JD(SF)-02-08
Sacramento, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH OFFICE
DIVISION OF JUDGES

A-1 DOOR AND BUILDING SOLUTIONS

and **Case 20-CA-33485**

MILLMEN AND INDUSTRIAL CARPENTERS UNION, LOCAL 1618, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Lucile Lannan Rosen, Esq., San Francisco, CA, for the General Counsel.
Matthew J. Gauger, Esq., Sacramento, CA, for the Charging Party.
E. A. Hubbert, Jr., Esq., Sacramento, CA, for the Respondent.

DECISION

Statement of the Case

Gregory Z. Meyerson, Administrative Law Judge. Pursuant to notice, I heard this case in Sacramento, California, on November 6, 2007. Millmen and Industrial Carpenters Union, Local 1618, United Brotherhood of Carpenters and Joiners of America (the Union or the Charging Party) filed an unfair labor practice charge in this case on July 5, 2007. Based on that charge, the Acting Regional Director for Region 20 of the National Labor Relations Board (the Board) issued a complaint on September 12, 2007. The complaint alleges that A-1 Door and Building Solutions (the Respondent or the Employer) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying the commission of the alleged unfair labor practices and raising a number of affirmative defenses.[1]

[1] All pleadings reflect the complaint and answer as those documents were finally amended.

All parties appeared at the hearing, and I provided them with the full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally and file briefs. Based upon the record, my consideration of the briefs filed by counsel for the General Counsel, counsel for the Union, and counsel for the Respondent, and my observations of the demeanor of the witnesses, I now make the following findings of fact and conclusions of law. [2]

Findings of Fact

I. Jurisdiction

The complaint alleges, the answer admits, and I find that the Respondent is a corporation with and office and place of business in North Highlands, California, where it has been engaged in the business of manufacturing and/or supplying doors, windows, hardware, and millwork to construction contractors. Further, I find that during the calendar year ending December 31, 2006, the Respondent, in the course and conduct of its business operations, sold and shipped from its North Highlands, California facility goods valued in excess of $50,000 directly to points located outside the state of California.

Accordingly, I conclude that the Respondent is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Labor Organization

The complaint alleges, the answer admits, and I find that at all times material herein, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. Alleged Unfair Labor Practices

A. The Dispute

The Respondent manufactures and supplies interior and exterior doors to contractors in the construction industry. Additionally, the Respondent has a retail division that sells doors and hardware to the general public. The finished product manufactured at the Respondent's facility is loaded into trucks by the Respondent's employees and delivered by its drivers to customers.

The Union and the Respondent have had a collective bargaining relationship for approximately 40 years. During that time they have successfully negotiated numerous contracts. The parties agree that at all material times the Union has been the exclusive collective bargaining representative of a unit (the Unit) of the Respondent's employees described as: All employees performing work covered by the collective bargaining agreement between the Respondent and the Union effective for the period from May 1, 2004, to May 1, 2007. There is further agreement among the parties, and I find, that at all times material, the

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[2] The credibility resolutions made in this decision are based on a review of the testimonial record and exhibits, with consideration given for reasonably probability and the demeanor of the witnesses. See *NLRB v. Walton Manufacturing Company,* 369 U.S. 404, 408 (1962). Where witnesses have testified in contradiction to the findings herein, I have discredited their testimony, as either being in conflict with credited documentary or testimonial evidence, or because it was inherently incredible and unworthy of belief.

Unit constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, and that based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the employees in the Unit. There are currently approximately 60 employees in the bargaining unit.

The last contract between the Respondent and the Union was effective by its terms from May 1, 2004 to May 1, 2007. (G.C. Ex. 2.) Negotiations for a new agreement began in April of 2007. Approximately 10 negotiation meetings between the Union and the Respondent took place between April and September of 2007.[3] The principal negotiators on behalf of the Respondent were the Respondent's president, Dale Winchester, and its legal counsel, E. A. Hubbert, Jr. On behalf or the Union, its principal negotiator was David Imus, business representative.

Preliminarily, it is important to note that the General Counsel is not contending that the Respondent engaged in bad faith bargaining during the course of these negotiations. Counsel for the General Counsel made this very clear in both her oral statements at the hearing and in her post-hearing brief. Further, I will note that in rendering this decision I specifically make no finding regarding bad faith or surface bargaining by either party to these negotiations. No such finding is required in order to decide the limited issues alleged in the complaint and litigated before me.

It is the General Counsel's contention that the Respondent violated Section (8)(a)(1) and (5) of the Act by refusing to provide information necessary to the Union's administration of the collective bargaining agreement and to its effective negotiation for a successor agreement. While there are no bad faith bargaining issues to be addressed by me, it is necessary to consider the course and progress of the parties' negotiations for a successor agreement. It is in this context that the Union's request for information and the Respondent's response to that request must be viewed.

The negotiations took place during, and were certainly made more difficult by, a significant reduction in the residential construction industry. Most of the Respondent's business is with contractors in this industry. From the testimony of Imus and Winchester, it appears that the parties were initially very far apart on economic and other issues. The Respondent initially proposed a 50% reduction in the profit sharing for unit employees, a reduction in wages for those same employees, the elimination of union security provisions, and the elimination of the successorship, sales, and assigns clauses, and offered a contract of only one year duration. There appears to be no disagreement that during the course of these negotiations the Respondent's negotiators repeatedly supported their bargaining proposals by contending that the Respondent was losing bids for door fabrication in part because it was paying overly generous benefits to its bargaining unit employees.

The information requested by the Union can best be considered and analyzed when placed in three separate categories. The first category of requests related to the profit sharing plan as provided for in the parties' collective bargaining agreement. The Union's requests for information regarding this category, as alleged in paragraphs 7(a) and (aa) of the complaint, were in the form of two letters sent to the Respondent and dated April 26 and August 8, respectively. The second category of requests related to job-bid-information. This request for information, as alleged in paragraph 7(b) of the complaint, was in the form of a letter dated

[3] All dates are in 2007, unless otherwise indicated.

June 18. The third, and last category of requests, related to information about newly hired employees. This request for information, as alleged in paragraph 7(c) of the complaint, was in the form of a letter dated July 6.

These requests for information will be discussed at length throughout the remainder of this decision. The General Counsel and the Union contend that the Respondent's bargaining proposals made during the course of negotiations, as well as its conduct, serve as justification for the Union's information requests. It is alleged that these requests were necessary to rebut those proposals and effectively negotiate for a successor agreement, and also to be able to administer the collective bargaining agreement.[4] The Respondent takes the position that it fully complied with its duty to furnish the Union with the requested information to the extent that the information was relevant, not privileged, confidential, or private, and did in fact exist. This is the gavamen of the case.

B. Applicable Law

In a recent case, *Disneyland Park and Disney's California Adventure,* 350 NLRB No. 88 (September 13, 2007), the Board recited certain well established legal principles regarding an employer's obligation to provide requested information to a union representing the employer's employees. As the Board said, "An employer has the statutory obligation to provide, on request, relevant information that the union needs for the proper performance of its duties as collective bargaining representative." The Board cited to a number of Supreme Court decisions including, NLRB *v. Truitt Mfg. Co.,* 351 U.S. 149, 152 (1956); *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 435-436 (1967); and *Detroit Edison Co. v. NLRB,* 440 U.S. 301 (1979). Further, the Board added that, "This includes [information need for] the decision to file or process grievances," citing to *Beth Abraham Health Services,* 332 NLRB 1234 (2000).

Specifically, where the union's request for information pertains to employees in the bargaining unit, the Board reiterated that the "information is presumptively relevant and the [r]espondent must provide the information. However, where the information requested by the union is not presumptively relevant to the union's performance as bargaining representative, the burden is on the union to demonstrate the relevance." *Disneyland Park;* and cases cited therein including *Richmond Health Care,* 332 NLRB 1304 (2000); *Associated Ready Mixed Concrete, Inc.,* 318 NLRB 318 (1995), enfd. 108 F. 3d 1182 (9th Cir. 1997); *Pfizer, Inc.,* 268 NLRB 916 (1984), enfd. 736 F.2d 887 (7th Cir. 1985). The Board went on the say that "[a] union has satisfied its burden when it demonstrates a reasonable belief, supported by objective evidence, that the requested information is relevant," citing to *Knappton Maritime Corp.,* 292 NLRB 236, 238-239 (1988).

Finally, in the *Disneyland* case the Board repeated its well established principle that it "uses a broad, discovery-type standard in determining the relevance of requested information. Potential or probable relevance is sufficient to give rise to an employer's obligation to provide information."[5] Still, where the information requested is not presumptively relevant, as not pertaining to employees in the bargaining unit, "the General Counsel must present evidence either (1) that the union demonstrated relevance of the nonunit information, or (2) that the

[4] While the collective bargaining agreement between the parties had expired, there is no dispute that certain provisions remained in effect.

[5] Other cases have described a union's burden under these circumstances as "not an exceptionally heavy one." *Wisconsin Bell, Inc., d/b/a SBC Midwest,* 346 NLRB 62, 64 (2005).

relevance of the information should have been apparent to the Respondent under the circumstances. [Internal citations omitted] Absent such a showing, the employer is not obligated to provide the requested information."

C. Documents Related to Profit Sharing; Letters of April 26 and August 8.

While the General Counsel does not allege bad faith bargaining on the part of the Respondent, counsel still attempts to portray the Respondent's negotiators as less than cooperative. In an effort to "color the case" and set the stage for the later alleged failure to furnish information, counsel for the General Counsel questioned David Imus regarding a statement allegedly made to him by Dale Winchester just prior to the first negotiation session. According to Imus, he and Winchester had a private conversation in Winchester's office during which they discussed the fact that "work was down," and the economic conditions were not good. Imus testified that he informed Winchester that it was the Union's goal to reach an agreement with the Employer with "the least amount of trouble as possible." Imus contends that Winchester responded by saying that he did not want "to continue the relationship with the Union, that it was too much hassle."

Winchester placed the date of a private conversation in his office with Imus as the day before negotiations began. Winchester specifically denied saying anything to Imus to the effect that the relationship between the Employer and the Union was too much of a hassle. However, he does recall Imus asking him if there were any "surprises" coming from the Employer during the negotiations. Winchester testified that he told Imus that the only surprises came from Imus, who allegedly had a habit of arriving at the plant unannounced. According to Winchester, he informed Imus that he would appreciate it if Imus would check in with Winchester and let him know what was going on before Imus walked into the plant to speak with employees.

In comparing the demeanor and testimony of Imus with that of Winchester, I did not find either man to be anymore credible than the other. To some extent, both men seemed to have selective memory, specifically recalling those events that put them in the best light. Each man was clearly a partisan on behalf of his respective side in this dispute. I do not believe that either man was fabricating testimony, but rather tended to exaggerate or embellish events to favor their respective positions.

In considering the alleged statement by Winchester that he did not want to continue the relationship with the Union because it was too much of a hassle, I am of the belief that it is more probable than not that Winchester did in fact make the statement attributed to him by Imus. I doubt that Imus would make up such a statement "out of whole cloth." Imus' version of the conversation is inherently more plausible than that told by Winchester. Accordingly, I believe that the words were spoken by Winchester. However, I do not believe that those words establish that the Respondent held any particular animus towards the Union as would make the Respondent inclined to refuse to furnish the Union with relevant documents pursuant to a request for information.

The parties have had a successful 40 year history of collective bargaining. Certainly, hard economic conditions in the home building industry had made these current negotiations particularly difficult. Never-the-less, I seriously doubt that an "off the cuff" remark by Winchester that the Union was a hassle establishes animus such that the Respondent had any sort of a design or plan to frustrate the Union's request for information. While I believe that the statement attribute to him was made by Winchester, I do not believe that it is entitled to any weight in deciding the issues in this case, and I shall give it none. In any event, it is not necessary to establish animus or malice in this case in order to find a violation of the Act.

The expired collective bargaining agreement provided that the Respondent establish a company wide profit sharing plan for "all salaried and hourly employees." The "profit sharing pool" was based on a formula depending on the "net" profit of the Employer. (See G.C. Ex. 2, page 25.) It is undisputed that early in negotiations, the Respondent proposed reducing this profit sharing formula from 10% of net profit to 5%.

By letter dated April 26 from Imus to counsel for the Respondent, the Union requested that the Respondent furnish it with certain financial information. According to the letter, and Imus' testimony, he had previously orally asked for this information on two separate occasions, but the Respondent had failed to comply with his request. The letter seeks the production of three categories of information, specifically: "1. Gross revenue each year for the last three years; 2. Net profit each year for the last three years; [and] 3. Total amount of profit distributed to the employees with the number of employees receiving the distribution each year for the last three years." (G.C. Ex. 3.)

According to Imus, he requested item 1, the gross revenue, because the Respondent had been claiming it was having difficulty competing with other door manufactures, and so the Union needed to see the gross revenue in order to determine whether the claim was reasonable or not. Regarding item 2, the net profits, Imus testified that in order to evaluate the Respondent's profit sharing proposal and to formulate a counter-proposal, it was necessary to determine just how much money was available to pay profit sharing to bargaining unit employees, which was a product of the Respondent's net profits. As to item 3, profit distributed to employees, Imus testified that he needed this information in order to administer the contract and determine whether the bargaining unit employees had been receiving the proper profit sharing amounts pursuant to the contractual provisions, and also to help in formulating a response to the Respondent's proposal to reduce profit sharing.

Imus testified that the only information that he ever received in response to the Union's request of April 26 was the amount of profit distributed to bargaining unit employees for the last three years. He did not receive the amount of profit distributed to non-bargaining unit employees, which he testified was necessary since the amount of money available for bargaining unit employees was dependent to some extent on how much profit was distributed to non-bargaining unit employees. The contract provided that the profit sharing plan was company wide, meaning that a pool was created from which all employees, unit and non-unit, were paid. Additionally, he never received the requested information on gross revenue and net profits.

The Respondent's immediate response to the Union's request was a letter from counsel for the Respondent dated April 27. (G.C. Ex. 4.) In that letter counsel recited what would be the Respondent's recurring theme throughout negotiations. According to the letter, the Respondent "has never maintained it's not a profitable company or that it lacks the financial ability to comply with your economic demands during these negotiations. We have consistently maintained, however, that the wages, hours and working conditions of the employees you represent…should be consistent with other employees in the Sacramento area working in the same job classifications."

Counsel for the General Counsel acknowledged at the hearing and in her post-hearing brief that the Respondent had made it very clear during negotiations that it was not pleading "an inability to pay." What all parties agree that the Respondent was arguing during negotiations was that in order to be competitive with similar door manufactures in the Sacramento, California area, the wages and benefits paid to its employees had to be comparable to those wages and benefits paid to the employees' of competing employers.

It is the Respondent's contention that as it has never asserted a financial inability to meet the Union's wage demands, nor has it made a "plea of poverty," that it is not required to furnish the Union with its financial information concerning gross and net profits. *NLRB v. Truitt Manufacturing Co.,* 351 U.S. 149 (1956). The Respondent further argues that an assertion of "competitive disadvantage" does not by itself constitute a claim of inability to pay. *Nielsen Lithographing Co.,* 305 NLRB 697, 701 (1991). In his post-hearing brief, counsel for the Respondent claims that the Respondent did not make a claim of either inability to pay or to compete. He contends that the Respondent "merely reminded the Union that it was paying higher wages and benefits than any other comparable employer." In my view, this is nothing more than semantics. Throughout negotiations, on many different occasions, the Respondent's negotiators made it very clear to the Union negotiators that it was having trouble competing with its non-Union competitors. While it is clear that the Respondent did not make a general "plea of poverty," it is equally clear that it did make a claim of inability to compete, and I so find.

Further, counsel for the Respondent argues that it was only obligated to furnish the Union with information as to profit distributed to bargaining unit employees, since similar information for non-unit employees was irrelevant. As another defense, counsel contends that the Respondent proposed an alternate means of satisfying the Union's request. At the negotiation session held on August 31, the Respondent presented the Union with a written proposal to have the Union select an accountant to examine the Respondent's books and records and provide the Union with the following information: 1. Whether the Respondent's profit and loss is calculated according to generally accepted accounting procedures and standards, and, if not, how does it deviate from those procedures and standards; and 2. Whether the allocation of profit sharing funds between Union and non-Union employees is conducted on an equal basis, and, if not, in what manner are the allocations unequal. (Res. Ex. 5.) While not entirely clear from the record, it appears from Imus' testimony that the proposal was briefly discussed, after which the parties agreed to further discuss the proposal later. However, apparently no further discussions were held on this issue. In any event, it is important to note that the Respondent's written proposal of August 31 was received by the Union over four months after the Union's initial written request of April 26.

The Union contends that as time passed it had reason to request additional information regarding the administration of the Respondent's profit sharing program. According to Imus, he was given a pay stub for John Wilkerson, a non-unit employee, whom Imus thought was a company salesman.[6] Imus testified that his review of the pay stub led him to believe that Wilkerson was receiving profit sharing or production bonuses far in excess of what a salesman, as a non-unit employee, should have received. (G.C. Ex. 5.) If accurate, this could adversely impact on the profit sharing received by bargaining unit employees, as the amounts received by all employees were interdependent.

Accordingly, by letter dated August 8, Imus requested the following information from the Respondent: "1. [For] all salaried employees, including non-bargaining unit employees, name, job title, wage rate, gross yearly wages, [and] the date and the amount of profit sharing distribution for each year for the last three years; 2. [For] all hourly employees, including non-bargaining unit employees, [the same information as request above]; 3. [The] name of all salaried or hourly employees, including non-bargaining unit employees, [and] the amount of any

[6] In fact, Wilkerson was not a salesman, but, rather, the general manager of the Respondent's commercial department, which is a separate profit center not covered by the collective bargaining agreement with the Union.

other bonus or bonuses paid to them during each of the last three years; [and] 4. The employee name and the amount of any other non-wage compensation received by all salaried and hourly employees, including non-bargaining unit employees." (G.C. Ex. 6.)

While not entirely clear from the record, it appears that Imus never indicated to the Respondent's negotiators that he was in possession of Wilkerson's pay stub. In any event, Imus testified that he never received any of this requested information.

In his post-hearing brief, counsel for the Respondent argues that the information requested by the Union in its August 8 letter need not have been furnished because the Union's reliance on Wilkerson's pay stub was irrational and unsubstantiated. Further, counsel contents that the information requested was not produced because it was irrelevant and protected by the right to individual privacy in the United States and California Constitutions.

Regarding Wilkerson's pay stub, counsel seems to be suggesting that this was merely a ruse used by Imus to justify a broad irrelevant request for information that the Union was not legally entitled to. Imus' testimony suggests that his "suspicions" regarding the pay stub were based only on what other employees told him about Wikerson's job duties and responsibilities. As counsel for the Respondent points out, it is well established that mere suspicions are not enough to create a presumption of relevance.[7] *Anchor Motor Freight,* 296 NLRB 944, 949 (1989) (union failed to show anything beyond "mere suspicion" that the information may be relevant).

Counsel for the Respondent contends that the Union's request for the names and financial information regarding the non-unit employees in the August 8 letter was irrelevant and a violation of the individual right to privacy as protected by the United States and California Constitutions. Counsel acknowledges that the Board traditionally will balance employees' expectations of privacy with the Union's need for the information, but contends as the Union had no legitimate right to the information concerning non-unit employees, the balance tips strongly in favor of not disclosing the information. See *Aerospace Corp.,* 314 NLRB 100 (1994); *Exxon Co. USA,* 321 NLRB 896 (1996); *Silver Bros. Co., Inc., d/b/a Good Life Beverage Co.,* 312 NLRB 1060 (1993); *Pennsylvania Power & Light Co.,* 301 NLRB 1104 (1991); *Howard University,* 290 NLRB 1006 (1988).

In analyzing the request for information contained in the Union's letter of April 26 (G.C. Ex. 3.), it is necessary to determine the use to which the Union would or could put the information. As expressed by David Imus, the Union needed the information in order to fully understand the Respondent's proposal to reduce profit sharing, to prepare a counter proposal, and to administer the profit sharing clause in the expired contract. The amount of profit sharing distributed to unit employees is directly dependent on the Respondent's total net profit, the number of company employees receiving the money, and the amount each is receiving. Accordingly, both items 2 and 3 in the letter of April 26, the request for the "net profit each year for the last three years," and for the "total amount of profit distributed to the employees with the number of employees receiving the distribution each year for the last three years," pertain to,

[7] Frankly, I am of the belief that had Imus genuinely wanted to determine who Wilkerson was, or what role he played with the Employer, it would not have been difficult for him to have done so. He might have started out with simply asking Wilkerson or Winchester. However, apparently he did neither.

among others, employees in the bargaining unit. Therefore, the information is presumptively relevant and the Respondent must provide it to the Union. See *George Koch & Sons,* 295 NLRB 695 (1989); *Kendell College of Art*, 292 NLRB 1065 (1989).

Further, to the extent that the request calls for the profit distributed not only to unit employees, but also to non-unit employees the information is also presumptively relevant. The contractual profit-sharing formula for employees covers both non-unit employees and unit employees. It is an interdependent calculating system. There is no way to accurately determine or project the profit sharing for unit employees, without also knowing the profit sharing for non-unit employees. In other words, there is only "one pot," the Respondent's net profits, out of which all employees receive their profit sharing.

Even assuming the information requested for non-unit employees is not presumptively relevant, it is still extremely relevant for use in the collective bargaining process and contract administration because, as noted, the profit sharing system for all employees is interdependent. The Union's burden to establish relevance is not a heavy one, and is easily met under the circumstances of this case. The Board allows for the use of a broad discovery-like standard to measure relevance, and even potentially or probably relevant material would be sufficient to require production by an employer. *US Postal Service*, 332 NLRB 635, 636 (2000); *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994); *Reiss Viking,* 312 NLRB 622, 625 (1993). Clearly, the Union has met that standard for both unit and non-unit employees as it concerns the Employer's profit sharing program. Accordingly, items number 2 and 3 in the Union's request for information letter of April 26 must be produced. The Respondent's failure to furnish this information constitutes a violation of Section 8(a)(1) and (5) of the Act, as alleged in paragraph 7(a)(ii) and (iii) of the complaint.

However, I do not believe that the Union is entitled to the information requested in item number 1 of its April 26 letter, the "gross revenue each year for the last three years." As mentioned above, the Respondent was not claiming a financial inability to meet the Union's contract demands. All parties agree that the Respondent was not making a plea of poverty. As such, the Respondent was not required to open its financial books to the Union. See *Truitt Manufacturing Co.,* 351 US 149 (1956); *North Star Steel,* 347 NLRB No. 119 (2006). Yet, that is essentially what the Employer would be required to do in producing gross revenue information.

Imus' testimony regarding the Union's alleged need for the Respondent's gross revenue information made no sense to me. The profit sharing plan is predicated on the Respondent's "net" profits. These are, of course, the profits remaining after all the expenses of doing business are deducted. I have already indicated the relevance of net profit figures and the requirement that the Respondent produce this information. Gross revenue is neither potentially nor probably relevant to the profit sharing issue, and the General Counsel and the Union have failed to establish a reasonable justification for its production. The Respondent's refusal to produce the gross revenue figures does not constitute a violation of the Act. Accordingly, I shall recommend that paragraph 7(a)(i) of the complaint be dismissed.

Regarding the Union's request for information as set forth in its letter of August 8 (G.C. Ex. 6.), Imus testified that this information was necessary in order to properly administer the contract and determine whether a salesman was receiving excessive benefits to the detriment of the profit sharing payments made to unit members, and also to fully evaluate the Respondent's profit sharing proposal and to prepare counter proposals. As noted above, Imus testified that after having viewed the pay stub for John Wilkerson, he became suspicious as to whether salesmen and perhaps other non-unit employees were receiving excessive benefits. While I am not entirely confident that Imus was genuinely confused about Wilkerson's status

with the Employer, the amount of benefits paid to non-unit employees was a legitimate concern for the Union, since whatever profit sharing or other benefits they received correspondingly diminished the net profits available to provide profit sharing to bargaining unit employees. As I have indicated repeatedly, the profit sharing formula for both non-unit and unit employees was an interdependent calculating system.

The letter of August 8, in its four paragraphs, essentially requested for all employees, including unit and non-unit employees, their names, job classifications, the wages paid to them, and all benefits received by them, including profit sharing, bonuses, and non-wage compensation, for a three year period. For the same reasons as listed above regarding the April 26 letter, I find that this information is presumptively relevant as it concerns the Union's duty to administer a contact provision, the profit sharing clause, and was the subject of bargaining proposals. *George Koch, supra; Kendell College, supra.* Again, even if not presumptively relevant because it included information on non-unit employees, the interdependency of the profit sharing formula caused the information on non-unit employees to be relevant to a determination as to whether the unit employees were being properly compensated under the expired contract and as it related to contract negotiations. Thus, the Union has met the relatively light burden of establishing potential or probable relevance. *US Postal Service, supra; Shoppers Food Warehouse, supra; Reiss Viking, supra.*

As noted earlier, counsel for the Respondent argued in his post-hearing brief that even assuming the requested information for non-unit employees was relevant, the Respondent had offered a legitimate alternative means of satisfying the Union's request. By this he is referring to the Respondent's written offer of August 31 (Res. Ex. 5.), handed to Imus during contract negotiations. This document proposes allowing an accountant selected by the Union to examine the Respondent's books and records to determine whether its profit and loss figures are calculated according to generally accepted accounting procedures, and, if not, how does it deviate from those procedures; and whether the allocation of profit sharing funds between unit and non-unit employees is conducted on an equal basis, and, if not, in what manner is the allocation unequal.

This "alternative" was offered by the Respondent over four months after the original request for information was made by the Union in its April 26 letter. While counsel for the General Counsel did not specifically address whether this offer was "reasonably prompt," I am of the view that it was not. The Board has indicated that what constitutes reasonable promptness must be determined under the totality of the circumstances in each case. There is no "per se" rule, rather what is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow. *Allegheny Power,* 339 NLRB 585, 587 (2003). Under the circumstances of this case, I believe that a four month delay was not reasonable. None of the information sought by the Union was particularly complex, and was likely readily available from the Respondent's payroll and personnel records, which should have been easily accessed through its computer system. *Samaritan Med. Ctr.,* 319 NLRB 392, 398 (1995). Such access to the information by the Respondent should not have required a four month delay before an alternative proposal was even made. See *Regency Serv. Carts, Inc.,* 345 NLRB No. 44 (2005) (three month delay in circumstances unlawful); *Peyton Packing Co.,* 129 NLRB 1358 (1961) (three month delay too long, even when data are incomplete and necessary persons absent from work).

However, even if a four month delay in this case from the initial request for the information was not excessive, I am of the view that the proposal of August 31 (Res. Ex. 5.) was not an adequate alternative. As an alternative, it provided only that an accountant view the records and report back to the Union as to whether the Respondent has made its calculations

and allocations regarding profit sharing according to accepted accounting procedures and on an equal basis, and, if not, how it deviated from those procedures and equity. That information, while certainly useful, would not serve as a basis for the Union to fulfill its legal duty as the exclusive collective bargaining representative to administer the terms of the contract on behalf of the unit employees. The Union needed to know the specific information requested as it related to individual employees and how each employee classification was effected by the profit sharing of the other classifications. Such information was even more necessary in order for the Union to be in a position to intelligently address the Respondent's bargaining proposal on profit sharing and, if necessary, to respond with a counter proposal. Therefore, I conclude that the Respondent's proposal of August 31 did not relieve the Respondent of the duty to comply with the Union's request for information contained in its letters of April 26 and August 8, as more fully set forth above.

Finally, counsel for the Respondent argues in his post-hearing brief that the information requested by the Union, as it related to individual non-unit employees, was irrelevant, and, thus, protected against disclosure by the United States and California Constitutions as the guarantors of the individual employees' privacy rights. However, as noted at length above, I have already concluded that most of the information requested by the Union was relevant. While counsel for the Respondent correctly notes that where employees have a legitimate and substantial expectation of privacy, the Board will balance those interests against a union's need for the information,[8] I am of the opinion that in this case the balance tips strongly in favor of the Union's need for the information.

The Union seeks the names, job titles, wage rates, gross yearly wages, profit sharing distribution received, other bonuses received, including non-wage compensation, for all employees, unit and non-unit. Certainly this is sensitive information, for which employees have a legitimate and substantial expectation of privacy. Never-the-less, the Union has at least as great an interest in ensuring that the Respondent is abiding by the contract provisions that establish a profit sharing formula for unit employees. As noted, this formula is interdependent and involves not only the unit employees represented by the Union, but all other employees of the Respondent. As the Respondent has yet to offer an adequate alternative to the production of these documents, the balance tips in favor of releasing this information to the Union. Only in this way can the Union fulfill its legal duty to administer the contract on behalf of the unit employees, and to properly carry out its collective bargaining responsibility.

For the reasons expressed, items number 1 through 4 in the Union's request for information letter of August 8 must be produced. The Respondent's failure to furnish this information constitutes a violation of Section 8(a)(1) and (5) of the Act, as alleged in complaint paragraph 7(aa)(i), (ii), (iii), and (iv).

D. Documents Related to Job Bids; Letter of June 18

There appears to be no dispute that throughout the course of negotiations the Respondent took the position that because of superior wages and benefits paid to its employees, the Respondent was at a competitive disadvantage when bidding for jobs against other companies performing similar work. Imus testified that at one point during negotiations the Respondent presented the Union with a list of companies with whom the Respondent believed it was not competitive. According to Imus, in an effort to determine the basis upon

[8] *Aerospace Corp., supra; Exxon Co. USA, supra; Silver Bros. Co., Inc., d/b/a Good Life Beverage Co., supra; Pennsylvania Power & Light Co., supra; Howard University, supra.*

which the Respondent was not competitive, the Union requested certain information from the Respondent. It was Imus' contention that if the Union could determine the reasons why the Respondent was not competitive, assuming that to be accurate, the Union might be able to alter its bargaining proposals in an effort to provided the Respondent with a competitive advantage.

It was allegedly for this reason that the Union sent a letter to counsel for the Respondent dated June 18. (G.C. Ex. 7.) The first paragraph of the letter notes that, "During negotiations the company has repeatedly stated that they were not competitive with other companies. The workers are willing to negotiate in order to make the company more competitive…. In order to negotiate responsibility [sic] we need the following information to evaluate the company's proposals. All information should be for the last three years."

The letter then specified 11 separate items the Union was requesting, as follows:

1. Copies of bids received;
2. Copies of new projects bidding;
3. Copies of bids that were not awarded to A-1 Door;
4. The reason why A-1 Door did not receive the bid;
5. What company was awarded the bid, not received, and why;
6. How much lower was the competition on each bid not received;
7. Were there any dates A-1 Door was too busy, and turned away bids, if so when;
8. Copies of jobs that you were doing, but now are awarded to another company;
9. Copies of bids or jobs A-1 Door was removed from and the reason for removal;
10. Copies of bids not submitted due to contractors insurance requirements;
11. Copies of bids not submitted due to a lack of production ability.

In response to its request for information, the Union received a letter from counsel for the Respondent dated June 20. (G.C. Ex. 8.) In part, that letter stated, "I must inform you that your various requests for information include information that does not exist and information that will not [be] produced due to the fact that it contains confidential proprietary information." Further the letter stated, "…we dispute the necessity for the Employer to produce any of the information you requested because the Employer has not maintained an inability to comply with the demands of the Union during the negotiations."

For all intense and purposes, none of the requested documents were received by the Union, and apparently no further formal explanation was proffered by the Respondent. In his post-hearing brief, counsel for the Respondent defends the Respondent's failure to furnish the bid related documents on the basis that they were not relevant to negotiations, did not exist, and/or were confidential, proprietary, and/or constituted trade secrets.

I am of the opinion that all 11 categories of documents requested in the Union's letter of June 18 were relevant to the parties' negotiations. If not relevant on their face, they certainly became relevant when the Respondent argued during negotiations that it was not competitive with other door manufactures in the Sacramento area because its wages and benefits paid to employees were greater than the wages and benefits competitors paid to their employees. Items number 1-9 and 11 appear to be directly related to the Respondent's bidding process, specifically why bids submitted by the Respondent were either accepted or rejected by contractors. The Union was also seeking information as to whether the Respondent was in a position to perform the work needed to submit a bid, or whether a lack of production capacity resulted in a failure to submit a bid on a particular project. Further, the Union wanted to find out what reasons the Respondent may have been given by contractors or otherwise learned regarding why it was unsuccessful in bidding for any particular projects. As to item number 10,

Imus testified that he had been told my Jeff Wilson, one of the Respondent's managers, that some contractors were creating such stringent insurance requirements that the Respondent was declining to bid certain work. This item was requested in order to produce documents as could establish which jobs the Respondent had declined to bid on because of concerns that insurance and liability issues were so significant that a profit could not be made on the projects.

Regarding counsel for the Respondent's contention in his letter of June 20 that much of the requested information on bids did not exist, Winchester was cross-examined at length by counsel for the Union. His testimony in this area was a mass of contradictions and equivocation. He claimed not to understand what the Union was requesting for several of the items listed, but he admitted not approaching the Union to clarify specifically what was being requested.[9] For many of the listed items he claimed to have had no specific information as it was allegedly outside his area of responsibility and expertise, but repeatedly acknowledged that managers Jeff Wilson and Rick Hall likely had such information. Of course, the information request was made of the Respondent as the employing entity, not of Winchester personally. The Respondent had the duty to produce relevant documents and information through its collective knowledge, and that included from Winchester, Wilson, Hall, and any other managers who could appropriately respond. It was clear from his testimony that Winchester had no intention of putting forth a good faith effort to respond to the Union's request. It is obvious to the undersigned that the letter of June 20 refusing to furnish any information was the only response that the Respondent intended to proffer.

In his post-hearing brief, counsel for the Respondent argues that the bid information concerned matters outside the bargaining unit, for which the Union had failed to establish relevance. The Board has repeatedly taken the position that information requests for similar documents, such as subcontracting agreements, even those relating to bargaining unit employees' terms and conditions of employment, are not presumptively relevant. Therefore, a union seeking such information must demonstrate its relevance. *Disneyland Park, supra,* citing *Richmond Health Care,* 332 NLRB 1304, 1305 fn. 1 (2000); See *Detroit Edison Co.,* 314 NLRB 1273, 1273-1274 (1994). However, in the case before me, the Union is certainly able to establish relevance as it was the Respondent itself that raised the underlying issue during negotiations by alleging difficulty in the bidding process with its non-union competition. Under these circumstances, the relevance of the information requested should have been apparent to the Respondent, but, in any event, that relevance was pointed out to the Respondent in the first paragraph of the Union's letter of June 18. (G.C. Ex. 7.) *Disneyland Park, supra,* citing *Allison Co.,* 330 NLRB 1363, 1367 fn. 23 (2000); *Brazos Electric Power Cooperative, Inc*., 241 NLRB 1016, 1018-1019 (1979), enfd. in relevant part 615 F.2d 1100 (8th Cir. 1980).

Counsel for the Respondent further argues that it has a legitimate confidentiality and proprietary interest in protecting the specifics of its contractual and business relationship with contractors' soliciting bids. There is no genuine dispute that the Respondent does in fact have such legitimate interests. However, the Board has repeatedly held that "in dealing with union requests for relevant but assertedly confidential information, [it is] required to balance a union's need for such information against any 'legitimate and substantial' confidentiality interests established by the employer, accommodating the parties' respective interests insofar as feasible

[9] Imus testified that regarding item 1, he should have more accurately used the words: "Copies of bids awarded"; and regarding item 2, should have more accurately used the words: "Copy of a list of new projects that A-1 Door is bidding on." He further indicated that the Respondent's negotiators never asked him to explain what was meant by the items in the request.

in determining the employer's duty to supply the information." *Allen Storage & Moving Co., Inc.,* 342 NLRB 501, 502 (2004). In the case at hand, the Union needs the requested bidding information in order to determine both whether the Respondent's argument is genuine that it has a problem competing due to the alleged superiority of the wages and benefits it pays, and also so as to be able to formulate appropriate contract proposals. As Imus testified, the Union might be willing to adjust its proposals to aid the Respondent in successfully bidding on jobs, if any proffered information from the Respondent can demonstrate such a need.

In my view, a balancing of these competing interests tips strongly in the Union's favor. After all, the Respondent can not "have it both ways." The Respondent should not be able to advance the contention during negotiations that it is not competitive in the bidding process and then be privileged on the basis of confidentiality and propriety interests not to have to produce any proof of its claim. The information is relevant to the Union's proposals at the bargaining table, and, in fact, the Union may be in a position to adjust its proposals to improve the Respondent's bidding position. These factors weigh heavily in favor of requiring the Respondent to produce the requested information.

Counsel for the Respondent argues in his post-hearing brief that the Respondent offered an alternative method of satisfying the Union's need for the requested information, that being the proposal of August 31 (Res. Ex. 5.) to allow an accountant to examine the Respondent's books and records regarding its profit and loss calculations and profit sharing allocations. Frankly, I am at a loss to understand how this proposal has any connection with the Union's request for bidding information made in its letter of June 18 (G.C. Ex. 7.). I am unaware of any alternate proposal that the Respondent made in response to the Union's request for the bidding information. Certainly, the letter from counsel dated June 20 (G.C. Ex. 8.), which was the Respondent's only official response, makes no mention of any alternate method of satisfying the Union's request.

Finally, in counsel's post-hearing brief, he alleges that the bidding information sought by the Union is protected from disclosure by the California Uniform Trade Secrets Act. However, counsel offers no Board or court case holding this to be so. I am unaware of any such case. In any event, to the extent that the California Uniform Trade Secrets Act would protect the Respondent's bidding process from disclosure as a confidential or proprietary interest, I have already addressed the Board's position on the balancing of such conflicting legitimate interests. As I have found, the interests of the Union in addressing this matter through the collective bargaining process outweigh the Respondent's interests in keeping it confidential. Also, it would seem that the Respondent waived any such defense when it raised the issue of competitive disadvantage during negotiations.

Accordingly, items number 1-11 in the Union's request for information letter of June 18 must be produced. The Respondent's failure to furnish this information constitutes a violation of Section 8(a)(1) and (5) of the Act, as alleged in paragraph 7(b)(i) through (xi) of the complaint.

E. Documents Related to New Employees; Letter of July 6

The expired collective bargaining agreement between the Union and the Employer contains a "Union Security" provision requiring a newly hired employee to either be a member of, or join, the Union within a certain period to time. Further, the contract requires that a newly hired employee will be processed through the union hiring hall and receive a "work referral." Whenever a referral is requested, the Employer is required to provide the Union with "a written

request stating the name, address, classification, rate of pay, Social Security number and proposed date of hire" of the person to be employed.[10] (G.C. Ex. 5, the Collective Bargaining Agreement, Article 2, Union Security; and "Exhibit D," Employer's Notification of Hire.)

Winchester testified that sometime in May the Respondent hired a company called Huffmaster to provide security services. Huffmaster's employees remained on the Respondent's property for approximately three weeks. According to Winchester, these individuals were never hired by the Respondent or placed on its payroll. They remained employees of Huffmaster. Apparently, these individuals were engaged principally for security purposes to ride along as passengers when the Respondent's truck drivers made deliveries of product to construction sites. From Winchester's testimony, it seems that the use of Huffmaster personnel coincided with a period of high labor unrest among the bargaining unit members employed at the Respondent's facility.

In any event, Imus testified that he became suspicious that Huffmaster personnel might be performing bargaining unit work, even though they had never been referred through the union hiring hall. In an effort to determine whether the contract was being violated, and in order to further respond to the Employer's negotiation proposals, Imus requested certain information from the Respondent. He sent Winchester a letter dated July 6 (G.C. Ex. 9.) requesting the following information for the period from "May 1, 2007, to [the] present":

1. The name, address, phone number, date of hire, rate of pay of anyone hired.
2. The resume and application for anyone you accepted an application from.
3. Application and/or resume of anyone offered a job but did not take the job.
4. Copies of any and all documents given to new or prospective employees.
5. Copy of any document notifying applicants of the labor dispute in progress.

Counsel for the Employer responded by letter dated July 9, indicating that the information would be forthcoming, but only to the extent that it concerned bargaining unit employees. (Res. Ex. 7.) A second letter was sent by counsel dated July 12, enclosing "copies [of] the Employer's records concerning employees hired in the bargaining unit during the period you requested." Attached to the letter was the personnel information requested by the Union in item number 1, for 11 of the Respondent's newly hired employees. (G.C. Ex. 10.)

Imus testified that sometime after he received the Respondent's letter of July 12, he went to the Respondent's facility. While there he was introduced to two bargaining unit employees, Mario Navarro and Juan Villegas, who informed him that they had recently been hired by the Respondent. These two employees had not been included in the personnel information received from the Respondent. Further, Imus testified that while at the facility he was told by employees that there were 3 other individuals recently hired by the Respondent for bargaining unit positions, but he was not able to meet with them or lean their names or dates of hire.

Counsel for the Respondent argues in his post-hearing brief that I should find Imus' testimony regarding Mario Navarro and Juan Villegas incredible and disregard it, because counsel for the General Counsel had to refresh Imus' memory by showing him his affidavit given to an agent of the Board during the investigation of this case. In my view that is a totally specious argument. After all, the Respondent offered no evidence to rebut Imus' contention.

[10] No party has claimed that these provisions of the collective bargaining agreement did not survive the expiration of the contract.

Winchester did not deny the assertion and no personnel or payroll records were offered to show that no such persons were on the Respondent's payroll. The fact that a witness can not recall the names he learned of approximately four months before the hearing and needs to have his memory refreshed by use of his earlier affidavit does not by any means establish that he is incredible.

As Imus' testimony was unrebutted by the Respondent, I credit that testimony and conclude that Navarro and Villegas were hired as bargaining unit employees, but not included as such on the Respondent's July 12 letter responding to the Union's information request of July 6.[11] Whether the absence of their payroll and personnel information was intentional or inadvertent is really not an issue. All that matters is that the information furnished by the Respondent was incomplete.

Regarding item number 4 in the Union's July 6 information request, copies of any documents given to new or prospective employees, Imus testified that the Respondent did supply him with an "employee handbook" given to new hires, but that he did not receive that until early August. Later, during cross-examination, he described what he received from the Respondent as a "new hire packet" that "included an employee handbook."

It is significant and important to note that the complaint does not allege that the Respondent should have furnished the Union with all the information requested in the Union's July 6 letter. Counsel for the General Counsel represented at the hearing that the General Counsel was only alleging that the Respondent violated the Act by failing to furnish the information requested by the Union in items number 2 and 4 of the July 6 letter. In fact, to be very specific, the complaint (see paragraph 7(c)(i) and (ii)) is even somewhat more restrictive than that, alleging as a violation of the Act only the failure to furnish:

(i) The resume and application for anyone Respondent accepted an application from [limited to individuals actually hired].
(ii) Copies of any and all documents given to new employees.

Regarding item (i) above, the resume and application for anyone hired by the Respondent in a bargaining unit position, this would certainly be presumptively relevant information. It pertains to the persons hired for bargaining unit positions. The Union has an interest in administering the collective bargaining agreement and determining that individuals hired to perform unit work are processed pursuant to the terms of the contract including union security and hiring hall referral procedures. Apparently, the Respondent did not dispute that relevance, as counsel's letters of July 9 and 12 (Res. Ex. 7 and G.C. Ex. 10.) make it clear that such documents are being furnished for bargaining unit personnel.

Unfortunately, Imus' testimony establishes that the information furnished by the Respondent was incomplete, since it failed to include the requested information for at least two newly hired members of the bargaining unit, namely Mario Navarro and Juan Villegas. I reject counsel for the Respondent's argument in his post-hearing brief that such records are protected against disclosure by the involved employees' privacy rights. Any employee applying and being hired for a job where the unit employees are covered by a collective bargaining agreement containing a union security provision has to assume that basic payroll and personnel information will be turned over to the Union representing those employees. Without that information, the

[11] As Imus' testimony regarding the possible existence of three other bargaining unit employees was vague and unsubstantiated, I will not rely on this information.

Union can not properly administer the contract, nor knowledgeably respond to the Respondent's contract proposals. Any balancing of rights tips strongly in favor of the Union's right to this information.

Accordingly, the Respondent must furnish the Union with the resume and application for anyone hired by the Respondent in a bargaining unit position for the period from May 1 to the present, the time period specified in the Union's letter of July 6. The Respondent's failure to furnish this information constitutes a violation of Section 8(a)(1) and (5) of the Act, as alleged in complaint paragraph 7(c)(i).

Regarding item number (ii) above, copies of any and all documents given to new employees, this would also constitute presumptively relevant information. It involves the documentation given to newly hired bargaining unit employees, and, depending upon what such documents consists of, may directly impact the relationship between the Union and the bargaining unit members it represents. Such information may well have a direct bearing on the Union's ability to administer the contract as well as present bargaining proposals to the Respondent.

It appears that the Respondent did not initially disagree, as Imus testified that in early August the Respondent did provide him with a "new employee packet" that "included an employee handbook." Presumably this was the entire set of documents new bargaining unit employees received from the Respondent at the time of their hire. No evidence was offered to establish that this was not so. Still, the Respondent did not furnish copies of these documents until early August, approximately one month after the July 6 request was made. The only remaining issue, therefore, is whether such a delay constitutes an unfair labor practice. I am of the view that it does not.

As I noted above, the Board has indicated that what constitutes reasonable promptness in the production of requested information must be determined under the totality of the circumstances in each case. There is no "per se" rule, rather what is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow. *Allegheny Power, supra.* In my opinion, one month's time is not an inordinate delay. Clearly the Respondent's managers had other matters to attend to, not the least of which was operating the business during a period of difficult economic and labor conditions, as well as while preparing for and engaging in bargaining sessions with the Union.

Under these circumstances, I do not believe that the Respondent's one month delay in furnishing the Union with copies of any documents given to newly hired employees constitutes a violation of the Act. Accordingly, I shall recommend that paragraph 7(c)(ii) of the complaint be dismissed.

F. Summary

As is reflected above, I recommend dismissal of the following paragraphs of the complaint: 7(a)(i) and 7(c)(ii).

Further, I find that the Respondent has violated Section 8(a)(1) and (5) of the Act, as alleged in the following paragraphs of the complaint: 7(a)(ii) and (iii), 7(aa)(i) through (iv), 7(b)(i) through (xi), and 7(c)(i).

Conclusions of Law

1. The Respondent, A-1 Door and Building Solutions, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Millmen and Industrial Carpenters Union, Local 1618, United Brotherhood of Carpenters and Joiners of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees performing work covered by the collective bargaining agreement between the Respondent and the Union effective for the period from May 1, 2004, to May 1, 2007, constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material, the Union has been, and is now, the exclusive collective bargaining representative of Respondent's employees in the above unit within the meaning of Section 9(a) of the Act.

5. By failing and refusing to provide the following information to the Union since on or after April 26, 2007, the Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) and (5) of the Act: Net profit each year for the last three years; and the total amount of profit distributed to the employees with the number of employees receiving the distribution each year for the last three years.

6. By failing and refusing to provide the following information to the Union since on or after June 18, 2007, the Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) and (5) of the Act: Copies of bids awarded; a copy of a list of new projects that A-1 Door is bidding on; copies of bids that were not awarded to A-1 Door; the reason why A-1 Door did not receive the bid; what company was awarded the bid not received, and why; how much lower was the competition of each bid not received; were there any dates A-1 Door was too busy, and turned away bids, and if so when; copies of jobs that A-1 Door was doing, but now are awarded to another company; copies of bids or jobs A-1 Door was removed from and the reason for removal; copies of bids not submitted due to contractors' insurance requirements; and copies of bids not submitted due to a lack of production ability. All information submitted should be for the preceding three years.

7. By failing and refusing to provide the following information to the Union since on or after July 6, 2007, the Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) and (5) of the Act: The resume and application for anyone hired by the Respondent in a bargaining unit position. The information provided should be for the time period from May 1, 2007, to the present.

8. By failing and refusing to provide the following information to the Union since on or after August 8, 2007, the Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) and (5) of the Act: All salaried employees, including non-bargaining unit employees, name, job title, wage rate, gross yearly wages, the date and the amount of profit sharing distribution for each year for the last three years; all hourly employees, including non-bargaining unit employees, name, job title, wage rate, gross yearly wages, the date and the amount of profit sharing distribution for each year for the last three years; names of all salaried or hourly employees, including non-bargaining unit employees, the amount of any other bonus or bonuses paid to them during each of the last three years; and the employee name and the amount of any other non-wage compensation received by all salaried and hourly employees,

including non-bargaining unit employees.

9. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

10. The Respondent has not violated the Act except as set forth above.

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 polices of the Act.[12]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

The Respondent, A-1 Door and Building Solutions, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Refusing to bargain collectively with the Union since on or after April 26, 2007, by refusing to furnish the Union with the following information: Net profit each year for the last three years; and the total amount of profit distributed to the employees with the number of employees receiving the distribution each year for the last three years;

(b) Refusing to bargain collectively with the Union since on or after June 18, 2007, by refusing to furnish the Union with the following information: Copies of bids awarded; a copy of a list of new projects that A-1 Door is bidding on; copies of bids that were not awarded to A-1 Door; the reason why A-1 Door did not receive the bid; what company was awarded the bid not received, and why; how much lower was the competition of each bid not received; were there any dates A-1 Door was too busy, and turned away bids, and if so when; copies of jobs that A-1 Door was doing, but now are awarded to another company; copies of bids or jobs A-1 Door was removed from and the reason for removal; copies of bids not submitted due to contractors' insurance requirements; and copies of bids not submitted due to a lack of production ability. All information submitted should be for the preceding three year period;

(c) Refusing to bargain collectively with the Union since on of after July 6, 2007, by refusing to furnish the Union with the following information: The resume and application for anyone hired by the Respondent in a bargaining unit position. The information provided should

[12] In order to provide a meaningful remedy, the Respondent is directed to furnish the documents to the Union, as specified in this Order, from the time periods listed in the respective information request letters to the date by which the Respondent complies with this Order.

[13] 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.

be for the time period from May 1, 2007, to the present;

(d) Refusing to bargain collectively with the Union since on or after August 8, 2007, by refusing to furnish the Union with the following information: All salaried employees, including non-bargaining unit employees, name, job title, wage rate, gross yearly wages, the date and the amount of profit sharing distribution for each year for the last three years; all hourly employees, including non-bargaining unit employees, name, job title, wage rate, gross yearly wages, the date and the amount of profit sharing distribution for each year for the last three years; names of all salaried or hourly employees, including non-bargaining unit employees, the amount of any other bonus or bonuses paid to them during each of the last three years; and the employee name and the amount of any other non-wage compensation received by all salaried and hourly employees, including non-bargaining unit employees; and

(e) 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) On request, bargain collectively with the Union by furnishing it with the following information: Net profit each year for the last three years; and the total amount of profit distributed to the employees with the number of employees receiving the distribution each year for the last three years;

(b) On request, bargain collectively with the Union by furnishing it with the following information: Copies of bids awarded; a copy of a list of new projects that A-1 Door is bidding on; copies of bids that were not awarded to A-1 Door; the reason why A-1 Door did not receive the bid; what company was awarded the bid not received, and why; how much lower was the competition of each bid not received; were there any dates A-1 Door was too busy, and turned away bids, and if so when; copies of jobs that A-1 Door was doing, but now are awarded to another company; copies of bids or jobs A-1 Door was removed from and the reason for removal; copies of bids not submitted due to contractors' insurance requirements; and copies of bids not submitted due to a lack of production ability. All information submitted should be for the preceding three year period;

(c) On request, bargain collectively with the Union by furnishing it with the following information: The resume and application for anyone hired by the Respondent in a bargaining unit position. The information provided should be for the time period from May 1, 2007, to the present;

(d) On request, bargain collectively with the Union by furnishing it with the following information: All salaried employees, including non-bargaining unit employees, name, job title, wage rate, gross yearly wages, the date and the amount of profit sharing distribution for each year for the last three years; all hourly employees, including non-bargaining unit employees, name, job title, wage rate, gross yearly wages, the date and the amount of profit sharing distribution for each year for the last three years; names of all salaried or hourly employees, including non-bargaining unit employees, the amount of any other bonus or bonuses paid to them during each of the last three years; and the employee name and the amount of any other non-wage compensation received by all salaried and hourly employees, including non-bargaining unit employees;

(e) Within 14 days after service by the Region, post at its facility in North Highlands, California, copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 20, 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 April 26, 2007; and

(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.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

Dated at Washington, D.C., on January 15, 2008

_____
Gregory Z. Meyerson
Administrative Law Judge

[14] 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 do anything that interferes with these rights. Specifically:

WE WILL NOT refuse to bargain collectively with the Millmen and Industrial Carpenters Union, Local 1618, United Brotherhood of Carpenters and Joiners of America (the Union) by refusing to furnish the Union with information necessary and relevant to the Union's performance of its responsibilities in representing employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Federal labor law.

WE WILL, on request, bargain collectively with the Union by furnishing the Union with items number 2 and 3 of the information request in its letter of April 26, 2007; with items number 1 through 11 of the information request in its letter of June 18, 2007; with item number 2 of the information request in its letter of July 6, 2007; and with items number 1 through 4 of the information request in its letter of August 8, 2007.

A-1 Door and Building Solutions
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

901 Market Street, Suite 400

San Francisco, California 94103-1735

Hours: 8:30 a.m. to 5 p.m.

415-356-5130.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 415-356-5139.