the pension plan only for those employees who were not eligible for retirement, and all the retirement-eligible employees retired immediately with the pension supplement. The document also appears to state that the Respondent would save $25,633 in 2004 if it eliminated the supplement, but did not freeze the pension plan. A number of the entries in this summary document are difficult to interpret, and, indeed, the union committee had trouble understanding them. The Respondent arranged for the parties to discuss the matter by telephone with the actuary who had prepared the document. After this conversation, which lasted approximately 25 minutes, the union committee continued to have questions about how the Respondent was calculating the costs associated with various pension plan options. In particular, the union committee wanted to know how much it would cost to keep the supplement in place for the unit members who remained, given that so many employees had recently retired. The Respondent's team said it would provide that information. Petro requested an extension in order to review information the Respondent had provided, but, once again, the Respondent's team denied the request and said that the parties had until midnight to reach agreement. Nicoson stated that the Respondent had "pending orders that were out there," and it was "very detrimental to have our customers be aware that you do not have an agreement," because "[t]hey may take their business elsewhere."

The union committee, in the absence of a counter offer to its June 7 proposal, tried to draft a new proposal of its own. The Union committee caucused to prepare a proposal, but the members believed they were hampered by the lack of reliable information from the Respondent. At approximately 2:15 p.m., Nicoson and Wright came to the room where the Union committee was working, and asked for the Union's new proposal. Petro stated that the union committee members were frustrated because they were not able to make a good decision without the information they had sought. Nicoson responded that the Union did not have any outstanding information requests, and Petro maintained that the Union did have such requests. Petro asked what the Respondent intended to do if the Union was unable to continue making proposals until it had gotten, and processed, the necessary information. Wright answered that the Respondent would implement its last proposal at midnight. Although the Respondent had previously stated that June 10 was a deadline for concluding a new contract, this was the first time in the negotiations that the Respondent explicitly stated that it would unilaterally implement its proposal or indicated that it thought the parties might be approaching impasse. According to Nicoson, these possibilities had not previously been raised because, as of the start of the June 10 meeting, he believed the parties could reach an agreement. In response to Wright's statement that the Respondent would implement its proposal, Petro said it would be difficult to make much progress that day regarding the issues dividing the parties because even after the union committee obtained the information it needed from the Respondent, it would have to wait for the Union's social security department to analyze that information.

After this encounter, the union committee was confronted with the reality that the Respondent appeared prepared to unilaterally implement terms without either compromising from its initial "ugly" proposal or providing documentation to show that the cuts were justified by financial necessity, or even allowing the Union the time it needed to analyze some of the information that had already been provided. The union committee decided to make a written information request at that time because it believed it needed to document the requests in light of the Respondent's threat to unilaterally implement terms. The union

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Since the documents that Wright produced on June 9 in response to Petro's June 7 request were the last pension documents that Wright provided to the union committee in June, I conclude that Wright was saying he had "missed copying" the census information in response to the June 7 request. I do not believe that Wright would have referred to the census information as something he had "missed copying" in response to the June 7 information request unless he understood that Petro had requested the census information. Moreover, the fact that the Respondent waited for over 3 months to provide the census data even once the Union requested it in writing undermines the Respondent's suggestion that the only reason it did not provide that information on June 9 was that Petro had not asked for it. The Respondent contends that I should not credit the testimony of Ryan, Letzgus, and Dennis regarding Petro's oral request for census data because they did not know exactly what census data consisted of. Based on their respective demeanors, I conclude that Ryan, Letzgus, and Dennis testified honestly. The fact that they may not have known what the term "census data" encompassed does not significantly detract from the reliability of their testimony that they heard Petro use those words when telling the Respondent what information he was requesting. See, also, footnote 13, infra.

committee prepared an information request letter, with the assistance by telephone and facsimile transmission of counsel for the Union. The letter stated that the information was needed for the Union to "adequately and intelligently evaluate the company proposal," and that it would be "difficult or even impossible for the [U]nion to put together a comprehensive proposal until we begin to receive information requests in a timely manner." The letter requested a variety of types of information including: corporate income tax returns, interim financial statements, monthly sales and profit data, capital expenditure and depreciation figures; monthly operating reports; current audits; income sheets; actuarial information that was updated to recognize the large number of retirements; lists of the Company's major competitors; and a comparison of the costs of the Company's proposal to freeze the pension plan and eliminate the pension supplement and the Union's proposal not to freeze the pension plan for active employees. Some of the information the Union asked for in the letter had been requested previously and some apparently had not been. The Union committee had already asked, in general terms, that the Respondent "open its books," but the Union now unpacked that request—specifying precisely what financial information it was seeking.[10]

The union committee presented the written information request to the Respondent at about 4 or 5 p.m. Petro stated that he should have made the information request much sooner. After receiving the request, one of the Respondent's representatives stated that the Company was not going to open its financial books because it had made money and was not claiming poverty. The Respondent's team wanted time to look over the request, and suggested that the parties break for dinner and resume negotiations at 7 p.m. Petro responded that he would be unavailable at that time, but that the rest of the committee would be present and "would function on with whatever had to be done."[11] Petro's presence was not necessary for the remaining five committee members to reach a contract and, in any case, Petro stated that the other members could reach him by cell phone if the need arose. Kostal, the union president, was present and, as discussed above, had relatively extensive experience in negotiating contracts, having helped negotiate the last seven contracts between the Union and the Respondent. Ryan, the chairperson of the union committee was also present. No one from the union committee said anything to the Respondent's representatives to indicate that their ability to function would be limited by Petro's absence.

When the parties returned at 7 p.m., the Respondent presented the union committee with two documents. One was a letter in which the Respondent opined that "the negotiations have reached the point at which any further bargaining at this time would be futile because the positions of both Newcor and Local 496 are firm and are not close to agreement," and disputed the Union's claim that it needed additional information. At the same time, the Respondent presented a document entitled "Management Final Proposal to UAW, Local 496, June 10, 2004." Nicoson stated that the parties were at impasse and that the Company would implement its final proposal the next day—that is, immediately upon the expiration of the existing contract.

Ryan reacted to Nicoson by stating that the parties were not at impasse, and that the union committee would still negotiate and talk about "anything." According to Kostal, the union committee had enough information at that point to bargain in good faith and could have made further concessions on issues including healthcare and wages, but that it felt it needed information substantiating the Respondent's financial claims before the Union could accept the level of the reductions sought in the Respondent's proposal.[12] The Respondent's team answered Ryan's call for further negotiations by reiterating that the parties were at impasse and that the Company would implement its final proposal upon the expiration of the current contract at midnight. Then, Nicoson and Wright left the room, ending the meeting. This was the first time the Respondent had presented a "final proposal" to the union committee. The final proposal was the only comprehensive proposal that the Respondent had made since distributing its initial proposal on the very first day of negotiations. The final proposal was, however, identical to the Respondent's initial proposal in nearly every respect. Among the few changes were: the deletion of language providing for future pay increases based on plant profitability; the deletion of the Respondent's proposal that the number of union committee members be reduced; and the addition of language providing that when unit employees were displaced from the service and test department they would be reassigned according to a contract provision that took seniority rights into account.

Nicoson testified that he distributed the final proposal when he did because there had been seven bargaining sessions, "at just about all those sessions we had discussed the major economic issues that needed to be resolved," but "[t]here was no movement, on the bargaining unit's part, on any of those issues, and we needed to have immediate relief, to capture any new business." Nicoson also testified that his assessment took into account that Petro had left the meeting. He stated that his conclusion that the parties could not reach agreement had nothing to do with the fact that the current agreement was going to expire that day at midnight.[13] Aside from Nicoson, the only wit-

[10] The only other written information request that a member of the union committee made was the list that Ryan presented to Conklin on May 11, but which Conklin declined to accept. The record does not show precisely what information was requested in that document.

[11] Nicoson and Wright testified that Petro said he could not be present because he was attending a conference the next day and had to take care of chores at home such as yard work and bathing his dog. Tr. 271, 296. Petro and Kostal both denied that Petro had made such a statement. Tr. 73, 182–183. Petro testified that he could not be present at 7 p.m. because he had previously committed to attend another meeting at 6 p.m. Based on my review of the record, and after considering the demeanor of the witnesses, I doubt there is a basis for crediting one side's account over the other's on this issue. At any rate, I do not believe that the question of whether Petro said he was leaving to take care of home chores is of any real moment in this case, especially since the Respondent was advised that the five other union committee members were authorized to do whatever had to be done during Petro's absence.

[12] Based on my review of the record, and my assessment of Kostal's demeanor, I believe that these views regarding the state of the negotiations were sincerely held.

[13] In general, I did not find Nicoson to be a credible witness based on his demeanor and his sometimes evasive and defensive responses to

ness called by the Respondent was Wright. Wright attended all the bargaining sessions from May 11 to June 10, but did not testify that he believed further negotiations would have been futile at the time the Respondent declared impasse. Conklin, the remaining member of the Respondent's negotiating team, did not testify.

Multiple members of the union committee disagreed with Nicoson's assessment that further bargaining would be futile. Kostal, who had participated in the negotiation of seven contracts with the Respondent, testified that, in the past, negotiations often continued until "midnight or 2 am" and that he did not believe the parties had reached a bargaining impasse when the Respondent broke off negotiations at 7 p.m. on June 10. He testified that the Respondent had not previously indicated that it believed the parties were close to impasse and that, in past contract negotiations, the parties had used a federal mediator when they could not agree on a contract. Kostal credibly testified that "compared to past negotiations," the parties "really hadn't spent hardly any time" negotiating on a number of the issues. Similarly, Ryan testified that it was not his impression that the parties were at an impasse when the Respondent broke off the negotiations.[14] He stated that the Union had made "real good" concessions on wages, supplemental pension payments, holidays, and vacations, and that the union committee never stated that it would not compromise further. He testified that the Union committee was willing to keep working and looking for a "middle ground" at the time Nicoson declared impasse. Like Kostal and Ryan, Petro stated that he did not believe the parties had reached impasse when he left the meeting on June 10. He stated that there had been only seven meetings, two of which were relatively short, and the union committee required time to process pension information. Union committee members Letzgus and Dennis also testified that the negotiations were not at an impasse when the Respondent announced that it was implementing the final offer.[15]

C. Request for Census Data

As discussed above, Petro requested pension information, including census data, on June 7, but when Wright provided information in response to that request on June 9, he did not include the census data. The Respondent points out that earlier in 2004, Kostal, in his capacity as an administrator of the pension plan, received information from the Respondent that included the names, birth dates, seniority dates, and marital status of at least some unit employees. However, the record does not show that the information provided to Kostal in or around March 2004 represented complete census data for all unit employees as of June 2004. Moreover, it is unlikely that such information could be considered current after the passage of several months, especially given that over a third of the bargaining unit members retired in the days immediately preceding the expiration date of the current contract.[16] At any rate, the Respondent does not claim that, in June 2004, it responded to Petro's request for census data by claiming that Kostal had already received some form of the information outside the context of the bargaining process. Kostal himself was unable to attend the meetings on June 7 and June 9.

On June 18, 2004, a week after the Respondent implemented its final proposal, Petro sent a letter to Nicoson stating that there were "several information requests that are incomplete," including "the request for updated census data [i]n computer readable form." In a letter to Petro dated July 6, 2004, Wright denied that the Union had made any information requests prior to June 10. Along with the letter, Wright provided some of the information requested by the Union, but declined to provide certain financial information because "[o]n May 12, 2004 . . . Newcor stated that it was not pleading poverty." The information provided with the July 6 letter did not include the census

questioning. Moreover, his claim that the timing of the declaration of impasse had nothing to do with the expiration of the existing contract on June 10, Tr. 282–284, is wholly implausible and his willingness to make such a statement under oath further darkens the cloud over his testimony. In its brief the Respondent itself contradicts Nicoson—stating that "[t]he contract expiration date . . . constituted a deadline for the negotiations." Respondent's Brief at 43. Indeed, Nicoson himself conceded that, from the start of negotiations, the Respondent viewed the expiration date of the contract as a "deadline" for reaching a new agreement. See Tr. 239, 264, 269. Indeed, Nicoson's claim that the contract expiration and the declaration of impasse were unrelated is part of pattern on Nicoson's part of stretching and misrepresenting facts in an effort to defend his actions. To justify the decision to unilaterally implement the Respondent's proposal, Nicoson stated: "[W]e had, had seven bargaining sessions. At just about all those sessions we had discussed the major economic items that needed to be resolved. There was no movement, on the bargaining unit's part, on any of those issues." Tr. 272–273. But the truth is that in its June 7 proposal the Union made significant movement towards the Respondent's position on many of the major economic issues dividing the parties, including wages. Nicoson also claimed that "all the information that [the Union] had requested on any items was supplied to them." Tr. 273. However, the record shows that Petro asked the Respondent to open its financial books and that Ryan submitted a list of types of information he thought was necessary to evaluate the Respondent's financial claims, but that the Respondent refused both requests. Nicoson also stated that the union committee never suggested any ways, other than wage and benefit cuts, for the Respondent to cut costs. Tr. 257. However, on cross-examination, Nicoson conceded that the union committee had suggested that the Respondent save money by closing one of the buildings at the facility. Tr. 280–281. Nicoson's willingness to retreat from some of his more implausible statements when provided with an opportunity to do so by counsel for the Respondent, did not, in my view, rehabilitate him. See, e.g., Tr. 273 (Nicoson retreats from statement that the Union made "no movement" on key issues, and now says that there was no movement after June 7).

[14] Ryan had difficulty recalling dates and often needed to have his attention directed to a specific subject, or in some way refreshed, before he could retrieve memories about a subject. For these reasons I did not consider Ryan a reliable witness regarding dates and the numerous matters about which he was uncertain. However, based on Ryan's demeanor and testimony, I believe that he was answering honestly to the best of his ability, and that his testimony was very reliable regarding matters about which he evidenced confidence.

[15] During his testimony, Van Hurk, was not asked whether he thought further bargaining would have been futile as of the time Respondent declared impasse on June 10. However, the June 10 meeting was the first bargaining session Van Hurk attended and therefore his impressions would probably not have been particularly helpful.

[16] Sixteen or seventeen of the approximately 40 to 42 bargaining unit employees, retired during the days immediately preceding the expiration of the contract.

data that Petro requested orally on June 7 and in writing on June 18. In a letter to Petro, dated September 29, 2004, Wright stated: "Please note the enclosed pension census information, which I missed copying back in June." With the letter, Wright enclosed a printout of the pension information.

D. The Complaint Allegations

The complaint alleges that the Respondent failed and refused to bargain in good faith with the Union in violation of Section 8(5) and (1) of the Act by: not providing the Union with employee census data that the Union requested on about June 3, June 9, and June 18, 2004; and unilaterally implementing its final offer on or about June 11, 2004, at a time when the parties were not at a bona fide impasse.

III. ANALYSIS

A. Information Request for Census Data

It is well settled that an employer's duty to bargain in good faith with the bargaining representative of its employees encompasses the duty to provide information needed by the bargaining representative to assess claims made by the employer relevant to contract negotiations. *NLRB v. Acme Industrial Co*., 385 U.S. 432, 435–436 (1967); *NLRB v. Truitt Mfg. Co*., 351 U.S. 149, 153 (1956); *Saginaw General Hospital*, 320 NLRB 748, 750 (1996); *Public Service Electric & Gas Co*., 323 NLRB 1182, 1186 (1997), enfd. 157 F.3d 222 (3d Cir. 1998); *National Broadcasting Co*., 318 NLRB 1166, 1168–1169 (1995). Generally, "'information pertaining to employees within a bargaining unit'" is "presumptively relevant." *Quality Building Contractors*, 342 NLRB 429, 431 (2004); *Western Massachusetts Electric Co.*, 234 NLRB 118, 118–119 (1978), enfd. 589 F.2d 42 (1st Cir. 1978). "The Board uses a broad, discovery-type of standard in determining relevance in information requests, including those for which a special demonstration of relevance is needed, and potential or probable relevance is sufficient to give rise to an employer's obligation to provide information." *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994). see also *Acme Industrial*, 385 U.S. at 437 and fn. 6. The question is whether there is 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." *Acme Industrial*, 385 U.S. at 437 (emphasis added). "An employer must respond to the information request in a timely manner" and "[a]n unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all." *Amersig Graphics, Inc*., 334 NLRB 880, 885 (2001); see also *Britt Metal Processing*, 322 NLRB 421, 425 (1996), affd. 134 F.3d 385 (11th Cir. 1997) (mem.); *Leland Stanford Junior University*, 307 NLRB 75, 80 (1992).

I conclude that the Respondent had a duty to provide the census data requested by the Union on June 7, and that it violated Section 8(a)(5) and (1) by not providing that information in a reasonably timely manner. The information was presumptively relevant to the Union duties because it pertained to unit members. *Quality Building Contractors*, supra; *Western Massachusetts Electric*, supra. The Respondent has not rebutted that presumption of relevance or shown that the presumption is inapplicable. Moreover, even if the census information was not presumptively relevant, the Respondent would have been obligated to provide it since the record shows a probability that the information would have been useful to the Union in evaluating the Respondent's proposal to freeze the pension plan and eliminate the supplemental payments under the plan. The pension issue was, by the Respondent's own reckoning, the most economically significant one dividing the parties. The Union was certainly entitled to census data that it needed in order to compare the costs and effects of that proposal with other options. The Union requested the census data on June 7 and again on June 18, but the Respondent did not supply the information until September 29—over 3 months after the request and long after the Respondent declared impasse and unilaterally implemented its final proposal. The Respondent has not claimed that unusual circumstances made such an extended delay reasonable, and the record reveals no such circumstances.

The conclusion that the Respondent unlawfully failed to provide the census data in a timely fashion is not rebutted by evidence that, several months before the union committee's June requests, the company had provided Kostal with census information for at least some employees. As discussed above, the record does not show that the information provided to Kostal covered all unit members or that it was complete for those employees for whom it was provided. Moreover, it is unlikely that whatever census information the Respondent had provided to Kostal months before the start of negotiations was still current when the Union committee made its June 7 and 18 requests for census data—especially given the many recent retirements.

For the reasons discussed above, I conclude that the Respondent violated Section 8(a)(5) and (1) by failing to supply the requested census data to the Union without unnecessary delay.

B. Respondent's Unilateral Implementation of Final Offer

"'Generally, an employer has a statutory obligation to continue to follow the terms and conditions . . . in an expired contract until a new agreement is concluded or good-faith bargaining leads to impasse.'" *Made 4 Film, Inc.*, 337 NLRB 1152 (2002), quoting *R.E.C. Corp*., 296 NLRB 1293 (1989). The General Counsel alleges that the Respondent violated this statutory obligation when it implemented its final proposal on June 11, immediately upon the expiration of the contract between the parties, and at a time when the parties had not reached a valid impasse. The Respondent counters that an impasse did, in fact, exist at that time. For the reasons discussed below, I conclude that the parties had not reached a valid impasse, and that the Respondent unlawfully implemented its final proposal in violation of Section 8(a)(5) and (1) of the Act.

C. Had the Parties Reached Impasse?

The Board has defined bargaining impasse as the "situation where 'good-faith negotiations have exhausted the prospects of concluding an agreement.'" *Royal Motor Sales*, 329 NLRB 760, 761 (1999), enfd. sub nom. *Anderson Enterprises v. NLRB*, 2 Fed. Appx. 1 (D.C. Cir. 2001), quoting *Taft Broadcasting*, 163 NLRB 475, 478 (1967), enfd. sub nom. *Television Artists, AFTRA v. NLRB*, 395 F.2d 622 (D.C. Cir. 1968). It is "the point in time of negotiations when the parties are warranted in assuming that further bargaining would be futile . . . .

'Both parties must believe that they are at the end of their rope.'" *AMF Bowling Co.*, 314 NLRB 969, 978 (1994), enf. denied 63 F.3d 1293 (4th Cir. 1995), quoting *PRC Recording Co.*, 280 NLRB 615, 635 (1986), enfd. 836 F.2d 289 (7th Cir. 1987); *Patrick & Co.*, 248 NLRB 390, 393 (1980), enfd. mem. 644 F.2d 889 (9th Cir. 1981). The question of whether a valid impasse exists is a "matter of judgment" and among the relevant factors are "[t]he bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, [and] the contemporaneous understanding of the parties as to the state of negotiations." *Taft Broadcasting Co.*, 163 NLRB at 478. Under these standards, an employer's claim of impasse has been found invalid where the evidence showed that the employer was determined to unilaterally implement reductions immediately upon the expiration of the agreement regardless of the state of negotiations. *CBC Industries*, 311 NLRB 123, 127 (1993); *Dust-Tex Service*, 214 NLRB 398, 405–406 (1974), enfd. mem. 521 F.2d 1404 (8th Cir. 1975).

The Respondent, as the party asserting impasse, has the burden of proof on the issue. *L.W.D., Inc.*, 342 NLRB 965, 965 (2004); *CalMat Co.*, 331 NLRB 1084, 1097–1098 (2000), *Outboard Marine Corp.*, 307 NLRB 1333, 1363 (1992), enfd. mem. 9 F.3d 113 (7th Cir. 1993) (Table); *North Star Steel*, 305 NLRB 45 (1991), enfd. 974 F.2d 68 (8th Cir. 1992). In this case, the Respondent has not met that burden. Given the record, I conclude that as of June 10 the parties had not come close to "'exhaust[ing] the prospects of concluding an agreement.'" *Royal Motor Sales*, supra. Impasse only exists when "*Both* parties . . . believe they are at the end of their rope." *AMF Bowling Co.*, supra (emphasis added); see also *PRC Recording Co.*, 280 NLRB at 640 (for impasse to exist, both parties must be unwilling to compromise). The evidence in this case shows that Union officials were not at the end of their negotiating rope, but were ready and willing to negotiate further compromises. While Nicoson was impatient with the Union's pace in agreeing to concessions, his frustration is not the equivalent of a valid impasse, nor did it mean that a negotiated settlement was not within reach. *Grinnell Fire Systems, Inc.*, 328 NLRB 585 (1999), enfd. 236 F.3d 187 (4th Cir. 2000), cert. denied 534 U.S. 818 (2001), citing *Powell Electrical Mfg. Co.*, 287 NLRB 969, 973 and 974 (1987), enfd. as modified 906 F.2d 1007 (5th Cir. 1990) (futility, not some lesser level of frustration, discouragement, or apparent gamesmanship, is necessary to establish impasse). The Respondent's "feelings that the Union should have realized the seriousness and immediacy of its financial condition is immaterial and the Union cannot be made responsible for the resulting events because it was skeptical of the Employer's claims and therefore was slow to respond to or failed to immediately capitulate to Respondent's terms." *Page Litho, Inc.*, 311 NLRB 881, 889 (1993), enfd. in relevant part 65 F.3d 169 (6th Cir. 1995).

The record here shows that the negotiations had not broken down, but rather were succeeding in narrowing the differences between the parties and moving them closer to a contract. On May 26, at the third bargaining session, the parties signed tentative agreements on a number of noneconomic issues. Then on June 7, the Union presented a new comprehensive proposal in which it made concessions that eliminated or narrowed the divide between the parties on many economic and noneconomic issues. The Union's concessions demonstrated a willingness to make sacrifices in the interest of arriving at a new agreement, and were presented only two meetings before the one at which the Respondent declared impasse. See *Royal Motor Sales*, 329 NLRB at 762 (no valid impasse when the Union had made a dead-lock breaking proposal only 2 days earlier), *Towne Plaza Hotel*, 258 NLRB 69, 78 (1981) (employer's declaration of impasse invalid where the union had significantly reduced its wage demand only 2 weeks earlier and the union never stated it was unwilling to make further concessions). As indicated by *Taft Broadcasting*, supra, such evidence of good faith militates against finding a valid impasse. Although the Respondent repeatedly relies on the Board's finding of impasse in *H&H Pretzel Co.,* 277 NLRB 1327, 1334 (1985), enfd. 831 F.2d 650 (6th Cir. 1987), that finding was based on the conclusion that the union's actions showed it "had no intention of ever consenting to any reductions in the existing labor costs." That cannot be said of the Union in the instant case. Moreover, the Union made this substantial movement even though the Respondent had declined to compromise from it initial proposal and had been unwilling to provide financial documentation that might very well have helped accelerate the progress towards a new contract. Given the clear indication of the Union's flexibility on significant issues, the Respondent was "'required to recognize that negotiating sessions might produce other or more extended concessions.'" *Royal Motor Sales*, 329 NLRB at 772 quoting *NLRB v. Webb Furniture Corp.*, 366 F.2d 314, 316 (4th Cir. 1966), enfg. 152 NLRB 1526 (1965). That is true even where "'a wide gap between the parties remains because under such circumstances there is reason to believe that further bargaining might produce additional movement.'" *Hayward Dodge*, 292 NLRB 434, 468 (1989), quoting *Old Man's Home of Philadelphia v. NLRB,* 719 F.2d 683, 688 (3d Cir. 1983). "Rather than explore the possibilities raised" by the Union's June 7 proposal, however, the Respondent "rushed to declare impasse and implement" its own final proposal. *Royal Motor Sales*, 329 NLRB at 763. This action "precluded further exploration of possible tradeoffs and foreclosed any finding that good-faith bargaining exhausted the prospects of reaching an agreement." Id. "Having never fully tested the finality of the Union's bargaining position, Respondent is in a poor position to argue that further negotiations would have been futile." *Towne Plaza Hotel*, 258 NLRB at 78.

In addition to indicating flexibility by its actions, the Union team explicitly notified the Respondent that it was not at the end of its rope. On June 10, when the Respondent's team asserted that the parties were at impasse, Ryan asked to continue bargaining and assured the Respondent that the Union committee was prepared to negotiate on any subject. Kostal's contemporaneous understanding was consistent with Ryan's assurances—he believed that the union committee was prepared to make further concessions on central issues, and that more extreme movement would be possible in the future, depending in part on what information the Respondent provided. Neither Ryan, Kostal, Petro nor anyone else from the union committee ever stated that the Union would not make further movement

towards the Respondent's position on any issue, or even foreclosed the possibility that the Union would eventually accept the Respondent's initial "ugly" proposal.[17] Under the circumstances, "the Union's "protestations that negotiations have not reached impasse provide substantial evidence to support . . . [a] finding of no impasse." *Royal Motor Sales*, 329 NLRB at 773, citing *D.C. Liquor Wholesalers v. NLRB*, 924 F.2d 1078, 1084 (D.C. Cir 1991). This is true even though the Union had not yet offered specific additional concessions, but only declared its intention to be flexible and continue bargaining. G*rinnell Fire Systems, Inc.,* 328 NLRB at 585–586 (no impasse where employer expressed unwillingness to move from its position and the union had not yet offered specific concessions, but the union had declared its intention to be flexible, sought another bargaining session, and indicated a willingness to involve a federal mediator). Moreover, prior to the afternoon of June 10, the Respondent's officials had never raised the possibility that the parties were approaching impasse. Indeed, even Nicoson admitted that as of the morning of June 10 he believed the parties could reach an agreement. Under these circumstances, the parties' "contemporaneous understanding" regarding the state of the negotiations weighs against a finding that a valid impasse was reached before the Respondent unilaterally implemented its proposal. *Taft Broadcasting*, supra.

The Respondent's effort to establish an impasse is also hampered by the relatively limited amount of time that had been devoted to negotiations. Since the Respondent was insisting on a wide range of drastic cuts, it was reasonable to expect that the negotiations might be difficult and potentially protracted, even assuming that both sides were working diligently towards an achievable common ground. Instead of acknowledging that reality, the Respondent set an artificial, relatively short, deadline for concluding a new agreement and then declared impasse when that deadline could not be met. At the time the Respondent declared impasse, the parties had actually spent significantly less time bargaining on many issues than they had before reaching agreement on issues in past contracts. The parties had met for a period of 1 month, and had conducted seven sessions—not an insignificant effort, but certainly not an unusually drawn-out one, especially given what was at stake. See *United States Testing Co*., 324 NLRB 854, 860–861 (1997) (impasse prematurely declared where there had been only six bargaining sessions, the employer was seeking substantial concessions, and Union withdrew nine proposals at final session and told the employer it wished to negotiate further), enfd. 160 F.3d 14 (D.C. Cir. 1998); *Tom Ryan Distributors*, 314 NLRB 600, 605 (1994) (no impasse where parties had met only eight times before employer declared impasse), enfd. mem. 70 F.3d 1272 (6th Cir. 1995). In addition, the parties had not yet availed themselves of a Federal mediator's help—something they had done in the past when they had trouble reaching a contract. Although some of the issues on which there was not yet agreement were important ones, the Respondent has not demonstrated that the parties were deadlocked on any of those matters. The record provides no reason for believing that the parties could not have concluded an agreement in this instance if the Respondent's team had exerted efforts similar to those that produced contracts in the past, instead of cutting off negotiations on June 10. See *Taft Broadcasting* supra. (bargaining history and length of bargaining are relevant factors in determining impasse).

The evidence regarding these negotiations leads to the conclusion, inescapable in my view, that the Respondent's assertion of impasse on June 10 was motivated not by a valid bargaining deadlock, or even a good-faith belief that further bargaining would be futile, but rather by the Respondent's determination to implement reductions immediately upon the expiration of the current contract, regardless of the state of negotiations. The Respondent openly states that it considered "[t]he contract expiration date . . . a deadline for negotiations," Respondent's Brief at 43, as indeed Nicoson and Wright stated repeatedly during bargaining.[18] The Respondent has not provided any evidence that when it set that deadline it had a basis for believing that bargaining would become futile after June 10. Rather the evidence shows it set that deadline on the basis of its unwillingness to continue providing the contract-level benefits for even a moment past the contract's expiration. Compare *Made 4 Film,* supra. Moreover, the Respondent staunchly refused the Union's repeated requests, made as early as the opening day of negotiations, for an extension of the deadline in light of the breadth and depth of the cuts being sought, and the complexity of some of the information that had to be obtained and analyzed. See *Royal Motor Sales*, 329 NLRB at 763 (no valid impasse when union had not had time to analyze considerable information received during 2 days before assertion of impasse). It continued to insist on that deadline even when, with 3 days remaining, the Union made concessions that brought the parties' positions far closer than they had been at any other time in the negotiations. In its statements to the union committee, the Respondent's team indicated that the deadline was absolute and would not be relaxed.

On the day that the Respondent declared impasse, nothing dramatic occurred that showed future negotiations would be futile or that a negotiated agreement had moved out of reach.

[17] Petro stated, at about 4:30 p.m. on June 10, that the parties were unlikely to make major progress that day, but that is not the same as saying that the parties were at impasse. Indeed, if inability to conclude an agreement on a particular day were all that was required to establish impasse, then multiday contract negotiations would always be susceptible to a declaration of impasse. See *Dust-Tex* Service, 214 NLRB at 405 (employee's comment that the parties were at impasse "for now," means they are "not yet in agreement" as of that meeting, not that they had reached a bona fide impasse).

[18] The Respondent alludes to its need for "immediate" economic relief, Respondent's Brief at 62, but does not argue that this entitled it to unilaterally implement reductions without bargaining to impasse. At any rate, under Board precedent, the Respondent's contention that the terms of the labor contract put it at a competitive disadvantage, even if established, would not constitute a compelling economic justification that would permit it to take unilateral action while bargaining is ongoing. *RBE Electronics of S.D.*, 320 NLRB 80, 81 (1995). Moreover, the Respondent had been profitable the previous year, and although it repeatedly claimed there was no "future business," the record indicates that the Company was poised to obtain new orders at the time it asserted impasse and had a backlog of work that was greater than that of any of the 3 prior years.

Although the Respondent points to receipt of the Union's written information request, the record shows that even before the Union conceived of that request, the Respondent had set June 10 as a strict deadline for a new contract, and had threatened to unilaterally implement its last proposal at midnight on that day. Nicoson attempted to explain the June 10 deadline by stating that the Respondent's customers might take their business elsewhere if they learned that the Company was operating without a contract. The record does not support this explanation,[19] but even assuming that Nicoson's concern was justified, it would not show that further negotiations would be futile or that a bona fide impasse had been reached. As discussed above, when the June 10 deadline arrived, the parties had not yet expended the efforts that had been required to conclude some of its past contracts. The only plausible explanation that the record provides for the Respondent's sudden conviction that the parties were at impasse on June 10 is the approaching expiration of the contract, and the accompanying siren call of unilateral cuts. As the Board found in *CBC Industries*, 311 NLRB at 127 and *Dust-Tex Service*, 214 NLRB at 405, an employer's declaration of impasse is not valid when it is motivated by an employer's determination to implement cuts immediately upon the expiration of the contract.

The Respondent claims that the evidence showed it bargained in good faith before declaring impasse, and asserts that this is powerful evidence that it "made a bona fide effort to reach agreement" before implementing its final offer. Respondent's Brief at 40–41. Assuming *arguendo* that the Respondent engaged in some period of good-faith bargaining, that would not show that it expended sufficient efforts before implementing its final offer. An employer that engages in a period of good-faith efforts to reach a contract still violates the act if it unilaterally implements new terms of employment before exhausting the prospects of concluding an agreement. At any rate, the overriding impression left by the record is that Nicoson viewed the requirement to bargain as an imposition, but one that would not be allowed to interfere with his determination to implement cuts in wages and benefits immediately upon the expiration of the current contract. When the Union committee did not immediately capitulate to the Respondent's demands, Nicoson could not contain his irritation and had to be chided to listen to the Union's proposal. When Union officials questioned the Respondent's claim that the existing pension plan cost $12.27 per employee on an hourly basis, Nicoson cavalierly responded that the $12.27 figure "can be any number we want it to be." When the Union made rather dramatic movement towards the Respondent's position, he offered discouraging comments. When the Union suggested that money could be saved by closing one or more of the facility's buildings, Nicoson did not bother to respond. The obligation to bargain in good faith did not require the Respondent to compromise its bargaining position, see *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984), *Long Island Jeep*, 231 NLRB 1361, 1367 (1977), but it did require that the Respondent see the bargaining process through to either a new contract or the exhaustion of prospects for concluding one.

I note, moreover, that of the three individuals on the Respondent's bargaining team, only Nicoson testified that he believed the parties had exhausted the prospects for concluding an agreement at the time of the Respondent's assertion of impasse. Wright, who attended every one of the bargaining sessions, was called by the Respondent and testified extensively, but he did not state that he believed the parties were at a point where further bargaining would be futile, or even that the Respondent was at the end of its rope. Conklin, who was present for some, but apparently not all, of the bargaining sessions was not called as a witness by the Respondent. The Respondent has not explained its failure to illicit testimony from Wright and Conklin regarding this subject.

The Respondent cites *Concrete Pipe and Products Corp.*, 305 NLRB 152 (1991), affd. sub nom. *United Steelworkers of America v. NLRB*, 983 F.2d 240 (D.C. Cir. 1993), for the proposition that the Union's request for "economic data, when the union has no right to that data" supports a declaration of impasse. There are some obvious similarities between *Concrete Pipe*—in which the Board found a valid impasse—and the instant case. In both instances the employer was seeking deep cuts in wages and the union was seeking wage increases. Both unions asked the employers to provide financial records relevant to the claims that the cuts were justified by financial circumstances, and both employers refused to either provide that information or compromise on their demands for cuts. There is a world of difference, however, in how the unions in the two cases reacted to this state of affairs. In *Concrete Pipe* the union refused even to "negotiate for concessions unless they were given the company's books." Id. at 153. Moreover, that union continued "pressing for wage increases to the very end," Id. at 164. By contrast, the Union in the instant case had sought financial documentation, but when that documentation was not provided, the Union displayed good faith and flexibility by continuing to negotiate, abandoning its proposals for increases, and offering a proposal that included cuts in wages, insurance, pension, and other benefits. At the time the Respondent team asserted impasse, the Union committee was willing to continue negotiating on any subject. Furthermore, the Respondent here, unlike the employer in *Concrete Pipe*, was shown to have acted based on an artificial deadline for concluding a new agreement. To put it simply, impasse existed in *Concrete Pipe* because the parties had, in fact, come to the ends of their ropes, whereas the Respondent in the instant case asserted impasse based on its artificial deadline at a time when a negotiated agreement was still feasible.[20]

[19] Nicoson does not explain how that situation could possibly have been helped by the Respondent's decision to declare impasse and refuse to continue the June 10 meeting—thereby assuring that the Respondent would, in fact, be operating without a labor contract. Moreover, the Respondent has not shown that any customers actually indicated they would seek another supplier if the Respondent extended the existing contract for a short time, and it is hard to see why any customer would feel compelled to do so.

[20] I do not address the question of whether the Respondent, unlike the employer in *Concrete Pipe*, made claims during negotiations that triggered an obligation to open its financial books to the Union. The complaint does not allege that the Respondent violated the Act by withholding its financial books and the General Counsel has not argued

The Respondent points out that once it became clear that employees were only going to lose benefits in the next contract, the Union had an incentive to draw-out the bargaining process in order to retain the superior benefits of the old contract as long as possible. By the same token, however, the dynamics of the situation provided the Respondent with an incentive to declare impasse so that it could begin to reap the benefits of the reductions as soon as possible. The question is whether these incentives against good-faith bargaining caused one or both parties to abandon such efforts. The record shows that these incentives did not, in fact, deter the Union from bargaining in good faith and seeking a negotiated contract. The Union never delayed bargaining by canceling sessions or instigating an extended hiatus from negotiations. Indeed, the Respondent was the only party shown to have cancelled a meeting. When the Respondent's team left the June 10 meeting, the union committee was still present and urging that the negotiations continue into the night. The record in this case does not support the Respondent's claim that the union committee was intent on dragging out the negotiations.[21] On the other hand, the evidence discussed above makes abundantly clear that the incentives inherent in the situation did sway the Respondent. Despite recent, substantial, concessions by the Union that significantly narrowed the gap between the parties, the Respondent refused to permit bargaining to take its natural course. Instead, it asserted impasse when its artificial deadline arrived so that it could implement unilateral cuts immediately upon expiration of the contract, and at a time when further negotiations might well have been fruitful.

For the reasons discussed above, I conclude that the Respondent violated Section 8(a)(5) and (1) by unilaterally implementing its last offer at a time when the parties had not reached a valid bargaining impasse.

Even if the evidence discussed above did not persuade me that the Respondent declared impasse when the possibility of a negotiated contract was still very real, I would conclude that the parties were not at a valid impasse on June 10 because the Respondent had failed to provide the census data to which the Union was entitled and which was relevant to proposals regarding the pension plan. The Board has held that "[a] failure to supply relevant and necessary information to bargain constitutes a failure to bargain in good faith in violation of Section 8(a)(5), and no genuine impasse c[an] be reached in these circumstances." *Pertec Computer Corp.*, 284 NLRB 810, 812 (1987), decision supplemented 298 NLRB 609 (1990), enfd. in relevant part 926 F.2d 181 (2d Cir. 1991), cert. denied 502 U.S. 856 (1991); see also *United States Testing Co.*, 324 NLRB at 860 ("A legally recognized impasse cannot exist where the employer has failed to satisfy its statutory obligation to provide information needed by the bargaining agent to engage in meaningful negotiations."). Even when such information is provided prior to a declaration of impasse, an employer must permit the Union a reasonable opportunity to review the information and evaluate any impact it might have on its proposals. See *Royal Motor Sales*, 329 NLRB at 763; *Storer Communications*, 294 NLRB 1056, 1057 (1989). Census information regarding unit employees was relevant to proposals regarding the employees' pension plan—quite possibly the most economically significant issue separating the parties. The Union requested the information prior to the Respondent's declaration of impasse, but the Respondent did not provide it until after that declaration was made, following an unlawful delay of several months. Because the Respondent asserted impasse without giving the Union an opportunity to review that information, the Union was unable to use it either to evaluate the Respondent's pension proposal or to formulate proposals of its own. See *Royal Motor Sales*, 329 NLRB at 763 and 770 (union did not have critical information on the employer's proposals for a sufficient period of time and therefore the employer "acted prematurely when implementing its final offer and did not place its theory of the [union's] bargaining rigidity . . . to the test").

The Respondent contends that an impasse was not precluded by its failure to provide the census data, because on June 10 it had provided the Union with a summary document regarding the comparative costs of certain pension proposals. I have examined that summary document and conclude that it did not alleviate the Union's need for the census data. First, skepticism about the reliability of the information presented in the Re-

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that the Respondent's failure to provide that information is a basis for finding there was no impasse. See *Leland Stanford Junior University*, 307 NLRB at 75 (lawfulness of employer's failure to comply with information requests was not fully litigated when it was neither alleged in complaint nor argued in briefs). I do note, however, that in *H&H Pretzel Co.,* a decision the Respondent relies on, the fact that the employer *volunteered* to open its financial books, but the union refused to examine them, was an important factor in the Board's finding of impasse. 277 NLRB at 1327 and 1334.

[21] The Respondent asserts that the Union's written information request on June 10 was "submitted solely for purposes of delay." Respondent's Brief at 52. The record is contrary to that characterization. It shows that the union committee was seeking the information for the purposes of verifying the Respondent's claims during negotiations and preparing its own proposals. The Union had unsuccessfully sought some of the information before, as early as the first bargaining session on May 11. Moreover, the summary documents that the Respondent had been providing during negotiations in lieu of the underlying records were shown to be of questionable reliability in some instances. The timing of the Union's written request is explained not by a desire to delay legitimate bargaining, but by the necessity of documenting its information requests following the Respondent's threat of unilateral implementation and assertion that there were no outstanding information requests. Before that, it was not unreasonable for the union committee to hope that the Respondent would compromise sufficiently to alleviate the need for some or all of the documentation. See also *Royal Motor Sales*, 329 NLRB at 762–763 ("Parties commonly change their position during the course of bargaining notwithstanding the adamance with which they refuse to accede at the outset. Effective bargaining demands that each side seek out the strengths and weaknesses of the other's position. To this end, compromises are usually made cautiously and late in the process."). To support its claim that the Union made the information request for purposes of delay, the Respondent states that "there may have been 'laughing and snickering' that 'accompanied' Charging Party's delivery of its . . . information request." Respondent's Brief at 53, fn.38. This suggestion is made completely without citation to the record. Indeed, although the Respondent puts "laughing and snickering" in quotes, those words do not appear anywhere in the transcript of the instant case. The Respondent's unsubstantiated suggestion that the union officials may have engaged in such behavior is not only unpersuasive, but improper.

spondent's summary documents is warranted. In one of its prior summary documents, the Respondent set forth the supposed cost of the current pension plan, but when questioned about that figure, Nicoson responded that it "c[ould] be any number we want it to be." The same document stated that the Respondent's pension proposal would reduce the hourly, per-employee, cost to "zero," but Nicoson conceded that he knew that figure was not valid when he presented it. The Respondent's lax attitude towards the figures it was presenting to the Union in summary documents underscores the Union's need for the underlying census data. Moreover, as best I can discern, the Respondent's summary document compares the costs of three alternatives to the current plan—none of which correspond directly to the Union's June 7 proposal to maintain the plan unchanged for current employees, but eliminate it entirely for new hires. The summary document also would not provide the Union with the underlying information necessary to determine the costs and effects of additional alternatives that might be acceptable to both sides. Moreover, my review of the summary document revealed that not all the information provided there was presented in a way that was easy to interpret. I doubt, therefore, that the Union would have been able to fully evaluate the information in the Respondent's June 10 document during the few hours that the Respondent waited between providing that information and declaring impasse.

For the reasons stated above, I conclude that when the Respondent declared impasse on June 10 it had not provided the census data the Union requested and was entitled to, and that this provides an independent basis for finding that there was no valid impasse as of that time.

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).
3. The Respondent violated Section 8(a)(5) and (1) by failing to supply the requested census data to the Union without unnecessary delay
4. The Respondent violated Section 8(a)(5) and (1) by unilaterally implementing the terms set forth in its final contract proposal effective June 11, 2004, without bargaining in good faith to a valid impasse.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular, I recommend that the Respondent be ordered place in effect all terms and conditions of employment provided by the contract that expired at midnight on June 10, 2004, and to maintain those terms in effect until the parties have bargained to agreement or a valid impasse, or the Union has agreed to changes. I will also recommend that the Respondent be ordered to make whole the unit employees and former unit employees for any loss of wages or other benefits they suffered as a result of the Respondent's implementation of its final proposal on June 11, 2004. This includes reimbursing unit employees for any expenses resulting from the Respondent's unlawful changes to their health and dental benefits, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), affd. 661 F.2d 940 (9th Cir. 1981). Interest shall be paid as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I further recommend that the Respondent be ordered to make all contributions to any fund established by the collective-bargaining agreement with the Union which was in existence on June 10, 2004, and which contributions the Respondent would have paid but for the unlawful unilateral changes, including any additional amounts due to the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 6 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[22]

ORDER

The Respondent, Newcor Bay City Division of Newcor, Inc., Bay City, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to provide to the Union, or unnecessarily delaying in providing, upon the Union's request, census data or other information that is necessary to the Union's performance of its duties as collective-bargaining representative of the Respondent's hourly employees.

(b) Failing to follow the terms and conditions of the collective-bargaining agreement with the Union that was set to expire on June 10, 2004, until a new contract is concluded or good faith bargaining leads to a valid impasse, or the Union agrees to changes.

(c) Implementing terms and conditions of employment that are different than those in the collective-bargaining agreement that was set to expire on June 10, 2004, before a new contract is concluded or good-faith bargaining leads to a valid impasse, or the Union agrees to changes.

(d) 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) Restore, honor, and continue the terms and conditions of the contract with the Union that was set to expire on June 10, 2004, until the parties sign a new agreement or good-faith bargaining lead to a valid impasse, or the Union agrees to changes.

(b) Make whole employees and former employees for any and all loss of wage and other benefits incurred as a result of the Respondent's unlawful alteration or discontinuance of contractual benefits, with interest, as provided for in the remedy section of this decision.

(c) Make contributions, including any additional amounts due, to any funds established by the collective-bargaining agreement with the Union that was in existence on June 10,

[22] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2004, and which the Respondent would have paid but for the unlawful unilateral changes as provided for in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Bay City, Michigan, copies of the attached notice marked "Appendix."[23] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 10, 2004.

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

[23] If this Order is enforced by a judgment of a 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."

APPENDIX

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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post 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

WE WILL NOT fail to provide to The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, and its Local 496 (the Union), or delay providing, upon request, census data or other information that is necessary to the Union's performance of its duties as collective bargaining representative.

WE WILL NOT fail to follow the terms and conditions in the collective-bargaining agreement with the Union that was set to expire on June 10, 2004, until a new contract is concluded or good-faith bargaining leads to a valid impasse, or the Union agrees to changes.

WE WILL NOT implement terms and conditions of employment that are different than those in the collective-bargaining agreement that was set to expire on June 10, 2004, before a new contract is concluded or good-faith bargaining leads to a valid impasse, or the Union agrees to changes.

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

WE WILL restore, honor, and continue the terms and conditions of the contract with the Union that was set to expire on June 10, 2004, until the parties sign a new agreement or good-faith bargaining lead to a valid impasse, or the Union agrees to changes.

WE WILL make employees and former employees whole for any and all losses incurred as a result of our unlawful discontinuance of contractual benefits, with interest.

WE WILL make contributions, including any additional amounts due, to any funds established by the collective-bargaining agreement with the Union that was in existence on June 10, 2004, and which we would have paid but for the unlawful unilateral changes.

NEWCOR BAY CITY DIVISION OF NEWCOR, INC.