

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

PROVIDENCE JOURNAL COMPANY

and

Cases 1-CA-37763  
1-CA-38129  
1-CA-38546  
1-CA-38627  
1-CA-38743  
1-CA-38888  
1-CA-39123

PROVIDENCE NEWSPAPER GUILD,  
TNG-CWA, LOCAL 31041, AFL-CIO

*Elizabeth A. Vorro and Joseph F. Griffin, Esqs.,*  
for the General Counsel.

*Richard A. Perras and Lincoln D. Almond, Esqs.,*  
(*Edwards & Angell, LLP*) of Providence,  
Rhode Island, for Respondent.

*E. David Wagner and John McMahon, (Angoff,*  
*Goldman, Manning, Wanger & Hynes, P.C.),*  
of Boston, Massachusetts, for Union.

DECISION

Statement of the Case

William G. Kocol, Administrative Law Judge. This case was tried in Pawtucket, Rhode Island on February 26-March 1 and March 4-5, 2002. The 12 charges and amended charges were filed as alleged in the fourth amended complaint (the complaint) that was issued February 11, 2002.

The complaint alleges that Providence Journal Company (Respondent) committed numerous violations of the Act. First, the complaint alleges that on January 1, 2000 Respondent unlawfully implemented certain contract proposals. Second, the complaint alleges that thereafter Respondent made additional unilateral changes. Third, the complaint alleges that Respondent failed to provide, or delayed in providing, information to the Providence Newspaper Guild, TNG-CWA, Local 31041, AFL-CIO (the Union). Fourth, the complaint alleges that Respondent unlawfully threatened to make, and did make, regressive bargaining proposals because the employees engaged in protected concerted activity. Finally, the complaint alleges that Respondent failed and refused to bargain for a successor collective-bargaining agreement with the Union.<sup>1</sup> Respondent filed a timely answer that admitted the filing and service of the charges and amended charges, jurisdiction, labor organization status, agency status, appropriate bargaining units, collective-bargaining status,

---

<sup>1</sup> At the hearing the General Counsel withdrew pars. 16, 18, and 20 of the complaint.

and Section 9(a) status of the Union. It denied the substantive allegations.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent, and the Union, I make the following

Findings of Fact

I. Jurisdiction

Respondent, a corporation, publishes the Providence Journal at its facilities in Providence, Rhode Island, where it annually derives gross revenues in excess of \$200,000 and holds membership in or subscribes to interstate new services, published nationally syndicated features, and advertises nationally sold products. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background

Respondent publishes a daily and Sunday newspaper and employs over 1000 employees. Its main facility is located in downtown Providence and its production facilities are located about two miles away. There are also about six news bureaus located in Rhode Island and Massachusetts and one in Washington D.C. and about 12 regional circulation centers. Teamsters Local 64 represents a unit of about 140 distribution and mail room employees. Pressmen's Local 12N represents a unit of about 60 employees in the press operation.

The Union represents about 450 employees in two separate units. One unit consists of about 200 advertising employees<sup>2</sup> and the other of about 250 news employees.<sup>3</sup> These

<sup>2</sup> That unit is:

All employees employed in Respondent's Advertising Department, Systems Department, and Janitorial Department, excluding; elected officers of Respondent; senior sales directors; sales directors; creative director; manager advertising planning; advertising systems development manager; secretaries to: vice-president advertising, senior sales director personnel, senior sales director operations, and manager advertising planning; director of systems; systems analysts; programmers; research director; pre-publishing department manager; assistant pre-publishing managers; promotion director; promotion manager's cleaning manager; and except as specifically provided in the parties' collective-bargaining agreement, irregular extras.

<sup>3</sup> That unit is:

All employees employed in Respondent's News and

Continued

employees work at the main facility and at the news bureaus. The contracts for the two units are negotiated at the same time. The resulting individual contracts are printed together as separate sections in one book. The most recent contracts expired December 31, 1999. Timothy Schick has been the Union's administrator for about 12 years and during that time he has negotiated four contracts with Respondent.

In 1997 the Belo Corporation purchased the newspaper. The Belo Corporation owns four newspapers and several television stations around the country. Belo has its own benefits package that it offers its employees, referred to in the record as the Belo benefits. The Union believed that some of the Belo benefits were more desirable compared to what unit employees received.

Until his retirement in August 1999, R. Barrie Schmidt was Respondent's human resources director. He was replaced by Thomas McDonough. That same year Howard Sutton became publisher.

*B. January 1, 2000 Implementation of Contract Proposals*

The General Counsel contends that on January 1, 2000 Respondent unlawfully eliminated the "me-too" and "status quo" clauses from the expired contracts, changed the health and dental insurance plans, changed the eligibility criteria for enrollment in those plans, changed the cap on employee contributions for medical insurance, changed parking and bus pass benefits, and changed vacation eligibility and gainsharing benefits and eliminated one floating holiday for the unit employees.<sup>4</sup> Closely tied factually to these allegations are several other allegations that Respondent refused to provide, or delayed in providing, requested information to the Union.

In preparation for bargaining the Union identified a number of issues, one of which was parking. Because of the location of Respondent's facility in downtown Providence, parking was a concern. There were several provisions in the expiring contract that addressed this issue. First, that contract required Respondent to continue provide parking to employees at its Fountain Street parking lot "on the same basis as parking at that lot is offered to other employees" of Respondent. The contract required Respondent to provide free parking to employees who were "regularly required to maintain an automobile for use in the performance of their duties." Employees who worked fewer than 5 days per week were eligible to purchase per diem parking passes from the Parkade Parking Garage at not more than \$4 per day.

---

Editorial Department, excluding; elected officers of the publisher; executive editor; deputy executive editor; managing editors; systems editor; news editor; night production editor, regional news editors, metro edition editor; city editor; assistant city editor; editor of the editorial pages; chief editorial writer; editorial columnist; assistant managing editors; sports editor; financial editor; assistant director-photography and graphics; librarian; editor for technology and development; confidential secretaries; and, except as specifically provided in the parties' collective-bargaining agreement, irregular extras.

<sup>4</sup> Pars. 9-14 of the complaint.

Finally, the contract provided that during snow emergencies Respondent would provide off-street parking to employees at the per diem rate.

5 Medical and dental benefits were also an issue. Under the expiring contract the unit employees had a choice of several health insurance plans. A Blue Cross/Blue Shield plan, known as Classic Blue, was a traditional indemnity insurance plan. A United Health Plan PPO offered lower cost for office visits and the Harvard Health plan was a site-based plan. These two were managed care plans. A Delta Dental plan provided dental insurance. Respondent paid at least 85 percent of the cost of the insurance and, of significance in this case, employees would not have their share of the costs increase by more than 15 percent of the previous year's cost and employees were eligible for the insurance on the first of the month following their hire date. The expiring contract permitted Respondent to replace the Blue Cross plan with an "equivalent plan" approved by a joint committee. All other employees, including those represented by the Teamsters and Pressmen, received the Belo medical and dental benefits. 15 The Belo benefits package offered another Harvard plan and two plans that did not include the Blue Cross plan. Bargaining over these benefits was complicated by the fact that the enterprise offering the Harvard plan had apparently become insolvent. About 50 unit employees were covered by that plan. In the Union's own words, "(t)hese members MUST switch health plans – and the company under state rules must offer them an alternative before Dec. 31." Another 20 problem was whether Blue Cross was still willing to offer its plan to unit employees.

Under the expiring contract the unit employees participated in the "gainsharing" program. This program provided for a bonus and wage increase to employees if the economic performance of the newspaper reached certain goals set by Respondent. Under the Belo package of benefits, employees participated in the profit performance bonus plan. The Union 25 decided to seek coverage under the profit performance bonus plan to replace the gainsharing program.

30 The unit employees received 11 paid holidays per year; the employees under the Belo package received 10. The unit employees received 3 weeks of paid vacation after 3 years of employment; the employees under the Belo plan received 3 weeks after 5 years.

35 The expiring contract had a provision that generally required the newspaper to maintain the "status quo" while an issue was being grieved.<sup>5</sup> The contract also had a "me too" clause that provided for a wage increase for unit employees under certain conditions if Respondent granted a wage increase to other represented employees.<sup>6</sup>

40 On September 16, 1999<sup>7</sup> the Union sent Respondent a letter requesting the percentage of income each unit employee had elected to place in the 401(k) plan, the medical plan each unit employee had selected, whether the employee had individual or family coverage, whether each unit employee had individual or family dental insurance, and other information. Schick explained that the Union needed the information to formulate its bargaining proposals. On

45 <sup>5</sup> Art. 5, par. 4 states: "Except in the case of discharge, conditions prevailing prior to an action or circumstance which results in a dispute shall be maintained unchanged pending final settlement of the dispute as provided herein."

50 <sup>6</sup> Art. 18, par. E10 provides: "If any Union at the Company is granted an annual general wage increase in excess of two percent (2 percent) in 1997, 1998, or 1999, any such excess shall be granted in the appropriate year or years to employees covered by the Agreement."

<sup>7</sup> All dates are in 1999 until otherwise indicated.

October 28 Respondent provided the requested information.<sup>8</sup>

5 Bargaining for a successor contract began October 28. Schick headed the Union's bargaining team while Richard Perras, attorney, was spokesman for Respondent's team. After each made opening remarks, the parties discussed ground rules and procedures. They agreed that any agreements would be tentative until a complete agreement was reached. The Union presented its proposal for a new contract and the parties discussed the proposal.

10 The next bargaining session was held on November 5. There the parties dealt with housekeeping matters such as obsolete contract language; there was little discussion of substantive issues.

15 On November 12, the parties met for a third time. Respondent presented its initial contract proposal and the parties reviewed it. Respondent proposed a new set of medical plan benefits that were different from both the Belo package and the old contractual package. Respondent proposed that employees pay a flat 15 percent of the costs of the plan that they selected and that newly hired employees become eligible to participate in the plans on the first of the month after 60 days of employment. The Union asked to see the plan documents. As described above, in the old contract Respondent was permitted to substitute an "equivalent" plan for the Blue Cross plan; Respondent's proposed that it be allowed to substitute "substantially equivalent" plans for all the health and dental plans without joint committee approval. Respondent also proposed to eliminate all contractual parking subsidies except for those employees who were required to use their cars as a condition of employment. Respondent proposed eliminating the "status quo" and "me too" provisions from the contract. Respondent's proposal also offered other Belo benefits such as vision care and adoption assistance that had not previously been offered to unit employees. It also proposed to reduce benefits such as vacation and holidays to bring them in line with the Belo package. Respondent did agree with the Union to substitute the profit performance plan for the old gainsharing program. After discussing Respondent's proposal the Union presented a revised proposal that incorporated the housekeeping changes and other minor modifications. It also contained more description concerning its medical and dental plan proposals.

35 On November 18 Respondent sent the Union a letter regarding a new parking policy. Attached was a memorandum concerning parking that Respondent had earlier distributed to all employees. The memorandum indicated that a new policy would go into effect for nonunit employees beginning January 2000 and the same policy would be offered to unit employees through their bargaining representatives. The new policy provided employees with bus passes and free parking for designated "eligible employees" subject to a maximum number of allocated spaces, but that the policy would not be included in the collective-bargaining agreement and Respondent reserved the right to change or modify it any time. Respondent's letter invited the Union to let Respondent know within two weeks whether it wanted to discuss the new policy.

45 The next bargaining session was on November 19. The Union asked a number of questions about the parking proposal. It asked under what circumstances might Respondent change or revoke the availability of parking, how many spaces were available, where the spaces were located, which employees were eligible, and how it would be determined who would receive parking.<sup>9</sup> Respondent said that it wanted the matter of parking outside the

50 <sup>8</sup> Par. 35 of the complaint alleges that this delay was unlawful.

<sup>9</sup> Par. 37 of the complaint asserts that respondent unlawfully delayed in providing this information December 28. This par. also alleges that the Union asked "whether the bus passes

Continued

contract because it did not want to be held to any particular set of parking benefits. It was this position that was most troubling to the Union. Respondent also explained that under its proposal all employees working 22½ hours per week would get free parking, but that employees who worked less than that amount would get nothing. The parties also discussed the matter of open enrollment periods for selection of medical and dental plans. The open enrollment periods typically occurred in November. The Union wanted one enrollment period for employees under the existing plans and another for any new plans when a contract was finally reached. Respondent, however, signaled its desire for a single open enrollment period. There was no other significant discussion at this meeting concerning the issues that the General Counsel alleges were unlawfully implemented the following January.

On November 24 the Union followed up its oral request for information regarding parking with a written request as follows:

1. Which employees would be eligible?
2. How many spaces will be allocated?
3. How will spaces be allocated?
4. Where will the parking be located?
5. What circumstances could result in a modification or elimination of the policy?

Earlier, on October 6, the Union had sent Respondent a letter requesting copies of medical plan documents for the insurance plans offered under the expiring contract as well as the insurance plans offered as part of the Belo package. On November 24 Respondent replied by providing a stack of documents to the Union.<sup>10</sup> This was the first time that the Union was provided the details of the medical and dental plans that Respondent was proposing. In a cover letter Respondent also indicated that the employees would be choosing from one of the plans and that those would be the only plans available. The letter stated that if the Union did not agree to the plans then unit employees would have only two options after December 31; either obtain medical and dental coverage elsewhere or be in Respondent's United Healthcare HMO and Metlife dental plan. The cover letter also indicated that there would be a single open enrollment period. The Union responded by letter that same day. The Union notified Respondent in that letter that it was having a consultant review the documents and would reply when the review was completed. The Union acknowledged that the Harvard Health plan could no longer be offered through no fault of Respondent's, but it insisted that other contractual plans remained available to employees after December 31.

The parties met again on December 2. The Union presented a revised entire contract proposal. Among the revisions, the Union dropped its request for the Harvard plan; that amendment was needed because it was by then apparent that Harvard Pilgrim enterprise would be going out of business by December 31 in Rhode Island. The Union's proposal also maintained the existing Blue Cross/Blue Shield plan but added two other Blue Cross/Blue Shield plans. Respondent had earlier told the Union that Blue Cross was refusing to write a plan for unit employees, so the Union had contacted Blue Cross directly and discovered that Blue Cross had offered a package of three plans to Respondent, but only if the plans were offered to employees as part of a complete package. The Union used those plans to structure its

applied to the Rhode Island transit system only or included Massachusetts transit as well." However, Schick did not testify that the Union made such a request. I shall dismiss that portion of this par. of the complaint.

<sup>10</sup> Par. 36 of the complaint alleges that this delay was unlawful.

5 bargaining proposals. The parties discussed this matter at the bargaining session. Respondent agreed to a second open enrollment period as the Union had requested. The Union also suggested that they extend the contract past December 31 because it seemed that they would not be able to reach agreement by then. Respondent replied that it felt a contract extension was unnecessary; it wanted to continue to bargain with the existing expiration date. There was no discussion of the me-too or status quo proposals, gainsharing or profit performance, elimination of a holiday, or vacation eligibility.

10 On December 5, the Union sent Respondent a letter requesting information concerning medical and dental matters.<sup>11</sup> The request was extensive; it contained 26 line items. It requested information such as claims history, information concerning self-insurance, insurance proposals received by Respondent from insurers, and plan details. Respondent replied by letter dated January 17, 2000 providing some information. However, other information was not provided. For example, the Union sought copies of ASO agreements. An ASO agreement results when an employer self-insures and has an agreement with a health care provider to administer its plan. The Union requested that information so that it could determine if the rates charged to employees were reasonable and to solicit ASO's from other providers as alternatives. In its response Respondent indicated that the ASO for the self-insured plans had not yet been received. Schick testified that the Union never did receive that information even though Respondent had access to that information. In addition, in nine instances Respondent asked the Union to explain the relevance of its requests. As an example, the Union requested information concerning month-by-month paid dental and medical claims and head counts for the most recent 24 months. Respondent's letter inquired why this was necessary in light on the information that it had already provided. The Union explained the relevance of the information in a letter dated January 18. The Union stated that the information was necessary to evaluate Respondent's proposals and formulate its own. Respondent never provided the additional information.

30 On December 6, Respondent sent the Union a letter concerning the implementation of medical and dental plans. Respondent referred to its November 24 letter and indicated that it was willing to have two open enrollment periods. The letter stated "Between now and December 31, 1999, we urgently need to provide coverage options for our employees since Harvard ... has left Rhode Island and Blue Cross/Blue Shield will not continue its contract for the group it now covers at the company." Respondent said that it was rejecting the Union's proposal to include other plans in addition to those offered in Respondent's November 24 letter. The letter proposed that on December 10 Respondent would distribute material to unit employees and the employees would have until December 22 to select a plan. The letter assured the Union that agreement to Respondent's proposal would not limit the Union's right to continue to negotiate for other plans after December 31. The letter indicated that Respondent considered the matter to be extremely urgent and that time was of the essence.

45 On December 9, the parties met again. This meeting was very tense. Outside the meeting there were tables stacked with documents including the medical plans proposed by Respondent; these were being placed in envelopes addressed to unit employees. The Union concluded that Respondent was already in the process of implementing its medical and dental insurance plans. Respondent presented a new proposal for a complete contract. The Union said that it did not agree to the implementation of the medical plans, that Respondent acted at its own peril, and that the Union would take all necessary steps to oppose the implementation.

50 <sup>11</sup> Par. 38 of the complaint alleges generally that Respondent has failed to provide this information.

5 The Union advised Respondent that an outside consultant was reviewing the various proposals and that Respondent had not yet provided all the information that the Union had requested concerning this matter. Respondent replied that the information that the Union already had was the same as had been given to the other unions and they were able to make their decisions based on that information and that the Union was hiding behind information requests that were made in bad faith. The Union also asked a number of questions concerning the December 6 letter. Schick testified that not all the questions were answered, but he did not specifically indicate the unanswered questions. The Union again told Respondent that it believed that a Blue Cross plan was available and Respondent reiterated that it disagreed. Respondent asked if the Union would accept its medical plan proposal if the old United HMO was included. The Union responded by asking if Respondent would include the Belo 401(k) and pension plans. Respondent said no, and then the Union said no. Respondent declared impasse on the medical insurance issue and announced that it was implementing its proposal. There was no discussion concerning the me-too and status quo clauses, parking, vacations, or holidays at this meeting.

15 As planned, on December 10 Respondent distributed a memorandum to the unit employees. Respondent explained in the memo that Harvard had left the state and Blue Cross/Blue Shield would not continue its contract for the group of employees that it now covers. It urged the employees to select from United Healthcare PPO, United HealthCare HMO, and 20 CIGNA POS. It explained that the prescription drug program offered by the first and third choices was Merck-Medco and the dental insurance program was MetLife DPPO. This package of benefits, offered to the Union on November 12, was also offered to nonunit employees. The memo also advised the unit employees that a second open enrollment period would be offered later for the employees to choose other plans or options that might be negotiated with the 25 Union. It indicated that the employees must make their selection by December 22 and, unless they did so or opted to have no coverage, they would automatically be placed in the HMO and dental plans. The employees were to pay 15 percent of the costs of the plans that they selected and new employees became eligible on the first day of the month after 60 days of employment. Although Respondent contended that exigencies existed that required the implementation of 30 new health care plans by January 1, 2000, it never explained why the changes in the employees' share of the costs and eligibility were required at that time.

35 The next day the Union's consultant sent the Union a comparison of the benefit plans being offered by Respondent and the existing plans.

40 On December 17 the parties met again. At this meeting the Union presented three employees who had Blue Cross medical insurance coverage. They explained why it was important for them to continue to have that coverage. Respondent stated again that Blue Cross coverage was not available. The Union stated that it had been in contact with Blue Cross and believed that coverage was still available. Respondent said that they had several questions that they would like answered from Blue Cross concerning Blue Cross' willingness to continue coverage. The Union made note of the questions and later submitted them to Blue Cross in writing. The Union verbally modified its proposal concerning the eligibility to participate in the health plans and agreed to Respondent's proposal concerning the profit performance bonus 45 plan. The Union asked if Respondent was willing to move on its parking proposal; Respondent said no. There was no discussion about the status quo or me-too provisions, vacation, or holidays.

50 On December 22, Blue Cross responded to the Union's questions. Consistent with what it had earlier indicated, it offered to continue to have coverage for the unit employees, but only if Respondent agreed to offer two other designated plans to the employees as part of a package. That same day the parties met again and they discussed the letter from Blue Cross.

Respondent labeled the letter as vague and disingenuous; neither party's position changed. The Union asked if it would be receiving the information it had requested concerning parking; Respondent said it would provide the information soon. The Union asked if Respondent wanted to extend the contract; Respondent answered that it did not.

5

The next day Respondent did send the Union a letter concerning parking. It indicated that Respondent could not determine with finality the number of parking spaces available because it did not know if the Union would agree to the proposal. It told the Union that effective January 1, 2000 there would be no *contractual* free or discounted parking for unit employees who were not required to use their cars as a condition of employment. Finally, the letter indicated that if the Union accepted the new parking program it would be extended to unit employees 45 days after acceptance. Attached was another letter describing in detail the new parking and bus program. As indicated above, the new policy offered free parking for employees who were regularly scheduled to work at least 22 ½ hours per week and free monthly bus passes were also available to eligible employees. Parking would be available in three nearby parking lots, but there was a limited, though unstated, number of spaces available.

The ninth bargaining session was held on December 28. Respondent made some modifications to its earlier proposals. It then announced final offers on specific matters that it claimed raised issues of timeliness. These included medical and dental benefits, parking, holidays, vacation, profit performance bonus and the elimination of gainsharing, and the elimination of the "me-too" and "status quo" clauses. The Union presented a revised complete contract proposal that made substantive changes to its earlier proposals and incorporated the tentative agreements that the parties had made. The Union also asserted that there were unanswered information requests concerning medical benefits and parking. Respondent asserted that the detailed information that it already given to the Union was sufficient and that because of the details of the Union's request it still was working on a comprehensive response. Concerning parking, Respondent indicated that it was confident that under its proposal it would have enough free parking for all eligible unit employees so the Union did not need the information concerning the allocation of parking spaces. The parties then reached conceptual agreement on a contract extension to January 31, 2000, with each party preserving its position concerning the existence of impasse on the specific issues described above. Respondent also distributed a letter that it had sent to Blue Cross. That letter, responding to the December 22 letter described above, set forth Respondent's proposal to retain the current Blue Cross plan but not as part of a package with other Blue Cross plans. Blue Cross responded by letter dated January 6, 2000 rejecting Respondent's proposal.

The parties met again on December 29. The discussions at this meeting related primarily to the contract extension agreement that was ultimately reached.

40

On December 30 Respondent issued a memo to employees concerning its parking policy that stated:

All Guild employees who currently pay for parking through weekly payroll deductions shall continue to park in either the Fountain Street lot or the Biltmore Parkade after January 1, 2000. Payroll deductions will continue to be made weekly. Your company ID card will be programmed to permit you to enter either parking lot and choose a space.

50

This policy differed from both contractual terms and Respondent's earlier proposals. Schick testified that the effect of this memorandum was to maintain the status quo for already hired full-

time employees, but eliminated parking benefits for employees working less than 22.5 hours per week or who were newly hired. This policy would not be included in the contract.

5 On January 1, 2000,<sup>12</sup> Respondent made the following changes to the existing terms and conditions of employment. It deleted the "status quo" and "me too" provisions from the expired contract. It eliminated one of the floating holidays. It changed the yardstick for earning 3 weeks of paid vacation from 3 years of employment to 5 years.<sup>13</sup> It eliminated the 15 percent cap on increases in the employees' share of medical and dental insurance and made available to employees the medical plans described above. Employees were eligible to participate in 10 these plans on the first of the month following 60 days of employment instead of the first of the month following their hire date. Respondent promised to provide these plans or "substantially equivalent" ones, instead of an "equivalent" plan for the Blue Cross plan that was approved by a joint committee. Respondent eliminated the gainsharing program and replaced it with the profit performance bonus plan.

15 It is important to note that Respondent did not implement its entire contract proposal package nor did it implement all the matters that had been tentatively agreed upon with the Union. Sometime after January 1 Schick called McDonough and asked if other parts of the Belo package, such as flexible spending accounts, were available to unit employees. McDonough 20 answered that those benefits would be available to unit employees when a complete agreement was reached.

25 The parties resumed bargaining on January 11 with the assistance of a mediator; the entire meeting was off-the-record. They next met on January 17. They discussed an upcoming arbitration and then resumed bargaining with the mediator off-the-record.

30 On January 20 Respondent sent the Union a letter that modified its proposal. Respondent offered improvements in wage increases and life insurance but in exchange asked the Union to withdraw all pending grievances and charges. The parties discussed the latest proposal at the bargaining session that occurred on January 21 and the Union rejected it. After the parties discussed other issues they went off-the-record again.

35 The parties met again on January 24. At the meeting Respondent presented what it called its "last, best, and final offer." It added a number of improvements to its prior offer and the parties discussed the proposal. The Union agreed to take this proposal to the membership for a vote but with a recommendation of rejection. In early February the vote was taken and the membership rejected the offer by a vote of 354 to 28. Respondent did not implement its final proposal. On February 8 Respondent advised the Union that because the contract had expired, 40 the union-security, dues check-off, and arbitration clauses were no longer in effect.

45 I now assess whether Respondent actions on January 1, 2000 were lawful. The Board has held that an employer may implement the last offer it made to a union if the parties are at impasse after good-faith bargaining. *Taft Broadcasting Co.*, 163 NLRB 475 (1967). In this case it is clear that there was no overall impasse when Respondent made the changes on January 1, 2000. Indeed, as described below, Respondent contends that overall impasse first occurred on after the employees rejected Respondent's "last, best and final" offer in early February 2000. If there is no overall impasse, an employer generally may not implement

50 <sup>12</sup> All dates hereinafter are in 2000 unless indicated otherwise.

<sup>13</sup> Employees who had earned 3 weeks' vacation by June 30, 1999 did not lose that vacation time.

portions of its proposals while the parties are still engaged in collective bargaining. *Pleasantview Nursing Home*, 335 NLRB No. 77 (2000); *Bottom Line Enterprises*, 302 NLRB 373 (1991), *enfd.* 15 F.3d 1087 (1994). There are, however, circumstances where an employer may implement a portion of its bargaining proposals prior to overall impasse. Those circumstances exist when a union delays or avoids bargaining or when economic exigencies compel the employer to take prompt action. *Id.*; *RBE Electronics*, 320 NLRB 80 (1995). See also *Mackie Automotive Systems*, 336 NLRB No. 27 (2001)

Applying those standards I conclude that Respondent has shown that it needed to act promptly concerning replacing the Harvard plan. That plan was no longer available to unit employees through no fault of Respondent. The Union conceded that "(t)hese members MUST switch health plans—and the company under state rules must offer them an alternative before Dec. 31." Indeed, the General Counsel concedes as much in his brief. However, the General Counsel argues that Respondent was still not privileged to act concerning the Harvard plan because "the burden of loss of insurance falls on the employees, not the employer." I do not agree. The consequences of loss of medical insurance on employees is patently important, not only to the employees but to Respondent as well. Respondent's actions were necessary to allow the affected employees another choice in health care plans. The General Counsel also appears to argue that the parties were not at impasse on the replacement for the Harvard plan. The fact of the matter is that Respondent had to act before December 31, 1999, and it gave the Union notice and as much opportunity to bargain as circumstances allowed; the crisis concerning the Harvard plan first began evolving in October 1999, and it did not become a certainty until about December 2, 1999, when the Union dropped its proposal for that plan. I therefore conclude that Respondent did not violate the Act when it replaced the Harvard Pilgrim plan on January 1, 2000 with another health plan.

Respondent not only replaced that Harvard plan, it also replaced the Blue Cross plan that was part of the old contract. I agree with Respondent that Blue Cross was no longer willing to offer that plan, standing alone, to unit employees after December 31, 1999. I also agree that Respondent was not required to accept Blue Cross' package of plans that included the existing Blue Cross plan. Thus, consistent with my conclusion set forth above, Respondent was permitted to replace the Blue Cross plan to allow employees a choice of health coverage. However, the existing contract permitted Respondent to replace the Blue Cross plan, but only with an equivalent one as approved by a joint committee. This provision thus limited Respondent's options. Respondent has failed to show that the replacement plan was equivalent to the Blue Cross plan, as reviewed by a joint committee. Unlike with the Harvard Pilgrim Health Care plan, Respondent was aware of the problems concerning the Blue Cross plan months earlier. I therefore conclude that Respondent violated Section 8(a)(5) and (1) by failing to replace the Blue Cross plan with an equivalent one, as approved by the joint committee.

Respondent also replaced the existing United plan and the Delta Dental plan effective January 1, 2000. There is no evidence that those plans were no longer available or that there was any exigency that needed to be addressed prior to overall impasse. By unilaterally replacing the United plan and the Delta Dental plan, Respondent violated Section 8(a)(5).

In addition to replacing the existing plans, Respondent removed the cap on employees' future health care costs. It also modified the waiting period for enrollment into those plans. Respondent offered no justification for making those changes. By removing the cap on future increases of the employees' share of health care insurance costs and by modifying the waiting period for enrollment in the health care plans, Respondent violated Section 8(a)(5).

I have described above how effective January 1, 2000, Respondent also deleted the "status quo" and "me too"<sup>14</sup> provisions from the expired contract. Respondent argues that it needed to do so in order to enable it to make the other changes. I disagree. Nothing allowed Respondent to eliminate these provisions. By deleting the "status quo" and "me too" provisions from the expired contract, Respondent violated Section 8(a)(5) and (1). Respondent eliminated one of the floating holidays. It changed the yardstick for earning 3 weeks of paid vacation from 3 years of employment to 5 years. It changed the circumstances under which it could replace existing health plans from being able to replace the Blue Cross plan with one that was "equivalent" as approved by a joint committee to being able to replace all the plans with "substantially equivalent" plans without joint committee approval. Respondent eliminated the gainsharing program and replaced it with the profit performance bonus plan. Finally, Respondent changed parking benefits for employees working less than 22.5 hours per week or who were newly hired. In each of these respects, Respondent again violated Section 8(a)(5) and (1).

I have considered Respondent's arguments in reaching these conclusions. It first argues that *Bottom Line Enterprises*, supra, only prevents employers from *offensively* implementing parts of its proposals in a manner that gives an employer an unfair advantage. I find this argument unpersuasive for two reasons. First, nothing in that line of cases limits them in the manner suggested by Respondent. Second, I conclude that the proposals implemented by Respondent did give it an unfair advantage in bargaining with the Union. Except for the performance bonus plan, the Union was left with regaining the ground it lost by the disadvantageous provisions implemented by Respondent.

Respondent argues that the Union had a fixed position on retaining an indemnity plan such as Blue Cross as opposed to managed care plans. It also argues that the Union insisted on having the parking benefits spelled out in the contract. But even if this were the case it does not serve to justify Respondent's conduct on January 1, 2000. This is so because, as explained above, once overall impasse is achieved after good-faith bargaining Respondent would be free to implement its proposals despite the Union's "hard-line" positions on these matters.

Respondent also argues that impasse was reached after the Union members voted to reject the contract offer it made on January 24, 2000. I need not decide that matter, because if impasse were achieved on January 24, 2000, it would have allowed Respondent to make unilateral changes at that time; it does not privilege changes made when there was no overall impasse. I thus reject Respondent's arguments that it was entitled to act unilaterally in the manner that it did on January 1.

Returning to the fact of this case, the next time the parties met was on March 17. Although the meeting was off-the-record, Respondent presented the Union with a letter that it agreed could be made public. The letter announced a new retirement/savings plan as part of the Belo package called the STAR plan. This plan was not offered the unit employees.

The parties did not meet again until May 3. The Union presented a revised contract proposal. Schick also asked for information concerning attempts by government agencies and private corporations to purchase or otherwise acquire land that was being used by Respondent

---

<sup>14</sup> Respondent argues that the "me too" provision expired by its own terms after 1999. The Union argues to the contrary. The resolution of this issue depends purely on a matter on contract interpretation. This argument is better addressed in the first instance in the grievance and arbitration procedure should if it continues to be an issue.

for employee parking. This request was triggered by a report from a union that represented employees at a nearby hotel that the hotel was interested in acquiring one of those lots. Respondent rejected the Union's new proposal; in a letter dated May 23 Respondent asserted the Union's May 3 proposal only served to widen the gap between the parties and that Respondent stood by its January 24 proposal.

The parties next met on July 11. The entire session was off-the-record with the mediator present.

They parties met for bargaining only twice in 2001. On February 14 they met with the mediator and the Union made admittedly minor changes in its proposal in an effort to create some momentum towards reaching agreement. Very little progress was made at this meeting. They met again on November 14. The meeting broke down after little progress was made.

On February 20, 2002, Respondent sent the Union a letter revising its proposals and urging acceptance for a final agreement. That same day the Union responded by letter and recognized that Respondent's newest proposal was a positive step. The Union offered to bargain around the clock for 2 days to avoid the impending unfair labor practice hearing. By letter dated February 22, 2002, Respondent notified the Union that it interpreted the Union's response as a rejection of its latest offer; it declined the invitation to bargain around the clock. At my urging the parties met again with the mediator on the morning of February 27, 2002; they reported no progress had been made.

### C. Information Requests

An employer must furnish a union with requested information that is relevant in allowing a union to fulfill its duties as the exclusive collective-bargaining representative of the employees. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Certain types of information, including information that pertains to the negotiation of a collective-bargaining agreement, are presumptively relevant to fulfilling that role. *Kelly-Springfield Tire*, 266 NLRB 587, 592 (1983). Included in the duty to furnish information is the obligation to do so in a reasonable period of time. *Bundy Corp.*, 292 NLRB 671, 679 (1989). *DePalma Printing*, 204 NLRB 31 (1973). Whether information is provided in a timely fashion depends on the existing circumstances in each case, but the Board has held that a delay as short as 4 weeks can be unlawful. *USPS*, 308 NLRB 547, 550 (1992).

It will be recalled that on September 16, 1999, the Union requested the percentage of income each unit employee had elected to place in the 401(k) plan, the medical plan each unit employee had selected, whether the employee had individual or family coverage, whether each unit employee had individual or family dental insurance, and other information. On October 28, 1999 Respondent provided the requested information. Likewise, on October 6, 1999 the Union requested copies of medical plan documents for the insurance plans offered under the expiring contract as well as the insurance plans offered as part of the Belo package. On November 24, 1999 Respondent supplied the information to the Union. These information requests are obviously useful to the Union in determining its bargaining position. The response times on their face seem unreasonable under the circumstances. Respondent has not pointed to evidence that the information requests were so complex and time-consuming that its response time was justified. In its brief Respondent contends: "The parties were involved in intensive negotiations for a new collective bargaining agreement at the time the initial request was made which hampered the Journal's ability to immediately respond. Additionally, the Guild had made numerous information requests in the same time frame for which the Journal was diligently working to prepare a response." These assertions are not followed by a reference to the

transcript for supporting evidence and I conclude that the record does not support them. Certainly the parties had not begun negotiations at the time the Union made these requests and there is no evidence that Respondent had been overwhelmed with requests for information by early October 1999. By unreasonably delaying providing the information that the Union requested on September 16 and October 6, 1999, Respondent violated Section 8(a)(5).

As previously described, on November 19, 1999, the Union asked a number of questions about the parking proposal. On December 23, 1999, Respondent supplied the Union with a detailed written explanation of its parking proposals.<sup>15</sup> On December 28, 1999, Respondent provided the Union with the remaining information when it explained that it was confident that under its proposal it would have enough free parking for all eligible unit employees so the Union did not need the information concerning the allocation of parking spaces. I recognize that Respondent took more than a month to completely provide the requested information. However, the passage of time is not the sole measure of whether there has been an unlawful delay. In this case, unlike the instances discussed above, it was apparent that Respondent was still in the process of developing the details of its parking plan and that this contributed to the delay. Under these circumstances I conclude that the General Counsel has failed to show that this delay was sufficient to warrant a finding that Respondent acted in bad faith. In any event, I have concluded above that Respondent unlawfully delayed providing information to the Union and thus any finding has no effect on the remedy in this case. I therefore shall dismiss this allegation of the complaint.

As described above, the Union had also requested information on December 5, 1999 concerning medical and dental matters. Respondent replied by letter dated January 17, 2000, providing some but not all of the information and questioning the relevance of some of the requests. The Union replied by letter dated January 18, explaining the relevance. Respondent never provided the additional information. I conclude that the requested information was relevant and useful to the Union in assessing the merits and costs of the various insurance plans. In its brief Respondent concedes that it did not provide some of the information. However, it contends that the request was onerous and burdensome and therefore it was justified in failing to provide all of the information. I disagree. While the request was certainly extensive, the information was nonetheless relevant. Respondent made no attempt, either at the hearing in this case or during bargaining with the Union, to specifically explain any difficulties it was having in assembling the information. Finally, Respondent contends that this matter was rendered moot by its implementation of the health care plans on January 1, 2000, citing *C-B Buick v. NLRB*, 506 F.2d 1086 (3<sup>rd</sup> Cir. 1974). Because I have concluded that the January 1, 2000 implementation was unlawful, it follows that this argument must be rejected. By failing to fully provide the information requested by the Union on December 5, 1999, Respondent violated Section 8(a)(5) of the Act.<sup>16</sup>

Stephen Daigneault worked as a computer operator in the systems department.<sup>17</sup>

<sup>15</sup> I note that the complaint does not allege that the Respondent unlawfully delayed until December 23; rather the complaint alleges that the unlawful delay occurred on December 28. Interestingly, the General Counsel makes no argument in his brief to support this complaint allegation.

<sup>16</sup> In his brief the General Counsel argues that the delay in providing this information was also unlawful. However, the General Counsel did not make this allegation in the complaint nor did he advise Respondent of this contention at the hearing. I conclude that this issue was not fairly litigated and I declined to make any findings on it.

<sup>17</sup> Par. 39 of the complaint alleges that on about January 14, March 10, and April 26, 2000

Continued

During bargaining Respondent had proposed excluding the systems department from the bargaining unit and Daigneault was the last unit employee in that department. On January 3, 2000 Respondent transferred him to a nonunit position. The Union was concerned that Respondent was attempting to achieve through administrative transfer what it was unable to  
5 achieve at the bargaining table. In fact, however, the unit work that Daigneault had performed was eliminated and that position was never filled. On January 14, 2000 the Union requested descriptions of Daigneault's work duties both before and after his transfer, the duties that he performed prior to the transfer that he was still performing afterwards, his new job title and pay rate, and a list of any other employees performing the duties that he had formerly performed.  
10 The Union also filed a grievance over Daigneault's transfer. On March 28 Respondent replied that Daigneault worked as an IBM operator responsible for running IBM batch jobs, backing up the IBM databases and printing schedules and ad hoc reports and that after his transfer he worked as a support desk technician providing technical support to all departments through troubleshooting, hardware/software installation and customer service. Respondent indicated that Daigneault was not performing any of his former duties and no other employees were performing those duties either. Respondent provided Daigneault's title but refused to provide his salary, asserting that nonunit salary information was confidential. On March 10 the Union renewed its request for Daigneault's salary. Schick explained that the Union needed this information because a significant salary increase would tend to support "Respondent's" position that Daigneault was genuinely promoted. However, in fact, Respondent had never taken the position that Daigneault was promoted; rather it was Respondent's position that Daigneault had been transferred at his request. The Union also asked who was now responsible for backing up databases and printing schedules and ad hoc reports, regardless of which machine that work was done on. On April 24, 2000 reiterated that no one was performing the work of an IBM operator responsible for running IBM batch jobs, backing up the IBM databases and printing schedules and ad hoc reports and that the Union was not entitled to Daigneault's salary information. On April 26, 2000 the Union responded. It explained that it needed Daigneault's salary to determine the legitimacy of his transfer out of the unit. The Union filed a charge with the Board concerning Daigneault's transfer and that charge was deferred for resolution through the grievance and arbitration procedure. However, it was not until March 21, 2001 that the Union filed a grievance and at the same time renewed its request for the information described above. On April 13, 2001 Respondent asserted that it believed that its earlier answers provided the requested information. Respondent explained to the Union that no one was performing Daigneault's work because it was being performed by a system called Net Backup, a product of Veritas. It also renewed its assertion that Daigneault's salary was confidential, but it indicated that his pay increased slightly (less than 5 percent) upon his removal from the unit. The Union deemed these responses satisfactory.

The General Counsel argues that Respondent unlawfully delayed providing the Union with Daigneault's salary after he was removed from the unit. The General Counsel concedes, however, that because Daigneault was no longer in the unit, the Union was not presumptively entitled to receive that information. He argues that the Union demonstrated the relevance of the requested information because it "was ... relevant to a determination of the legitimacy of (Daigneault's) transfer." As indicated above, an employer's obligation to provide information is  
45 broad in scope. However, in this case it is difficult to see how Daigneault's salary after the transfer could impact on the issue of whether he continued to perform unit work. This, of course, occurred in a context where Respondent had otherwise provided all requested information on the issue. The Union argues that Daigneault's salary would shed light on

50 the Union requested information concerning Daigneault and that until about April 13, 2001, Respondent unlawfully delayed providing that information.

whether he was promoted. Indeed it might. But that is beside the point, because the relevant issue is not whether Daigneault was promoted, but whether he continued to perform unit work. Under these circumstances I conclude that the potential relevance of Daigneault's salary to the issue of whether he continued to perform unit work is too attenuated to support a finding that Respondent violated the Act when it failed to provide that information. I shall dismiss this allegation of the complaint.

It will be recalled that under the expired contract the unit employees participated in the gainsharing program that provided for a bonus and wage increase to employees if the economic performance of the newspaper reached certain goals set by Respondent. On June 22, 1999, the Union requested that Respondent provide it with the gainsharing goals for 1996, 1997, 1998, and 1999. It also requested Respondent's actual EBIT (earnings before interest and taxes) for 1996-1998. On October 15, 1999, Respondent provided the information. On February 4, 2000<sup>18</sup> the Union requested that Respondent provide it with the EBIT for Respondent's publishing division for 1999. On March 8, 2000, Respondent gave the Union the actual and budget EBIT gainsharing numbers for 1999 and also provided a brief description of the manner in which those figures were calculated. On March 10, 2000, the Union responded that it now needed:

For 1997, 1998, and 1999 the actual numbers, supporting documentation and the mathematical calculations (with numerical values stated) used to determine each of the components of the EBIT, the Newsprint Price adjustment, the Bonus awards, expense adjustment, and the "Adjusted" EBIT.

Schick explained that the Union needed that information because the goal for 1999 had been increased over the previous years and the employees had missed meeting the goal by a small amount. Employees were suspicious that Respondent had manipulated the numbers to avoid a payout. On April 24, 2000, Respondent replied that, as the Union already knew, senior management resolved the application and interpretation of the gainsharing program. Respondent also asserted that the request was burdensome and asked for an explanation in light of its response. On April 28, 2000, the Union explained that the gainsharing program was subject to the grievance and arbitration provisions of the contract and that the actions of senior management must be consistent with the contract. The Union indicated that it needed the information to determine whether the program has been applied in accordance with the collective-bargaining agreement. The Union asserted that Respondent had been able to make those calculations earlier between January 1 and the end of February 2000 and thus the figures should be readily available. The Union indicated a willingness to wait a reasonable period of time for the calculations from prior years to allow Respondent time to gather them. Respondent never provided this information.

I conclude that the General Counsel has shown that requested information for 1999 is relevant to ascertain whether Respondent properly determined the gainsharing pay out according to the standards that it had set. Employees were concerned that they had just missed achieving the goals and that Respondent may have made miscalculations to avoid the pay out. The Union was entitled to information to address the concern. The fact that the

<sup>18</sup> Par. 40 of the complaint alleges on about February 4, March 10, and April 26, 2000, the Union had requested information concerning the gainsharing program and that Respondent has unlawfully failed to provide that information.

request placed a significant burden on Respondent is no defense; instead it must bargain with the Union to address that problem. *Pratt & Lambert*, 319 NLRB 529, 534 (1995). I further conclude, however, that the information for years other than 1999 is not relevant. There was no contention that employees were concerned about the payouts for those years and the Union's request for that information was simply burdensome. Even as to the information for 1999, I shall not require Respondent to simply turn over that information but instead will allow it the opportunity to raise the burdensome nature of the request with the Union so that it can be addressed in the collective-bargaining process. By failing to provide the information requested by the Union on March 10, 2000 concerning gainsharing for 1999, Respondent violated Section 8(a)(5) and (1).

The parties use the words "small grid" to describe the pay differential that employees receive for working in a higher paying classification.<sup>19</sup> On March 10, 2000,<sup>20</sup> the Union asked Respondent to provide it with the frequency and amount of small grid payments made to each unit employee for 1998 and 1999. Schick explained that one of the issues during bargaining related to small grid payments made to employees who worked in higher classifications for extended periods of time and the Union needed the information to measure the scope of the perceived problem. On April 24, 2000, Respondent provided the Union with a list of the unit employees who received small grid payments and the total amount of the payment. It did not indicate the frequency of the payments. On April 26, 2000 the Union again requested the frequency of the small grid payments, clarifying that this meant the number of times each unit employee received such payments. Schick testified that Respondent never provided this information.

Respondent argues that information concerning the frequency which unit employees received small grid payments is irrelevant. I disagree. The Union felt that there was an issue concerning unit employees who worked in higher classifications for extended periods of time. The frequency unit employees received small grid payments is useful to the Union in determining the magnitude of the problem. By refusing to provide the Union with information requested on April 26, 2000 concerning the frequency that unit employees received small grid payments, Respondent violated Section 8(a)(5) and (1).

As stated, during bargaining Respondent had implemented the STAR plan for nonunit employees. On March 17, 2000, the Union sent Respondent a letter requesting seven specific items of information concerning the STAR plan.<sup>21</sup> Among the items, the Union requested that Respondent calculate the pension benefit estimate for every unit employee assuming they opted for the STAR plan and the pension benefit estimate for each unit employee if they remained in the current pension plan and retires at age 65. Schick testified that the Union needed the information because it was considering making a proposal that unit employees be able to participate in the STAR plan. On March 29, 2000 Respondent replied that the Union

<sup>19</sup> The collective-bargaining agreement provides, in pertinent part:

An employee in a lower classification assigned to and working as a substitute in any of the positions listed in the following table for one-half or more of his or her shift shall receive an extra per diem allowance as set forth in this table.

<sup>20</sup> Par. 41 of the complaint alleges that on about March 10 and April 26, 2000, the Union requested certain information concerning small grid payments and Respondent has unlawfully failed to provide that information.

<sup>21</sup> Par. 42 of the complaint alleges that Respondent unlawfully failed to provide this information and the information requested in a later letter dated March 30.

was not entitled to the information because the STAR benefits did not apply to unit employees and because the request was made in bad faith. As an example of the Union's bad faith Respondent pointed out that the Union had requested that Respondent calculate the pension benefit estimate for every unit employee assuming that they opted to retain the present pension plan and retired at age 65. The Union responded by letter dated March 30, 2000. It pointed out that at least six unit employees were covered by noncontractual pension and 401(k) plans by virtue of lifetime job guarantees. The Union pointed out that it was attempting to develop contract proposals that would give unit employees the benefits that Respondent had given to nonunit employees; information concerning changes in the benefits of nonunit employees was necessary so that it could decide whether to modify its proposals. The Union asserted that pension benefits are complex with the impact of changes not realized until long after decisions are made regarding modifications of existing benefits. This requires detailed information prior to making final decisions concerning those benefits. The Union pointed out that according to information that Respondent had provided on March 17 Respondent was making those calculations for about 9000 Belo employees. It argued that providing similar information to the 500 unit employees would be no great burden. Finally, as to the calculations that Respondent had asserted were evidence of bad faith, the Union asserted that it was entitled to the information as it relates to the existing pension plan. It asserted that employees are entitled to the information within 30 days under ERISA. The Union counterclaimed that Respondent's refusal to provide the information was evidence of bad faith. Much later, on February 25, 2001 the Union again asked for this information. In a letter dated February 28, 2001, Respondent stated that it has provided the Union with every piece of information that Respondent has provided to employees concerning pensions and 401(k) plans. It asserted that the Union has been provided all reasonable and relevant information that it needs to bargain on those issues. The letter ended:

Even though we think it is unnecessary, enclosed with this letter is a package of all the information that we currently distribute to newly hired, non-Guild employees describing in detail all of their retirement and 401(k) options.

Enclosed were 26 pages of information describing and comparing the plans and providing information on how employees can enroll. However, Schick testified that Respondent never provided the information that the Union had requested in its March 17, 2000 letter.

The General Counsel and the Union do not address this allegation in their briefs. Concerning the requests that Respondent calculate the pension benefit estimate for every unit employee assuming they opted for the STAR plan and the pension benefit estimate for each unit employee if they remained in the current pension plan and retires at age 65, Respondent argues that these requests were designed to harass Respondent during negotiations. Whether designed to harass or not, I conclude that Respondent was not required to make such calculations for the Union. Rather, the Union must make its own calculations. It may be entitled to the information needed to make such calculations, but there is no evidence that the Union lacked the raw information or that Respondent refused to provide it. Concerning the remaining items of information, Respondent asserted in its letter of February 28, 2001 that it had provided the Union with substantial information on this matter and it provided additional information at that time. Schick did not identify what particular items were not provided, and I do not credit his testimony that no information was provided.<sup>22</sup> Accordingly, I conclude that the General Counsel has not shown that Respondent failed to provide the additional items of information and I shall

---

<sup>22</sup> I note that there is no evidence that Respondent delayed in providing this information.

dismiss this allegation of the complaint.

5 On June 15, 2000, Respondent suspended unit employee Andrew McKnight for allegedly sexually harassing another employee. The suspension letter referred to an earlier incident that had occurred on March 15, 2000. In connection with the earlier dispute Respondent had given the Union McKnight's personnel file to examine. On June 20, 2000 the Union advised Respondent that it was investigating McKnight's suspension. It requested<sup>23</sup>:

10 A copy of any entries into any files or records maintained by the company on Andrew McKnight since August 1999.

A copy of any files or records maintained by the company on [the complaining employee].

15 Copies of any records, notes or correspondence related to the March 15 complaint by [the complaining employee] against Andrew McKnight, including but not limited to the allegation, investigation and findings of the investigation.

20 Names of any individuals questioned by the company in regard to the March 15 incident.

25 Copies of any records, notes or correspondence related to the June 9 complaint by [the complaining employee] against Andrew McKnight, including, but not limited to the allegation, investigation and findings of the investigation.

Names of any individuals questioned by the company in regard to the June 9 incident.

30 On July 10, 2000, the Union filed a grievance over the suspension. That same day the Union requested that Respondent give it:

35 Details of all sexual harassment and sex discrimination complaints received by the company since January 1995 that involve bargaining unit employees either as the person making the complaint or against whom the complaint was made. Please include the name of the person making the complaint, the name of the person against whom the complaint was made, the nature of the complaint and what, if any, action was taken by the company.

40 On July 20, 2000 Respondent answered the Union's letters. It explained that there were only two entries in McKnight's file since August 1999 and it gave the Union copies of those entries. Respondent asserted that the requested information concerning the two incidents was unnecessary and would violate the confidentiality of an employee who has come forward and raise concern for her own safety. It also asserted that past sexual harassment complaints were  
45 confidential and have no bearing on McKnight's case. On July 24, 2000 it was the Union's turn to respond. It asserted that it needed the information to determine the merits of the grievance and whether the suspension comported with the just cause standard for discipline. It pointed

---

50 <sup>23</sup> Par. 44 of the complaint alleges that on June 20, and July 10 and 24, 2000, the Union requested certain information concerning McKnight's suspension and that Respondent failed to provide that information.

5 out that it needed the information about other cases to determine whether Respondent has applied a uniform policy. The Union rejected a blanket claim of confidentiality and requested any information that Respondent had that indicates that McKnight or any other employee was a threat to the safety of the complaining employee. At the hearing, Schick admitted that there is a difference between sexual harassment and sex discrimination and that McKnight's case involved harassment and not discrimination. He argued that they both are part of the law involving sex discrimination. Neither party requested or offered to bargain over the issue of confidentiality. Respondent did not provide the information.

10 I shall first examine whether the requested information was relevant and then I will address whether the relevant information was exempt from disclosure because of concerns of confidentiality. As to the Union's June 20 request, the information concerning the March 15 incident is relevant; Respondent mentioned that incident in the letter suspending McKnight. The information concerning the June 9 incident that led to the suspension is patently relevant. By failing to provide that information Respondent violated Section 8(a)(5) and (1). However, the Union's request to review the complaining employee's file is patently overbroad. This person's salary, leave record, etc. is of no concern to the Union. At the hearing Schick attempted to narrow the scope of the request by indicating that the Union was seeking those records of the complaining witness that may show a pattern of making sexual harassment complaints. But Respondent is not required to read the Union's mind and courtroom testimony is not the time or place to belatedly convey that intent. I shall dismiss this portion of the allegations in the complaint. Moving on to the Union's July 20 request, the Union sought information concerning other sexual harassment cases. I conclude that this information is relevant to McKnight's grievance because the Union is entitled to determine whether the discipline was disparately imposed on him. *Star Tribune*, 295 NLRB 543, 549 (1989). But the Union also sought sexual discrimination cases. There is big difference between sexual harassment and sexual discrimination. I conclude that any connection between the two is too attenuated to support a finding of relevance. I shall dismiss this portion of the complaint. Lastly, I turn to the issue of confidentiality. I conclude that Respondent has raised a justifiable concern of the need for a measure of confidentiality. The very essence of sexual harassment cases often raise matters of a very private and potentially embarrassing nature. But the assertion of legitimate concerns for confidentiality does not privilege Respondent to simply refuse to disclose the information. Instead it must offer to bargain with the Union in an effort to reach an accommodation. *Roseburg Forest Products*, 331 NLRB 999 (2000). By withholding the information concerning other sexual harassment cases without offering to bargain with the Union concerning concerns of confidentiality, Respondent violated Section 8(a)(5) and (1).

40 On June 1, 2000, the Union reminded Respondent in a letter that at the May 3, 2000 bargaining session the Union had requested information concerning company-owned parking lots.<sup>24</sup> Schick testified that at the May 3 meeting he asked for information concerning attempts by government agencies and private corporations to purchase or otherwise acquire land that was being used by Respondent for employee parking. This request was triggered by a report from another union that represented employees at a nearby hotel that the hotel was interested in acquiring one of Respondent's lots. On July 18, 2000, the Union stated that the information it wanted was: "What offers of sale, purchase or acquisition have been made by firms or governmental entities for parking lots owned by the company?" Schick testified that Respondent never gave the Union that information.

50 <sup>24</sup> Par.45 of the complaint alleges that on about June 1 and July 18, 2000, the Union requested this information and that Respondent unlawfully refused to give it to the Union.

This request for information involved the matter of parking, a major area of contention during negotiations. The information is thus relevant. Respondent defends against this allegation by arguing that the major problem that the Union had with Respondent's parking proposal was the fact that it would be extra-contractual. Certainly this was the case. But this fact does not relieve Respondent of its obligation to provide otherwise relevant information. The Union is entitled to understand the context in which Respondent's parking proposal was made. The fact that Respondent was insisting that its parking policy not to be included in the contract only heightened the Union's need to know whether the parking lots would continue to be available. By refusing to provide this information Respondent violated Section 8(a)(5) and (1).

In the same June 1, 2000 letter described above the Union also reminded Respondent that at the May 3, 2000 meeting the Union had also requested information concerning digital convergence work.<sup>25</sup> Digital convergence refers to a process where Respondent placed barcodes in the newspaper that readers could scan and find links to advertisers and news stories. On July 18, 2000 the Union specified the information that it wanted:

How are barcodes prepared?  
 How are internet links created and managed?  
 Where does web material come from?  
 What job classifications are affected?  
 What training and equipment will be necessary?  
 What impact will it have on advertising incentives?  
 What impact will digital convergence have on compensations and wages?

Schick testified that the Union needed the information to ascertain its impact on unit employees. Schick testified that Respondent never provided this information. Schick testified that the digital convergence project ended in mid-2001.

McDonough admitted that he never gave the Union this information. He explained that he viewed the request as having been made in bad faith. He explained that the request involved unnecessary information, involved a lot of work, and concerned a short-lived project. Respondent repeats those contentions in its brief. I reject them. I do not conclude that this request was made in bad faith; its relevance is obvious. On its face the request does not appear burdensome and Respondent has not supported its bare contrary contention with evidence. Finally, although the project lasted only about a year, Respondent does not contend that at the time the Union requested this information, Respondent had already decided to terminate the project. Relevance is measured at the time of the request. By failing to provide the Union with this information, Respondent violated Section 8(a)(5) and (1). A remaining issue is whether Respondent should be ordered to provide this information despite the fact that the project has been completed and there is no evidence that it will be resumed. The General Counsel urges that I order Respondent to provide this and other information although he does not address this specific issue. Some of the requested information, such as how the barcodes were prepared, how the internet links were created and managed, where does web material come from, and what training and equipment would have been necessary, is now unquestionably moot. The remaining information might have relevance if there was evidence that lingering issues remained from Respondent's use of digital convergence. However, I note that the Union did not file any grievances concerning the use of digital convergence and there is no evidence that concerns have lingered after that project was terminated. Under these

<sup>25</sup> Par. 46 of the complaint alleges that on about June 1 and July 18, 2000, the Union requested this information and that Respondent unlawfully refused to give it to the Union.

circumstances I shall not require Respondent to provide this information to the Union.

The parties use the term "agency temporaries" to describe employees of agencies used by Respondent on a temporary basis. The collective-bargaining agreement allows Respondent to use agency temporaries to the same extent that it may use irregular extra employees.<sup>26</sup> Unlike irregular extra employees, agency temporaries are not paid by Respondent and are not part of the bargaining unit. During bargaining the Union sought to eliminate Respondent's ability to use agency temporaries. Article 3, section 7 of the contract required Respondent to provide certain information concerning agency temporaries. Schick testified that the practice developed that Respondent provided the Union with this information in the same way as it provided information concerning irregular extra employees. On May 25, 2000, the Union sent Respondent a letter stating that it had learned that an agency temporary employee was being used in the news department. The Union requested information on this matter as required by article III of the contract. On July 18, 2000 the Union, in a letter to Respondent,<sup>27</sup> stated:

The Guild had heard reports from employees that agency temporary employees are being used in the bargaining unit position beyond those that have been reported on the irregular extra reports provided by the company.

Please provide the Guild with a list of any and all individuals provided by employment agencies to work in bargaining unit positions since January 2000. Also please provide the reason each employee was used and the amount the Company paid for each employee.

Schick testified that Respondent began providing the information prospectively and made a written representation that no agency temporaries had been used prior to a certain point, but he did not remember the precise response. McDonough testified that he regularly supplied the Union with irregular extra reports that disclosed the name of the irregular extra or temporary employee, the reason that they were used and the hours that they worked. He testified that the information the Union was requesting had already been supplied to it in the form of the irregular extra reports.

On this issue, I credit McDonough's testimony. Schick's testimony appeared hesitant and uncertain. No evidence was introduced to contradict McDonough's testimony. The Union does not address this allegation in its brief. The General Counsel, in his brief, does not appear to challenge McDonough's testimony but instead argues that McDonough failed to advise the Union that it already had the information. However, Respondent was under no legal obligation to do so. I therefore conclude that Respondent has supplied the Union with the information it sought, and I shall dismiss this allegation of the complaint.

Respondent has a program that pays employees in the advertising department additional money when certain financial goals are met. The expired contract provided that Respondent had the "exclusive and unilateral right to institute, modify, suspend, or terminate

<sup>26</sup> Irregular extras are a type of temporary employee too. However, in fact about 15 irregular extras work for Respondent each week, almost every day; some have been employed by Respondent for years.

<sup>27</sup> Par. 47 of the complaint alleges that on July 18, 2000 the Union requested information agency temporaries employees by Respondent and the Respondent unlawfully refused to provide that information.

sales incentive plans at any time" and that the Union had recourse to the grievance procedure "only concerning calculation of incentive compensation." On September 8, 2000 the Union sent Respondent a letter indicating that it had learned that two unit employees would not be paid advertising incentives for the period of time that they were employed that year. The Union requested:<sup>28</sup>

5

- An explanation of why these employees have not been paid incentives.
- A list of all other sales employees who worked in 2000 and have not been paid incentives
- A copy of all incentive plans that were in effect in 1999 and 1998.

10

Schick testified that the Union needed this information to determine whether the payouts were made in accordance with the program and to determine whether there had been changes in the program. He testified that Respondent never provided this information.

15

On January 25, 2001, the Union informed Respondent that several advertising department employees had expressed concerns regarding the operation of the advertising incentive program.<sup>29</sup> The Union asked for:

20

The incentive goals for each group or segment for the year 2000 and 2001.

The eligibility requirement for individuals to qualify for incentives in effect for 2000 and 20001.

25

A copy of any policy or procedure regarding the assignment of new accounts to a particular salesperson or segment.

30

A copy of any policy or procedure regarding how long an account must be inactive before it can be assumed by a different sales person.

The procedures for resolving dispute[s] between salespersons over who handles particular accounts and receives credit for them toward incentive earnings.

35

On February 13, 2001 Respondent provided the Union with copies of the incentive plans for 2000 and 2001. This effectively provided the information in the first two items in the Union's January 25 letter. Relying on the contractual language set forth above, Respondent refused to provide any additional information. Respondent asserted that that information was unrelated to the actual calculation of incentive compensation but rather dealt with the management function of assigning accounts. The Union replied on February 23. It asserted that the information that Respondent had not supplied was necessary to determine if employees had been correctly paid and therefore related to the "calculation of incentive compensation". The Union also asserted that because the parties had been negotiating concerning the advertising incentive program, the Union needed the information in order evaluate its bargaining position.

40

45

---

<sup>28</sup> Par. 48 of the complaint alleges that on September 8, 2000, the Union requested information regarding advertising incentive pay and that Respondent unlawfully failed to provide this information.

50

<sup>29</sup> Par. 53 of the complaint alleges that on January 25, 2001, the Union requested information concerning this program and the Respondent failed to provide it.

I agree with the Union on both counts. The requested information was necessary, in a broad sense, for the Union to determine whether the employees were correctly paid according to the system Respondent had designed. In addition, the parties remained in negotiations and simply because the Union had agreed in the past to allow Respondent broad discretion in the developing and implementing this program does not mean that it could not change its mind and seek to limit Respondent's discretion in future contracts. By failing to provide the Union with the requested information, Respondent violated Section 8(a)(5) and (1).

On October 26, 2000 the Union advised Respondent that employees had received 401(k) statements for money that was placed in a fund account outside the 401(k) plan and that employees were having difficulty transferring the money back to their accounts in the 401(k) plan.<sup>30</sup> The Union requested an explanation for the origin of this money and how it was placed in accounts outside the Union's 401(k) plan, a list of all present and former unit employees that the situation applied to, and an explanation of the steps Respondent was taking to transfer the money to the proper accounts. On November 15, 2000, the Union renewed its request for that information. The Union claimed that when employees tried to transfer the money from the fund to the Union's plan they were told by the fund that the Union had to agree to the transfer. The Union asked what it needed to do to facilitate the transfer. Additionally, the Union asked for the name, address, and telephone number of the appropriate fund officials who could provide the Union with information concerning the origins and solutions to the situation. On February 28, 2001, Respondent gave the Union this information. It also explained that some money had inadvertently been placed in the fund and that all misplaced money had been transferred into proper accounts. McDonough explained that he looked into the matters raised by the Union's requests and discovered that there was a problem. The matter was resolved sometime after November 15, 2000 after frequent contacts with the benefits manager in Dallas, Texas. Because he had other responsibilities and priorities and because he had resolved the matter, he did not respond until February 28, 2001.

The General Counsel concedes that Respondent had corrected the problem some time before the end of the year. I infer and conclude that the Union became aware of this at the same time. Of course, Respondent must supply information directly to the Union. But under the circumstances here where Respondent effectively resolved the underlying problem and the employees and Union became aware of that, it seems hyper technical to find a violation based on a delay in formally replying to the Union. I also note that I have elsewhere concluded that Respondent has unlawfully delayed in providing information to the Union and I shall order that they cease doing so in the future. Thus, resolution of this issue has no impact of the remedy in this case. Under these circumstances, I shall dismiss this allegation of the complaint.

On October 30, 2000, the Union claimed that Respondent had ceased notifying the Union when employees began and ended leaves of absence.<sup>31</sup> The Union requested that Respondent resume the notification. The Union also requested the names of all employees who had taken leave since January 2000, when the leave began, when it ended, and what type of leave was taken. In addition, the Union requested the names of all unit employees who have

<sup>30</sup> Par. 49 of the complaint alleges that on October 26 and November 15, 2000, the Union requested information regarding the unit employee 401(k) plans and that Respondent unlawfully delayed providing that information until February 28, 2001.

<sup>31</sup> Par. 50 of the complaint alleges that on October 30 and November 15, 2000, the Union requested information regarding leaves of absence and long-term disability payment and that Respondent unlawfully failed to provide that information.

5 received long-term disability insurance payments since January 1997, their weekly rate of pay at  
the time they went on long-term disability, and the monthly benefit paid while on long-term  
disability. Respondent answered on November 13, 2000. It asserted that it was under no  
obligation to notify the Union when an employee begins and ends a leave of absence. Schick  
testified that he understood this to mean that Respondent was asserting that under article III of  
the contract it had no obligation to provide that information. Respondent also asserted that it  
would be time consuming and burdensome to provide the requested information. It asked the  
Union to describe why the information was required in such detail. On November 15, the Union  
replied. It asserted that Respondent had provided the leave of absence information in the form  
10 of payroll memoranda, described below. Schick testified that Respondent had provided this  
information to the Union in the form of the payroll memoranda and that had Respondent  
continued to give the Union those memoranda this information request would have been  
unnecessary. As to the long-term disability information, the Union explained that it was needed  
15 in connection with a pending grievance concerning a claim that an employee's long-term  
disability benefits were miscalculated. The Union said that only a handful of employees had  
received this benefit since 1997 and therefore the request was not burdensome. By December  
11, Respondent acknowledged that it had made an error in calculating the grievant's long-term  
disability payments and it rectified the matter. Schick admitted at trial that at that point the  
Union no longer needed the information concerning employees other than the grievant. Schick  
20 testified that he did need the information concerning the grievant to determine if Respondent  
correctly paid him. But he also admitted that so far as he knew the grievant was correctly paid  
after the resolution of the grievance, but that Respondent never actually provided the Union with  
the numbers.

25 I note that the Union does not specifically address this allegation in its brief. As to the  
information concerning use of leave, Respondent argues that this matter "is another iteration of  
the notion that the Journal was obligated to provide the payroll memoranda ... ." I agree. As  
more fully described below, I resolve that issue and order Respondent to resume supplying the  
information contained in the payroll memoranda. I shall therefore dismiss this portion of the  
30 allegation, but only because it is effectively subsumed within a broader allegation of the  
complaint. As to the information concerning long-term disability payments, the matter was  
effectively resolved by December 11. The General Counsel is quite correct when he argues  
that the relevance of the information must be tested at the time it is made. He also properly  
argues that a subsequent resolution of the underlying grievance does not moot an otherwise  
35 unlawful failure to provide information. But here the resolution of the grievance followed in short  
order after the request for information. The matter was resolved before Respondent's failure to  
provide the information had ripened into an unlawful act. As noted, Schick testified at trial that  
the Union needed the information, at least as it pertained to the grievant, to determine if he had  
been properly paid. Indeed, if the Union wanted to ascertain the accuracy of the payment it  
40 would be entitled to the information. But based on my observation of the demeanor of the  
witness as well as attendant circumstances, I conclude that Schick's testimony in this regard  
was created after the fact for trial purposes and I do not credit. Under these circumstances I  
shall dismiss this allegation of the complaint.

45 On November 8, 2000,<sup>32</sup> the Union requested information concerning each of the  
medical and dental plans being offered to employees for the year 2000. The Union requested  
copies of the insurance booklet and renewal summaries for each plan, a list of all doctors,

50 <sup>32</sup> Par. 51 of the complaint alleges that on this date the Union requested information  
regarding the medical and dental plans offered to employees and that Respondent unlawfully  
delayed providing that information until July 13, 2001.