

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25**

In the Matter of:)	
)	
COUPLED PRODUCTS, LLC,)	
)	
Respondent,)	Case No. 25-CA-031883
and)	25-CA-062263
)	
INTERNATIONAL UNION, UNITED)	
AUTOMOBILE, AEROSPACE AND)	
AGRICULTURAL IMPLEMENT WORKERS)	
OF AMERICA, UAW,)	
)	
Charging Party.)	

BRIEF IN SUPPORT OF CHARGING PARTY'S EXCEPTIONS

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I. INTRODUCTION

The National Labor Relations Act imposes a duty on an Employer to bargain in good faith with the Union representing its employees. To that end, the National Labor Relations Board, in enforcing the Act, requires a series of more specific duties that are inherent in the overarching duty to bargain in good faith. While an expansive body of case law has sprung out of the enforcement of these specific duties, the law is designed to promote good faith bargaining.

The duty to divulge information on request is one such duty. Parties negotiating a collective bargaining agreement are not playing poker, building a strategy to leverage the ignorance of the other party into a windfall profit. Instead, they are required to divulge information that would support the positions they take at the table. This duty is a necessary ancillary to the broader duty to bargain in good faith. Lying, obfuscating, and distorting are not indicia of this good faith.

When approaching cases concerning the duty to divulge information, the Board has traditionally engaged in a fact-specific inquiry. Each collective bargaining negotiation necessarily involves a number of issues specific to the parties sitting down for that negotiation. Furthermore, the history of the parties and the circumstances of their business are unique to each case. The Board's approach, then, makes sense. How did *these parties* bargain? What obligations did *these parties* have to each other?

The decision of the Administrative Law Judge (ALJ) in this case did not adopt this fact-specific approach. Instead, the decision applied a rigid and formulaic approach that did not consider the parties' history, their understandings at the time, and what obligations their conduct toward each other entailed. The decision reflects a mechanistic approach that improperly relied on magic words. The decision's approach was inconsistent with the standards the Board has

adopted. Accordingly, the Union excepts to the decision's legal conclusions as well as several specific factual findings.

II. STATEMENT OF THE CASE

This case arises out of unfair labor practice charges filed by the Union over Respondent's refusal to provide information at the bargaining table to justify its position with regards to concessions sought in bargaining over a new contract. The Respondent's failure to provide relevant financial information after expressing an inability to pay the wages of its employees was bad faith bargaining under Section 8(a)(5) of the National Labor Relations Act. This unfair labor practice prevented the parties from reaching a lawful impasse, and accordingly the Respondent unlawfully implemented new terms and conditions of employment. As a result of this, the Union struck. Because the strike was caused and prolonged by the Respondent's unfair labor practices, it should be considered an unfair labor practice strike. Finding no unfair labor practice, the Administrative Law Judge dismissed the case. The Union excepts to several of his findings of fact and conclusions of law.

III. ISSUES BEFORE THE BOARD

A. Whether the Respondent communicated an inability to pay the wages of its employees.

B. Whether the Respondent was obligated to provide any information to its employees.

C. Whether striking employees were on an unfair labor practice strike.

IV. FACTUAL BACKGROUND

A. History of Parties' Bargaining

In 2009, Coupled Products, LLC and UAW Local 2049 negotiated and signed a two-year Collective Bargaining Agreement (“CBA”). [GCX 2.] This was the first Agreement that the parties negotiated. [ALJD p. 2, ll. 22-24.] Coupled Products, LLC had purchased the facility in 2007, and Coupled Products had assumed the Dana-UAW agreement that was then in effect. [ALJD p. 2, ll. 21-22.] During the term of the 2009 agreement, there was a dispute at the plant about whether the CBA allowed the members' health insurance deductibles to be changed, a dispute about the move of work from Coupled Products, LLC's facility in Upper Sandusky, Ohio to Columbia City, and a dispute over the discharge of the Union's bargaining chair after an article about disputes at the plant appeared in the local newspaper. [Tr. 39-40, 520-27. Testimony of Tina Johnson.] Each of these disputes were triggered by the Company's desire to change the parties' Agreement during its term, and the result of each dispute was the Union's acquiescence to the Company's demands for more concessions. Union President Kathy Smith testified that the Company continuously sought concessions during the term of the parties' prior Agreement. [Tr. 260-63.]

The two-year Agreement was scheduled to expire on June 17, 2011. [GCX 2.] Eight months before the expiration of the Agreement, on October 20, 2010, counsel for Coupled Products sent a letter notifying the Union that the Company “made the decision, based upon labor costs, as well as other factors, that the work currently performed at the Columbia City facility will be moved to Mexico.” [GCX 3.] “The decision was made after an analysis which revealed that the costs of producing the parts in Mexico will be significantly lower than in Columbia City.” [*Id.*] The letter

notified the Union that the Company would like to schedule “negotiations to discuss the effects of this decision [to move the work to Mexico].” [*Id.*]

Eight days later, on October 28, 2010, Coupled Products posted a notice in the plant stating that:

Coupled Products ownership and management has determined that with the excessive costs, inefficiencies and unplanned expenses, the current Columbia City cost structure is too expensive to maintain.

Since the San Luis Potosi plant has the ability to produce the parts currently made in Columbia City, Coupled Products has no choice but to move the business to Mexico to realize the enormous labor savings available in an effort to be profitable.

Coupled Products will honor the current CBA unless/until it is altered by a subsequent agreement.

[GCX 4.]

The Union sent the Company a proposal suggesting modest mid-term changes to the Agreement to save the plant. The Union bargained with the Company in November 2010 with the goal of keeping the jobs in Columbia City, Indiana. [GCX 5.] On January 10, 2011, the Union requested to meet to negotiate further concessions to keep the plant open. [GCX 6.]

On January 18, 2011, the Company sent a letter to the Union stating that “there is no scenario whereby maintaining a presence in Columbia City will be the more favorable alternative from an economic standpoint.” But the Company listed a series of concessions it sought which “if this proposal is accepted in its entirety, we will maintain a presence in Columbia City.” [GCX 7.]

Notably, at the hearing in this matter, Coupled Products Director of Operations Tina Johnson testified that there were tangible benefits to the Company from keeping the plant in Columbia City. Johnson was vague about these benefits and insisted that they were never monetized, but indicated that having a plant in Columbia City allowed the Company to get more work. [Tr. 511-13.] The

nature of this advantage and the potential economic benefits of the Columbia City plant were not communicated to the Union. [Tr. 491.]

Among the concessions sought in January 2011 were the elimination of health insurance, sickness and accident pay, and a pay reduction of 75 cents per hour (with a further reduction of 6 cents per hour every week until an agreement was reached). [GCX 7.] The Company also sought to recover “[c]ontribution from the union to offset the efficiency losses the company incurred plus the out-of-pocket expenses related to the Post and Mail matter and its related litigation [i.e. the events leading to the termination of the Union’s former bargaining chairman]. To date our efficiency and related internal losses amount to \$97,063 plus an additional \$44,683 for our out of pocket expenses.” [Id.]

The Union submitted a counterproposal with a different series of more modest reductions. [GCX 8.] The Company responded on January 27, 2011, with what it termed its “Final Best Proposal.” [GCX 10.] The Company reduced its demand related to the “Post and Mail matter” to \$97,063, and changed its proposal with regards to job classifications, but it stood by the elimination of insurance benefits, increased the pay cut to 87 cents per hour (with additional decreases of 6 cents per hour every week until an agreement was reached) and asked for a series of other concessions. [GCX 10.]

“Unless an agreement is reached,” the Company continued, “we will continue to proceed with our plan to move lines out of the Columbia City facility. Coupled Products will honor its current obligations under the current agreement.” The offer concluded, in relevant part:

We believe that we have considered every issue and looked at the financial impact from numerous vantage points. To reiterate the facts, Columbia City from a financial aspect cannot come close to our Mexico labor alternative. If our proposal is accepted it will result

in significant losses for the facility so we are not in a position to take any further losses than what was contemplated in this proposal.

[*Id.*]

The Union did not accept the offer. According to the terms of the offer, the Union expected the Company to begin closing the plant. [GCX 11.] Instead of an immediate closing, the Company sent a letter promising to negotiate later when the Company would have a “better understanding of the work situation.” [GCX 12.] The parties agreed to meet beginning in May. [*Id.*]

B. 2011 Bargaining Over a New Agreement

The 2009 CBA was scheduled to expire on June 17, 2011. [GCX 2.] On May 3, the Company submitted its proposal for a new contract. The Company sought to eliminate all insurance benefits (which was consistent with its February proposal) but it dramatically deviated from its February proposal by demanding a reduction in wages by \$4.50 per hour, “excluding those within the skilled labor classification.” [GCX 13.] Other concessions were sought as well, limiting the union employees’ benefits to those of the Coupled Products non-union employees. [*Id.*]

Negotiations began May 17, but the parties agreed to postpone discussion on the monetary issues (i.e. the most contentious issues in the negotiations) until Day 3. [Tr. 61-62, 65-66, Testimony of Tina Johnson.] On May 19, 2011, the Union submitted a letter to Tina Johnson “formally requesting from Coupled Products LLC proof of the companies finances in all respects” because “the company is asking for a concessionary Collective Bargaining Agreement in respect to Wages, Holidays, Vacations, S & A [sickness and accident] pay, Bereavement Pay, Perfect Attendance and Insurance.” [GCX 15.] In the letter, the Union reminded Johnson that “on January 13, 2011 Brad Ginsberg, one of the owners of Coupled Products LLC made a statement in front of the entire Bargaining Unit members during a plant meeting that he had nothing to hide and was willing to open

his books to anyone who wanted to see them.” [*Id.*] The meeting the letter referenced was held “off the record” with Union members. [Tr. 528, Testimony of Tina Johnson.] The meeting was held in January during the mid-term negotiations about the future of the plant.

The next day, May 20, the Union received an unaudited line item sheet showing a net loss of \$1,603, 214 for the first four months of 2011. [GCX 16.] The sheet showed an expense of \$759,856 attributed to Allocable Selling, General and Administrative Expenses. This was the largest expense on the sheet and unattributable to Union employees. Union wages appeared to make up at most around \$430,000 of the Company’s cost during that period which was just thirteen (13) percent of the Company’s total sales of over \$3.2 million. [*Id.*] At the hearing, Tina Johnson testified that she did not understand these numbers and to understand these numbers, she would have to consult someone in Michigan. [Tr. 88-90.]

On May 20, Johnson told the union’s bargaining committee that from January to April of 2011, the Company was losing money and customers from not being competitive and that therefore the steep concessions sought by the Company were necessary. [Tr. 66, Testimony of Tina Johnson.] The Recording Secretary for the local Union, Beverly Kohne, reported in her notes that “from January thru April this year – Tina say that were losing money and customers from not being competitive.” (All notes will be quoted to include the errors from the originals intact.) [GCX 31, p. 12.] Ginny McMillin, the UAW International Representative for the local Union and lead spokesperson, noted that “Mgt. handed over finances for April 2011 (Jan thru April 2011).” [RX 1, p. 30.] Barb West, the Bargaining Committee Vice-Chairperson, noted that the financials were provided on that date, and reported the loss of “Navistar of Bluewater Freightliner. Cost is the resing for. They just want to quit are jobs.” [RX 2. p. 5.] Union Bargaining Committee Chair Joyce Lane’s

notes on that date confirm that Johnson's position was that Coupled Products "must be competitive. Losing Customer because we are not competitive." [RX 4 p. 12-13.] Lane reported that after the Union refused to agree to the wage package, a company spokesperson (presumably Johnson) reaffirmed that Coupled Products "must be competitive to keep doors open." [Id.]

RoseAnn Rubrake, the Company's Human Resources Manager, confirmed the Union's account in her notes and reported that Johnson stated that the Company was "losing Customers and Money = Not Competitive." [RX 9, May 20, p. 1.] Rubrake reported that later in the day, when the conversation turned back to wages, Johnson again said, "we are losing money . . . how can we pay what we are and still be competitive." [Id. May 20, p. 4.] Johnson reported the Company lost Freightliner and Plates (presumably plating work), and blamed it on the wages paid to the Union workers. [Id.] The Union demanded to know why they lost these customers and asked whether it was because of cost. Johnson reported that she would get back to the Union. [Id. p. 4-5.] According to Stefanie Jones, another management representative at the meeting, after providing the financials, Johnson stated, "Losing \$. We are not competitive. Even this offer does not make profitable. Makes closer and we believe this offer is fair market." [RX 8, p. 4.] Jones reported that Johnson listed the loss of customers Brazing Concepts, Freightliner, and Navistar due to not being competitive. [Id. at 7.] Jones's notes confirm that Johnson offered to get information about who the work was lost to and the prices, but stated that "[R]egardless of comparisons, to be competitive for OUR business, this is required." [Id.]

The matter of wages came up again on May 24, the next day of negotiations. This appears, according to the parties' notes, to be the day the issue was truly hashed out. Local Union Recording Secretary Kohne's notes report that after lunch on the 24th, the Company reported that on wages

“they can not take anything less there going to stand firm on these.” [GCX 31, p. 20.] Kohne’s notes report that McMillin asked Johnson, “You’re saying you have an inability to pay wages” and that Johnson responded, “Yes, were not willing to pay.” [*Id.* p. 24.] The parties disputed whether this meant that the Company had an inability to pay. McMillin then asked to audit the company’s books. [*Id.*]

Union Chair Lane’s notes report that Johnson stated that the Company “must be competitive to keep doors open.” [RX 4, p. 28.] (Although since Lane’s notes are not consistently dated, that comment could have been made on May 27, when the topic of wages came up again.) Company Representative Stefanie Jones’s notes confirm that there was a dispute that day about what Tina Johnson said. Jones’s notes reflect McMillin asking whether the company “can pay wages where they are as of today?” [RX 8, p. 13.] She reports Johnson’s answer as: “We are standing firm on economic issues.” [*Id.*] But later, on p. 16 of her notes, she confirms that there was a debate about what Johnson did and did not say, quoting Johnson as saying, “We did not come into neg. making a lot of \$. Don’t put words in my mouth.” [*Id.*] Jones also notes that McMillin asked to audit the books. [*Id.*] Rubrake’s notes confirm the conversation occurred almost identically to Kohne’s account. [RX 9, p. 20.] Johnson’s e-mail to Brad Ginsberg informing him of the audit request also confirms that this exchange occurred (although it obviously casts the exchange in a light most favorable to the Company.) [GCX 17.]

The Company offered evidence at the hearing that it provided extensive documents to the Union regarding the wages in the surrounding area and wages at other factories [Tr. 443-45.] But Rose Rubrake testified that “Ginny never looked at any of that” and that Rubrake took the information back to her office. [*Id.*] However McMillin’s notes confirm that the Union considered

this information because the identical companies identified by Rubrake, including Dexter Axle, Reelcraft, 8020, and Assured Resources appear in McMillin's notes, with the wage information the Company claims she ignored. [RX 1, p. 39.]

Rubrake also testified that she did not know what work was performed at the facilities whose wage information she provided to the Union, what machines the workers at those facilities used, and the experience the workers at these facilities had. [Tr. 446-48.] Rubrake testified that "it was hard to compare since we all do different things." [Tr. 448.] Further, Rubrake testified that she did not investigate wages of companies who were, in fact, Coupled Products competitors. [Tr. 449-450.] She did not inquire into the wage structure of the businesses that were allegedly taking customers away from Coupled Products. [*Id.*] Rubrake testified that she just called business randomly. [Tr. 460.]

Contrary to management representative Jones's notes ("We did not come into neg. making a lot of \$," and "Losing \$. We are not competitive. Even this offer does not make profitable" are statements attributed to Johnson), Johnson testified that she frequently told the Union that the Company was profitable. [Tr. 474-75.]. In fact, Johnson testified that Coupled Products was indeed thriving due to the cost advantages of its Mexico plant. [Tr. 489.] The testimony at the hearing combined with the Company's previous communications to the Union indicated that the employees the Union members at Columbia City were unable to compete with were Mexican workers at the Company's facility in San Luis Potosi. But, of course, no information was provided to the Union about the breakdown in wages between the Columbia City plant and the Mexico plant; the portion of the Company's business generated in Mexico versus Columbia City; nor the Company's rationale for keeping work in Columbia City.

By May 27, 2011, the Company had repeatedly expressed its unwillingness to budge on the demand for steep wage and benefit concessions. McMillin expressed that the Union could not accept a \$4.50 wage reduction and again sought an audit of the Company's books. Johnson refused. Johnson said that the Company needed to stand firm and that the Company needed to be competitive. McMillin threatened to file an unfair labor practice charge with the NLRB over the refusal to provide audited books, and Johnson told her to do what she had to do. McMillin asked to extend the contract so that negotiations could continue. Johnson refused. [GCX 31, p. 29-31.]

Negotiations broke down shortly thereafter; the Company provided a last, best, and final offer that was submitted on June 8. [GCX 21.] The offer contained the Company's demand for a \$4.25 per hour wage reduction for non-skilled employees and the elimination of company-paid insurance and a reduction in the vacation entitlement. On June 17, the day the contract was to expire, the Union threatened a strike over the Employer's conduct at the bargaining table and asked "in a last ditch effort to avoid a labor dispute" that the "company open their books to the International Union UAW Auditing Department for review." [GCX 40.]

In the letter, the Union noted that Johnson had indicated that:

Brad (Coupled Products LLC) can no longer afford, and has the inability to pay the wages where they are at today.

You tell us the company is continuously losing money, if this is true and you can show us this through your financial books we may be more apt to convince the membership that with these current wages the company would go bankrupt.

[*Id.*] Johnson refused.

On June 17, 2011, the International Union issued strike authorization to the Local based on a request from the Local Union and the recommendation of the UAW Regional Director. [Tr. 282-83, Testimony of Mike Ailes.] The regional director recommended that the UAW authorize the

strike because the Company's bargaining proposals combined with its refusal to provide the Union with financial information that would permit the Union and employees an opportunity to evaluate the justification for the demanded concessions made reaching agreement impossible. [Tr. 287-88.] After receiving authorization, the Union went out on strike, and the Union filed unfair labor practice charges over the Company's conduct at the bargaining table.

C. Proceedings before the National Labor Relations Board

The Acting General Counsel issued a Complaint on December 28, 2011, alleging that the Union "requested that Respondent furnish the Union with Respondent's financial records" and that the "information requested by the Union . . . is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit." The Acting General Counsel alleged that by refusing to provide this information and then altering the terms and conditions of employment, the Respondent committed an unfair labor practice which caused and prolonged the ensuing strike. The Acting General Counsel asked for back pay in the amount that would have been owed had there been no unlawful change in terms and conditions, and reinstatement of any unfair labor practice strikers.

The case was heard before an Administrative Law Judge from April 2-4, 2012. The ALJ issued his decision on June 20, 2012, dismissing the case and transferring proceedings to the National Labor Relations Board. The ALJ found that the Respondent had no obligation to permit an audit of its financial records because the Respondent never claimed an inability to pay the Union's demands. [ALJD p. 14, ll. 6-8, 24-25.] Further, the ALJ found that the Respondent was under no duty to disclose any information to justify its concessionary proposal and had no duty to comply with the Union's request for information because the Union's request was not specific

enough. [ALJD p. 17, ll. 24-31.] The decision contains several incorrect factual findings and mistaken conclusions of law to which the Union has excepted. This brief is offered in support of these exceptions.

V. ARGUMENT

A. **Exceptions to Factual Findings**

The Union excepts to several of the factual findings in the decision, in two particular areas – the assertions made by the Respondent regarding its finances at the table and the circumstances and relevance of information provided by the Respondent to the Union at the bargaining table.

1. **Respondent’s Representatives Consistently Conveyed a Message that they Could not Afford to Pay the Union Members’ Wages (Exceptions 1-3, 8-12, 21, 27-28).**

The ALJ found that “the Union’s bargaining committee was informed in late 2010 and early 2011 that while the Respondent as a whole was making a profit, the Columbia City facility was losing money.” This finding is based on Tina Johnson’s testimony that:

we either, you have to distinguish between Coupled Products and Columbia City because we’ve always made it known that Coupled Products made money, I mean we’ve had plenty of plant meetings telling everybody Coupled Products has made money since Brad [Ginsberg] purchased it, like a year later, and then Columbia City itself lost money.

[ALJD p. 3, ll.8-11 (citing Tr. 474-75).] In response to the question “Was that information relayed to the bargaining committee during late 2010 on into 2011?,” Johnson said “yes.” [Tr. 474-75.]

This factual finding appears throughout the decision to support a conclusion that the Respondent clearly stated to the Union bargaining committee that its finances were healthy. But,

there is no evidence from the parties' notes, testimony, or written proposals that this was the Company's position. As Johnson testified, "Columbia City itself lost money." [Tr. 474.]

In its October 28, 2010 posting to the plant, the Company claimed "that with the excessive costs, inefficiencies and unplanned expenses, the current Columbia City cost structure is too expensive to maintain" and "Coupled Products *has no choice* but to move the business to Mexico to realize the enormous labor savings available *in an effort to be profitable*." [GCX 4 (emphasis added).] In this communication, the Company indicated that it must move to Mexico "in an effort to be profitable." This communication from the Company to its workers is inconsistent with Johnson's testimony that she told the employees that "Coupled Products has made money since Brad purchased it." Contrary to the decision [ALJD p. 3, ll. 8-9], Johnson's testimony was directly controverted by the Company's own communications to its employees.

On January 18, 2011, the Company told its employees that "there is no scenario whereby maintaining a presence in Columbia City will be the more favorable alternative from an economic standpoint." [GCX 7.] On January 27, 2011, the Company told its employees that its "final proposal" regarding mid-term concessions "will result in significant losses for the facility so we are not in a position to take any further losses than what was contemplated in this proposal." [GCX 10.] When bargaining began, the employees of the plant had been told repeatedly (and indisputably) of the economic drain that Columbia City placed on the Company. And, in at least one communication, the Company indicated that it needed to change operations *in an effort to be profitable*. Johnson's testimony under her counsel's questioning is insufficient to rebut the weight of the evidence that the employees were informed that the Company was struggling. The distinction she tried to draw at the

hearing between Coupled Products LLC's finances and the finances at Columbia City facility does not appear in contemporaneous documents.

Moreover, this message was not conveyed to the Union at the bargaining table. The notes never reflect a statement by any company representative that Coupled Products as a whole was profitable. And, in fact, Johnson testified that she didn't tell the Union that Coupled Products was willing to keep the plant open if it was breaking even or even had a small loss. [Tr. 491] She moreover testified that "during negotiations with the Union, I tried to talk about Columbia City itself. It wasn't the Company. It was Columbia City." [*Id.*]

And this testimony conforms to the statements captured in the parties' bargaining notes that included multiple statements by the Company about its own financial distress. In Union Chair Joyce Lane's notes, she recorded that the Company representative stated that Coupled Products "must be competitive. Loosing Customer because we are not compective." [RX 4 p. 12-13.] She reported the company representative's statement that the Company "must be competitive to keep doors open." [*Id.*] Rose Rubrake, in her notes, reported the statement that the Company was "losing Customers and Money = Not Competitive." [RX 9, May 20, p. 1.] Stefanie Jones, another management representative at the meeting, reported in her notes that Tina Johnson said that the Company is "Losing \$. We are not competitive. *Even this offer does not make profitable.* Makes closer and we believe this offer is fair market." [RX 8, p. 4 (emphasis added).]

Thus, the decision was wrong in two ways. First, contrary to the decision, Johnson's testimony that she consistently maintained the Company was profitable was not uncontroverted. Her testimony was controverted by the objective evidence of the Company's own communication to its employees. Second, no distinction was made during bargaining between the financial health of the

Company and the financial health of the Columbia City facility. Indeed, the Company representatives stated “[e]ven this offer does not make profitable” and “must be competitive to keep doors open.” There is absolutely no evidence that the Union believed that Coupled Products was financially healthy. Indeed, all the objective evidence produced in this case, and the notes of the Company’s own representatives, make it clear that the Company repeatedly claimed the contrary.

2. The Company Never Provided Relevant Information to Support its Claims about Competitiveness at the Bargaining Table (Exceptions 4-7, 22-23).

The Administrative Law Judge credited testimony that “[p]rior to preparing the Respondent’s bargaining proposal, Johnson requested Rose Ann Rubrake, the human resources director at that Columbia City facility, to gather information on wages paid by manufacturing facilities in the area.” [ALJD p. 5, ll. 1-3.] In addition, he found that the information Rubrake gathered was for employees “comparable” to the employees at the Respondent’s Columbia City facility and indicated that the wages for the “market” rate for positions equivalent to those at Columbia City. [ALJD p. 5, ll. 8-17.] Finally, he found that McMillin refused to take the underlying documents because “she did not want it.” [ALJD p. 6, 12-16.]

The evidence adduced at the hearing in this matter indicates that Rubrake did indeed proffer information about other wage rates in Columbia City. As the decision noted, McMillin’s own notes reflect that she received this information, transcribed it in her notes, and submitted it to her supervisors in the Union. The decision contains the inference that “McMillan [sic] obtained at least some of the information proffered to her by Rubrake after the meeting and submitted it to Davison.” [ALJD p. 6, n. 9.] There is no basis in the record for this hypothesis. Instead, McMillin testified that

the information on wages “came from Rose” and that her notes reflect “wages that Rose was relaying to [McMillin] at the table.” [Tr. 320-21.]

Nothing in the record indicates that McMillin did not accept relevant information proffered by the Company. Instead, it appears that McMillin noted the wage rates and contacts with local business Rubrake told her about during their conversation. After that conversation, Rubrake offered a stack of documents showing Bureau of Labor Statistics (BLS) Reports.¹ McMillin refused to collect these, according to Rubrake and Kohne. [ALJD p. 6, n. 9.] But McMillin did take down the information about the wage rates of local businesses.

It is consistent with all the testimony that the parties discussed the wage rates of local businesses, McMillin noted that information (and provided it to her supervisor), but rejected the large stack of printouts showing unidentified employers and wages in the surrounding area. [*e.g.* RX 13.] As Rubrake testified, she did not know what companies the BLS Reports referred to, the industry in which those employees worked, what machines they operated, or the level of experience those employees had. [Tr. 438-39, 447-448.] The Union’s position at the table and in this proceeding has consistently been that these documents were not helpful to the Union in order to evaluate the Company’s claims about competitiveness. The Company explained that it was losing money and customers from not being competitive. [RX 9, May 20, p. 1.] None of the documents McMillin examined or left behind shed light on the loss of customers or the wages paid to employees similarly situated to the members of UAW Local 2049 who were working at actual competitors.

¹An example of one of these BLS reports was produced as a demonstrative exhibit at the hearing as RX 13. Rubrake testified at the hearing that she collected this information, printed it out to bring to the table, and then destroyed it after McMillin declined to take it with her. [Tr. 412-413].

B. Erroneous Conclusions of Law (Exceptions 41-42).

1. The Decision Employs a Magic Words Standard Beyond that Justified by Existing Law (Exceptions 13-20, 25, 29-31).

All parties engaged in collective bargaining have a general statutory obligation to provide, upon request, information which is relevant for the purpose of contract negotiations. *See NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-36 (1967); *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994). The threshold question in this case is whether the information the Union sought was relevant. To answer that question, the ALJ was required to determine what position the Company conveyed to the Union at the bargaining table.

As discussed above, the ALJ's decision erroneously found that the Company never placed its financial health at issue. Repeatedly, the Company explained that the jobs in Columbia City were in jeopardy and that the Company was losing money and customers. The Union's natural response was to inquire for more information about these claims. Instead of acknowledging the Union's right to this information, the decision is a chronicle of a search through the record for evidence of whether the Company's representative ever said it would go out of business.

The record contains this evidence. As noted above, there was evidence that Coupled Products indicated it would close its doors in Columbia City if it could not get concessions. Respondent's October 28, 2010 letter posted in the plant stated, "Coupled Products *has no choice* but to move the business to Mexico to realize the enormous labor savings available *in an effort to be profitable.*" [GCX 4 (emphasis added).] At the bargaining table, Company representatives reported that the Company "must be competitive to keep doors open." [RX 4 p. 12-13.] The Company had explicitly threatened to close its doors in Columbia City before negotiations began if it could not get steep concessions from the Union during the term of the Contract.

The decision dismisses all this evidence that the Company had in fact placed the survival of the Columbia City facility in jeopardy based on testimony Johnson gave that she had told the Union at some unspecified time prior to negotiations (even as she affirmed that during negotiations she did not mention this) that the Company as a whole was profitable. Again, as noted above, Johnson's testimony is contradicted by the Respondent's own communication that it had "no choice but to move the business . . . in an effort to be profitable." [GCX 4.]

But, even if we accept the facts as they appear in the decision, there is no support in Board law or national labor policy that threats to close a facility unless wage concessions are granted do not have to be supported by information upon request, if the employer has another profitable facility that it can keep open. None of the cases relied on in the decision establishes this principle.

Nielsen Lithographing Co. involved a single facility where the employer "continued to explain throughout the negotiations that it was not pleading poverty or inability to pay and that it continued to be profitable." 305 NLRB 697, 698 (1991). Likewise, *Burruss Transfer, Inc.*, involved an employer operating a facility in Ithaca, New York that faced trouble from competitors "who were coming into Ithaca and performing moving services with little more than advertisements in the yellow pages and that it was difficult to compete with them." 307 NLRB 226 (1992). In *AMF Trucking & Warehousing, Inc.*, the Board held that an employer operating a trucking company had not claimed an inability to pay because, "[m]ost significantly, the Respondent never said that the survival of the Company was at stake, i.e., that the Company would have no future if the Company's demands were rejected." 342 NLRB 1125, 1126 (2004).

In none of those cases did the Company claim that it was going to close the Union members' plant if the concessions were not granted, but point to another profitable plant to assert the overall

profitability of its business. Instead, in each case, the survival of the Company was exactly linked to the survival of the facility where the negotiations were taking place. And, in *AMF Trucking & Warehousing*, the Board specifically noted that “inability to pay means, by definition that the employer is incapable of meeting the union’s demands.” *Id.* Here that is exactly what Coupled Products did when management told the Union it would “have no choice” but to move the work to Mexico “in an effort to be profitable” and when it told the Union it would have to “be competitive to keep doors open.” The communications here were clear: the Company must reduce wages or close the doors of the Columbia City facility. In *Concrete Pipe & Products Corp.*, also relied on in the decision, the Board found no duty to disclose information because “the Respondent did not assert that it was losing money or that its business was at some imminent risk of closing down.” 305 NLRB 152, 153 (1991). Here there was a specific threat stated by the Respondent to the Union that if these employees did not take concessions their facility would close down.

The approach adopted in the decision, relying on the fact that the business as a whole was profitable, is incorrect as a matter of law and policy. The decision ignores the crucial question: what information did the Respondent convey to the Union? The Respondent’s message was clear: unless you take concessions we are closing up shop in Columbia City. Having made that assertion, the Respondent was obligated to provide relevant information to support it.

Looking at the matter from the Union’s perspective reinforces the point. What did the Union care whether the Company was making money in Mexico? The Union was negotiating about Columbia City and the future of the employees’ work there. As Tina Johnson said, the entire focus of discussions at the bargaining table was on Columbia City.

2. The Decision Improperly Rejected Governing Board Law based on the Magic Words Approach

The record demonstrates that by the time Johnson sat across from the Union at the table, she was aware of what “magic words” she needed to say in order to avoid incurring an obligation to disclose the Company’s finances to the Union. (And, to be fair, the record shows that Union representatives were aware of at least some of the relevant legal framework for determining the contours of the Company’s obligations to divulge information). But, while in certain cases, NLRB decisions have drawn a line between a claim about “competitiveness” and “inability to pay,” Board decisions have made it repeatedly clear that there are no magic words that trigger the obligation to disclose financial information. “Each case must turn on its particular facts. The inquiry must always be whether or not under the circumstances of the particular case the statutory obligation to bargain in good faith has been met.” *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 153-54 (1956).

The decision, though, appears to have adopted wholesale this magic words approach. Instead of examining the context of the parties’ communications, the decision features an examination of the record for evidence that the Company stated that “it was losing money *as a whole* or that its survival was an issue.” [ALJD p. 16, ll. 8-10 (emphasis added).] The term “as a whole” is a qualifier adopted in the decision that is unsupported by existing Board law. Indeed, the addition of the term “as a whole” is a tacit acknowledgment that the evidence showed that Coupled Products explicitly claimed it was losing money in Columbia City and that the survival of *that plant* was at issue.

As discussed above, the approach adopted in the decision establishes a new set of magic words that allows a Company to threaten the shutdown of a facility without having to support its threat with information. Moreover, as discussed above, this approach ignored the evidence in the

record that the Company did in fact tell employees it had no choice but to close its facility in an effort to be profitable.

But the biggest problem with the magic words approach adopted in the decision is that *Truitt* makes clear there should be *no magic words approach*. Indeed, a fact-based approach makes sense in the context of this case. These negotiations did not occur in a vacuum. From October 2010 through January 2011, the Company repeatedly threatened the Union with closure of the plant in order to extract mid-term concessions from the membership. The terms of the offer in May 2011 were in many ways identical to those sought by the Company during those mid-term negotiations, except to the extent that the wage concessions sought were much, much steeper. Back-stopping every Company demand from October 2010 was the threat of plant closure due to the Company's inability to maintain the current wage structure at the Columbia City facility. Johnson's comments at the bargaining table reaffirmed this threat.

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

Truitt Mfg. Co., 351 U.S. at 152-53. "No magic words are required to establish an obligation to provide general financial information, but the obligation arises whenever the employer's statements and actions convey an inability to pay." *Atlanta Hilton & Tower*, 271 NLRB 1600, 1602 (1984); *see also Stella D'oro Biscuit Co.*, 355 NLRB 769 (2010).

The decision distinguished *Stella D'Oro Biscuit Co.*, 355 NLRB 769 (2010), *Lakeland Bus Lines*, 335 NLRB 322, 324 (2001), and *ConAgra, Inc.*, 321 NLRB 944 (1996), on the grounds that in those cases the employer linked their economic proposal to their "survivability as a company." [ALJD p. 17, ll. 20-22.] These cases all reject the magic words approach and find that employers

were required to provide the Union with financial information based on the communications made by the Company to the Union during bargaining. None of these cases stands for the proposition that the future of the company, *as a whole*, must be threatened in order for the Company to be required to divulge information. In fact, *ConAgra, Inc.* is exactly to the contrary.

In *ConAgra, Inc.*, the bargaining parties were the Congreso de Uniones Industriales de Puerto Rico which represented bargaining unit employees at Molinos, Puerto Rico, (“MPR”) which was a “wholly-owned subsidiary” of “ConAgra, a multinational corporation headquartered in Omaha, Nebraska” which had facilities “in the U.S., Canada, and Europe.” 321 NLRB 944, 949 (1996). MPR was “one of 60 plants in the ConAgra Grain Processing Company,” and was bargaining with the Union that represented the employees at its facilities in Puerto Rico.

In the *ConAgra* case, company negotiators at MPR stated that “if we are not competitive, we cannot survive” and “we must do something to be able to survive.” The negotiator also told the Union that “if immediate measures were not taken the probabilities were that Molinos would not be here in the future.” When discussing a proposal, a management employee stated “things like this are what makes us not be competitive and can make us have to close shop because we cannot compete.” [ALJD p. 17, ll. 9-18 (citing *ConAgra*).]

At the negotiating sessions, MPR’s managers informed the Union that “the parent corporation, ConAgra, was demanding that the mill become competitive and improve its profit margin” and that the Union had to agree to “substantial concessions if MPR was to compete; that the Company had insisted on immediate measures or MPR might not be there in the future.” *Id.* at 950.

In the bargaining sessions, MPR's representative stated:

If you do not fill expectations since you are a very, very small part of ConAgra's operations, why should ConAgra care about the operation. If it does not matter to the membership that a lock be placed on it . . . We are trying to make the organization competitive and that can survive with that competition that operates with a lot less employees and low operational costs.

Id.

In *ConAgra*, the Board found that the Company's statements triggered an obligation to provide information. The decision in this case distinguished *ConAgra* on the grounds that, "[i]n the instant case, while the Respondent consistently claimed that the existing wages and benefits at the Columbia City facility were not 'competitive,' it never made statements linking its economic proposal to its survivability as a company." [ALJD p. 17, ll. 20-22.]

But in *ConAgra*, the survival of *ConAgra* as a *company* was never in doubt. ConAgra was a huge company and all the evidence in the case indicated that the future of the MPR plant where negotiations were taking place was incidental to ConAgra's future as a company. As the ALJ in that case noted, "During the trial in this matter, MPR's general manager admitted that "sixty percent of the flour market . . . is an enviable position to have." *Id.* at 950 n.9. Indeed, during negotiations in that case, the size of the company was used as leverage against the union and negotiators were told that the company did not care about the future of the plant. Thus, instead of the survival of the company as a whole being in doubt, the company's survival was *assured!* But in negotiating with one of its plants, the threat to close that plant and move those operations to a different location was sufficient to trigger a duty to provide information. We face the identical situation here.

Indeed, in *ConAgra*, the Board did not recognize the distinction (relied on in the decision in this case) between the survival a company *as a whole* and the continuation of business at a particular facility. Instead, the Board found that:

Respondents' repeated representations, set forth in detail in the judge's decision, although carefully couched in terms of competitive disadvantage, amounted to claims that it could not presently pay and *stay in business* during the term of the agreement, thus giving rise to its obligation to provide the Union with supporting information.

Id. at 944 (emphasis added). The Board, when using the term *stay in business* referred not to the company as a whole, but to the particular facility where negotiations were taking place. *ConAgra*, therefore, demonstrates that the approach adopted in this case is without a foundation in law and should therefore be rejected. Once the Board rejects the decision's finding that a duty to divulge information arises only if the business as a whole is declared unprofitable, it should adopt the approach laid out in the cases the decision mistakenly rejected under the theory that Coupled Products never "made statements linking its economic proposal to its survivability as a company."

3. Governing Board Precedents Require the Respondent to Divulge Information (Exceptions 32-35, 37)

Stella D'oro Biscuit Co. is instructive in this case because the circumstances the Company presented in that case are remarkably similar to those here. In that case, the Board found that the Company had, in fact, claimed an inability to pay.

Thus, it was stated, for example, that Stella could not survive under the current labor contract and had to reduce those costs to stay in business, that the concessions it sought were needed for the survival of the Company, and that it did not have the money to go forward unless it implemented the proposed reductions in labor costs. Stella clearly grounded its need for concessions in its current financial situation: absent concessions, its present unprofitability endangered Stella's survival.

Stella D'oro Biscuit Co., 355 NLRB 769 (2010). Similarly, here, the future of the facility was expressly threatened and the threat was tied specifically to Union members' wages and benefits.

Stella D'Oro Biscuit Co. is also instructive because there the Company did in fact provide financial records to the Union but refused to allow the Union to copy them or submit them for analysis. This was a violation of its duty to bargain. Coupled Products, in this case, provided an unaudited, unitemized list of calculations to the Union. When the union requested more detail, the Company refused², not even authorizing the kind of in camera inspection that was deemed insufficient in *Stella D'Oro Biscuit Co.* And, while the Company in that case justified its refusal to divulge information on the grounds of confidentiality, Coupled Products refused to divulge the information here on no grounds other than that it did not have to do so.

The information that the Company did provide purported to show significant losses to the facility. But Johnson testified that she was unable to interpret the information provided to the Union without the help of her accounting department in Michigan. Johnson's testimony about this information indicates that the Union would not be able to understand this information without supplementation. Furthermore, by providing this information during bargaining, the Company made a claim about the financial condition of the Columbia City plant. The Union was entitled, under the rationale in *Stella D'Oro Biscuit Co.*, to determine what exactly the purported information demonstrated. The provision of this information, therefore, established the employer's duty to provide the Union with information it would need to understand the financial data that was being provided at the table.

²The Union excepts to the ALJ's finding of fact that the Union never sought a more detailed explanation as to how the document was prepared or how the various line items were calculated and that the Union's request was "general." (Union's Exceptions 26, 36). The evidence shows that the Union's requested an audit *after* the initial company provision of financial information, in order to understand the information they were given. [GCX 39; GCX 40.]

4. The Respondent Had a Duty to Provide Relevant Information in Response to the Union's Request (Exceptions 38-39).

The decision of the ALJ made no explicit finding that the Respondent provided information to the Union about its claim that it was not “competitive.” As discussed above, the Union’s position is that the records provided to the Union by Rose Ann Rubrake, and the content of negotiations about area businesses and their wages, were insufficient to support the Respondent’s contention that it was losing “customers and money” from not being competitive.

Company representatives have offered shifting definitions of what they meant by the term “competitive.” Did the Company mean that it could not keep or secure customers based on the wage scale currently in effect at the facility? Did the Company mean that the wages at the Columbia City facility were not competitive with Coupled Products’ other facilities or competitors? At the hearing, the Company appeared to adopt the position that the term competitive meant that wages paid at the plant were higher than wages paid to other unskilled workers in the Columbia City area. This assertion, which was not formally adopted as a finding by the ALJ, is at odd with the contention that the company was losing money and customers due to a lack of competitiveness. Neither Rubrake nor Johnson testified that any area company was actually competing for the work that Coupled Products did.

Uncertainty about the term competitive stems from the Company’s refusal throughout bargaining to elaborate. The evidence in this case shows that Company representatives had made the distinction between “competitive” and “inability to pay” and bargained with the express intention of never claiming an inability to pay. It appears that Company officials received the Cliffs Notes version of *Nielsen Lithographing Co.*, wherein the Board held that “an employer’s obligation under *Truitt* to provide a Union with information by which it may fulfill its representative function

in bargaining does not extend to information concerning the employer's projections of its future ability to compete." 305 NLRB 697, 701 (1991). As noted above, to the extent that *Nielsen Lithographing* appears to establish a bright line rule that no information is required to be divulged by a Company claiming an inability to compete, subsequent Board holdings (including *Stella D'Oro* and *ConAgra*) have disavowed this type of magic words approach. The context of the case, the nature of the Company's communications to the Union, and the information actually provided by the Company all matter.

And, indeed, in *Nielsen*, the facts of the case were crucial. At the table, the employer stated that it "was still making a profit but stated that it needed the concessions to compete because increasing costs in the [expiring] contract were resulting in significant losses of business to competitors." *Id.* at 697. In support of this statement, the Company "furnished various charts and graphs compiled from Company records" that "showed, inter alia, labor costs increasing while sales and production decreased." The Company "presented data to support its assertions that it had been losing business to competitors whose wages and benefits were below the [Company's]." *Id.*

Thus, in *Nielsen Lithographing*, the Company did in fact provide information, according to the Board, substantiating its claim at the bargaining table that it was losing customers due to its wage structure. Contrast that with the situation here. The Company claimed it had to be competitive, but did not elaborate further. It provided one sheet of financial data that showed heavy losses that even its Director of Operations could not explain and provided very generalized wage information for other unskilled laborers in the Northern Indiana area. When the Union asked for information about the Company's competitors, Coupled Products did not divulge information on competitors and tried to recast it as a request for wage rates for laborers in the area, providing information from businesses

Rubrake “randomly” selected. [Tr. 460.] When the Union asked to have its expert review the Company’s books, the Company refused.

Assuming that neither the words nor context of the Company’s proposals to the union triggered a duty to divulge financial information, the Company was still required to substantiate the claims it *did make* at the table. In *Caldwell Manufacturing Co.*, the Board found that repeated factual assertions concerning the Company’s competitiveness including the fact that the Company “justified its proposals by a need to become more competitive in the industry” triggered the obligation to provide information about its competitiveness including “such information as material costs, labor costs, manufacturing overhead, productivity calculations, competitor data, and data on possible new production” 346 NLRB 1159, 1160 & n.3 (2006).

Similarly, in *A-1 Door and Building Solutions*, 356 NLRB No. 76 at *17-18 (2011), the Board found that information about job bids was relevant to the employer’s claim that “it could not compete for contracts against other specifically-named companies because it was paying overly generous wages and benefits to unit employees.” The employer, therefore, had a duty to furnish the information to the Union. Just so in *KLB Industries*, where the employer was required to furnish a variety of data including customer lists, outsourced work, prices, and customers who stopped buying its product to support “its demand for substantial wage concessions [premised] on its asserted competitive disadvantage in the marketplace.” 2011 NLRB LEXIS 377 at *9 (July 26, 2011). In *KLB Industries*, the Board reiterated the Supreme Court holding in *Truitt* that “if . . . an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy.” *Id.* at *10 (citing *Truitt*, 351 U.S. at 152-53.)

The decision distinguished these cases on the grounds that the Union's request for information was too broad, and that *Caldwell* and the associated cases only imposed a duty to respond to information requests that were "specifically tailored to the employer's assertions in bargaining." [ALJD p. 18, ll. 3-5, 27-29.] Once again, this is a gloss on the cases and seems to fly in the face of the standard articulated in *Keauhou Beach Hotel Co.*, that "[i]t is well established that an employer may not simply refuse to comply with an ambiguous and/or overbroad information request, but must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information." 298 NLRB 702 (1990).

The decision in this case distinguishes *Keauhou Beach Hotel* as a case involving presumptively relevant information. But in *Barnard Engineering Inc.*, the information was not presumptively relevant; the Union had to establish the relevance. 282 NLRB 617, 619 (1987) ("The issue is whether the Union has established the relevance of the information requested here.") The Respondent in *Barnard* further argued that in addition to being irrelevant, the information sought was "substantially overbroad, overreaching, and vague." The argument was rejected, and the ALJ (adopted by the Board) held that:

The mere fact that a union's request encompasses information which the employer is not legally obligated to provide does not excuse the employer from complying with the union's request to the extent it encompasses information which the employer is statutorily required to provide.

Id. at 621. *See also Colgate-Palmolive Co.*, 261 NLRB 90, 92 (1982) ("Respondent's blanket refusal to furnish any of the data requested, unless it pertained to a particular controversy, left the Union without a 'guide to assist it in framing a more limited demand, or an incentive to do so in the expectation that a more limited demand would be honored.'" (citation omitted).

In other words, there is no meaningful legal distinction between the employer's obligations under a request for presumptively relevant information and a request for information for which the Union is required to prove the relevance. Since the information, as established in this case, was relevant, the Company was not permitted to issue a blanket denial and then force the Union to go through the NLRB process to obtain the information. Furthermore, in this specific case, as discussed above, the information that *was provided*, in particular the opaque financial document, imposed a duty on the Respondent to help the Union clarify the information the employer was conveying in that document.

5. The Respondent did not Clarify its Position at the Table (Exception 24, 40.)

Finally, the Administrative Law Judge's decision found that even if there had been some uncertainty over the Company's conduct at the table, Johnson clarified it with a June 17 letter to the union when she wrote, "I have never stated Brad or CP could not afford or has the inability to pay wages where they are today. . . . We stand firm in saying we need to be competitive which is what was actually said during negotiations." [RX 6.]

In *Richmond Times-Dispatch*, the employer wrote a similar letter to a Union in response to an information request submitted after the Company declared it would not pay a bonus. In the letter, the Company "clarified that it was not unable to pay the bonus, but that it chose not to pay it due to the economic conditions in the market." *Richmond Times Dispatch*, 345 NLRB 195, 196 (2005). *See also American Polystyrene Corp.*, 341 NLRB 508, 509 (2004) (finding no duty to divulge when employer "makes clear that it is not claiming a present inability to pay").

But for all the reasons discussed above, Tina Johnson's June 17 letter clarified nothing. The letter did not say the Company "will not pay" the wages, but instead said that the company "did not

say” it had the inability to pay and instead said “competitive.” To rely on this letter as clarifying the issues in the case is begging the question. The question in the case is not what Johnson said, but whether what she said conveyed an inability to pay. For the foregoing reasons, it is clear that she did.

6. The Workers Were on an Unfair Labor Practice Strike (Exceptions 43-46).

As demonstrated above, the Company’s refusal to divulge information was an unfair labor practice. “[A] work stoppage is considered an unfair labor practice strike if its motivated, at least in part, by the employer’s unfair labor practices, even if economic reasons for the strike were more important than the unfair labor practice activity.” *Golden Stevedoring Co., Inc.*, 335 NLRB 410, 411 (2001). “[A] causal connection between the Respondent’s unlawful conduct and the strike may be inferred from the record as a whole.” *Childhood Development Council of Northeastern Pennsylvania*, 316 NLRB 1145 & n.5 (1995). “A strike which is motivated or prolonged, even in part, by an Employer’s unfair labor practices is an unfair labor practice strike.” *CC 1 Ltd. P’ship*, 2010 NLRB LEXIS 100 at * 41 (April 16, 2010).

The decision credited that Michael Ailes, the former assistant director for UAW Region 3, “made a recommendation to approve” a strike request from UAW Local 2049 to his supervisor, Director Mo Davison. “In making his recommendation he referred to the fact that the Local Union had not received information pursuant to requests it had made and that he did not see how the dispute could be resolved without the information.” [ALJD p. 12, ll. 4-9.] McMillin testified that she believed that the Union was unable to make a decision on the Company’s proposal without the information she requested. [Tr. 268.] The testimony of Ailes and McMillin is confirmed by the record as a whole, which lays out the effect that the refusal to divulge information had on the Union.

Without financial information, the Union was not in a position to effectively respond to the Company's negotiating positions. Because the bargaining process was short-circuited by the employer's bad faith, no lawful impasse was reached. Accordingly, the strike was caused and prolonged by the Company's unfair labor practices.

VI. CONCLUSION

For the foregoing reasons, the Union asks that the Board overrule and reverse the Administrative Law Judge's Decision, Findings of Fact, and Conclusions of Law to which it excepts. Furthermore, the Union asks that the Board find that Respondent committed unfair labor practices under 8(a)(1) and (5) and reverse the dismissal of the case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing has been served on Respondent's Counsel and Counsel for the Acting General Counsel via electronic means this 18th day of July, 2012.

/s/ Jeffrey A. Macey
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