

BPS Guard Service, Inc. d/b/a Burns International Security Services and International Union, United Plant Guard Workers of America (UPGWA). Cases 33-CA-8548, 33-CA-8568, 33-CA-8648 (formerly 12-CA-13242)

December 31, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On January 30, 1990, Administrative Law Judge David L. Evans issued the attached decision. The Respondent filed exceptions and a supporting brief, the Union filed an answering brief, and the General Counsel filed a brief in support of the judge's decision. The General Counsel also filed cross-exceptions and a supporting brief to which the Charging Party filed a brief in support and the Respondent filed a response brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by a bad-faith refusal to meet for collective bargaining at a location reasonably close to a unit in Cordova, Illinois. He also dismissed parallel 8(a)(5) allegations concerning units in Clinton, Illinois, and Crystal River, Florida. We adopt the finding of a violation and reverse the dismissals for the reasons set forth below.

A. Facts

The Respondent's utilities division provides guard services to operators of nuclear powerplants at various locations throughout the country. At each of the three facilities at issue in this consolidated case the employees are represented by the Union and a constituent local. In August 1988 the Respondent and Local 206 began negotiations for a successor collective-bargaining agreement covering the Cordova, Illinois unit. In December 1988 the Respondent granted initial recognition to the Union for the units in Clinton, Illinois, and Crystal River, Florida, and began discussions with the spokesmen of Locals 235 and 604, respectively, about the scheduling of negotiating sessions. At all times and at all three locations the Respondent was

represented by the utilities division's labor relations manager, Guy Thomas.

The Respondent neither owns nor operates the powerplants in question and none of them has on-site meeting facilities available to the parties for collective bargaining. The Cordova plant is approximately 15 miles from the nearest towns with appropriate meeting facilities (the Quad Cities) and approximately 160 miles from Thomas' office in Lisle, Illinois. The Clinton plant is approximately 30 miles from the nearest appropriate meeting place (Bloomington) and approximately 150 miles from Lisle. The Crystal River plant is, at most, approximately 10 miles from an appropriate meeting place (Homosassa Springs) and approximately 90 miles from the Orlando airport.

As the judge found, Thomas informed Ronald Warfield, the Union's chief negotiator at both Cordova and Clinton, that the Respondent would meet for collective bargaining *only* at a location which required each party to travel an equal distance. Accordingly, for the Cordova unit Thomas proposed locations (Lasalle, Rockford, and Peoria) whose distances from the Cordova plant range from 90 to 125 miles. For the Clinton unit he proposed meeting in Pontiac which is 75 miles from the plant. With respect to scheduling negotiations for the Florida unit at Crystal River, Thomas informed Gerry Hartlege, the Union's chief negotiator, that the Respondent's standard of "equal travel distance," already invoked in the Illinois setting, required in this instance meeting halfway between the plant and the Orlando airport. That location (Leesburg) is approximately 45 miles from the plant.

The judge found that the Respondent first asserted its purported right to insist on equal travel burdens in September 1988 with respect to the Cordova negotiations. No further meeting date was scheduled or held until the Respondent relented from this position. Following the Union's filing of a refusal to bargain charge on December 14, 1988, the Respondent agreed, on February 23, 1989, to meet with the Union in the Quad Cities. The parties met there on March 9, 1989.

The judge also found that the Respondent and the Union began discussions on December 30, 1988, concerning the Clinton negotiations. They agreed then to meet on January 27, 1989. The Respondent immediately took the position that any meeting site had to conform to the equal travel requirement it was seeking to impose at Cordova. It was not until after the Union filed an 8(a)(5) charge that the Respondent agreed to hold the scheduled January 27 meeting at Bloomington, as proposed by the Union. A similar sequence of events obtained with respect to the Crystal River negotiations. The judge found that the parties agreed on January 5, 1989, to meet on February 8-9. But, only after the Union had filed an unfair labor practice charge did the Respondent agree to conduct the sched-

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

uled February meeting at Homosassa Springs rather than halfway between the plant and the airport to which Thomas would travel from division headquarters.

B. Analysis

The judge found that the Respondent acted in bad faith by insisting that the Union travel further from each of the respective plants than the closest reasonable location proposed by the Union as a site for collective bargaining. In determining whether the Respondent had met its 8(d) obligation to “meet at reasonable times and confer in good faith,” the judge relied on the Board’s historic policy of placing central emphasis on the locale of the represented employees.

The judge acknowledged the principle, stated by the court in *NLRB v. Lorillard Co.*,² that an employer’s bargaining obligations under the Act require that he “make his representatives available for conferences at the plant where the controversy is in progress” and confer “at reasonable times and places.” Also central to the judge’s analysis was the Board’s most recent discussion of this issue in *Tower Books*.³ In that case the Board emphasized that it does not advocate a per se approach in deciding where bargaining should take place. Rather, it considers all the relevant circumstances. The Board found an 8(a)(5) refusal to make a reasonable and sincere effort to meet for collective bargaining where the company failed to provide an “overriding reason compelling negotiations” at its proposed bargaining site located far from the affected union and employees. It was this failure combined with the company’s “intransigent insistence” on that distant location that led the Board to characterize its actions as a “stratagem to delay or avoid bargaining” and thus a violation of Section 8(a)(5).

The judge acknowledged that the additional travel distances which the Respondent sought to impose here are much shorter than the 700-mile trip that the respondent in *Tower Books* attempted to require of the union as a condition for bargaining. However, the judge also stressed that the Respondent, after conceding that some travel by Thomas would be necessary, failed to substantiate the *Tower Books* defense of showing reasons which would “compel” negotiations at the locations it insisted on. The Respondent does not cite any authority for its “half-way rule” and, as noted by the judge and reluctantly conceded by the Respondent in its exceptions, none exists. We agree with the judge that the Respondent’s proposals were punitive, because their sole purpose was to force on the Union and its bargaining committee members, at all three units, travel time and expenses equivalent

to that which Thomas would incur when meeting away from his office in Lisle, Illinois. We further agree with the judge’s finding that the bargaining tactic with respect to selection of meeting sites was designed and implemented not to achieve agreement through accommodating legitimate needs of one or both parties, as sanctioned by *Tower Books*, but rather to delay or avoid bargaining altogether.⁴

However, after his finding of bad-faith efforts to delay or avoid bargaining at all three locations, the judge continued his analysis by distinguishing between the Respondent’s actions at Cordova on one hand and at Clinton and Crystal River on the other. He focused on the presence or absence of *actual* delay. He found an 8(a)(5) violation at Cordova because he found that about 3 months of the 5-month delay in resuming bargaining for the Cordova unit is directly attributable to Thomas’ insistence⁵ that negotiating sessions be held at sites remote from the plant’s immediate vicinity. The judge dismissed the allegations with respect to Clinton and Crystal River because, despite the Respondent’s continued use of the equal distance tactic, bargaining for each of these two units did begin on the day originally agreed on by the parties. Thus, no actual delays took place.

We agree with the judge that the Respondent violated Section 8(a)(5) in delaying the Cordova negotiations by means of its “bad faith contentions that the Union should incur unwarranted expense by traveling to remote locations.” We find, however, contrary to the judge, that the Respondent’s lack of success in actually delaying substantive negotiations for the Clinton and Crystal River units beyond the originally agreed-upon starting dates should not preclude the Board from finding 8(a)(5) violations with respect to these bargaining obligations as well.

The key to finding an unfair labor practice in the Respondent’s actions with respect to the units at Clinton and Crystal River is its overall effort, undertaken in bad faith, to thwart the collective-bargaining process by intransigently refusing to meet with the Union in a reasonable place. First, as the judge emphasized in the remedy section of his decision, Thomas’ written communications with the Union and later with the Regional Directors after charges were filed made it clear that it was the Respondent’s *national policy* to insist on the equal travel condition in selecting negotiating

⁴We find it unnecessary to adopt the judge’s characterization of the language in Thomas’ November 15, 1988 letter to Warfield.

⁵Thomas’ letter of November 15, 1988, to Warfield stated in part:

With respect to the meeting location, it is and remains the Company’s position that we are required by requisite labor laws to meet in a reasonable and mutually acceptable location for the purpose of collective bargaining agreements. . . . It is Burns’ position that equal travel distance between the parties is an inherent criterion in establishing a reasonable and mutually acceptable location.

²117 F.2d 921, 924 (6th Cir. 1941); revd. on other grounds 314 U.S. 512 (1942).

³273 NLRB 671, 672 (1984), enf. mem. 772 F.2d 913 (9th Cir. 1985).

sites.⁶ Second, the delay caused by the Respondent's having invoked that policy at Cordova was both ongoing and well known to the union representatives for the Clinton and Crystal River units when the Respondent later sought to impose the equal travel condition in those negotiations. Third, the Respondent did not yield and finally agree to meet reasonably near the Clinton and Crystal River units until after it had been served with unfair labor practice charges filed by the Union. In these circumstances we conclude that the Respondent's brinksmanship with respect to the intended impact on negotiations of its equal travel stratagem also supports findings of 8(a)(5) violations at Clinton and Crystal River.

AMENDED REMEDY

The Respondent excepts to the judge's extending the breadth of the cease-and-desist provision of his recommended Order beyond the three specific sites at issue here, so that it covers *all* of the Respondent's facilities nationwide. We find merit in the Respondent's exception. This extraordinary remedy is not warranted because it has not been shown that the Respondent has previously demonstrated a general disregard for employees' fundamental statutory rights with respect to the particular unfair labor practice found here. In the absence, therefore, of a showing that the Respondent at this point has a proclivity to violate the Act, we shall modify the recommended Order (which includes an affirmative order to bargain), so as to limit its coverage to the sites at Cordova, Clinton, and Crystal River.

AMENDED CONCLUSIONS OF LAW

Substitute the following for paragraphs 3 through 6 of the judge's conclusions of law.

"3. Each of the following units is appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time guards employed by the Respondent at its client, Quad Cities Nuclear Generating Station, in Cordova, Illinois; but excluding all office clerical employees, professional employees and sergeants and lieutenants and other supervisors as defined in the Act, and all other employees.

All full-time and regular part-time armed and/or unarmed security officers within the meaning of Section 9(b)(3) of the Act, employed by the Respondent at Clinton Nuclear Power Station in Clinton, Illinois; but excluding all other employees, professional employees, office clerical em-

ployees, training coordinator and supervisors as defined in the Act.

All full-time and regular part-time nuclear security officers, watchpersons and firewatch persons employed by the Respondent, who are assigned to work at the Crystal River unit 3 Power Plant; excluding all clerical employees, captains, lieutenants, and all supervisors as defined in the Act.

"4. At all relevant times, the Union, along with a constituent local union, has been the exclusive collective-bargaining representative of the employees in each of the three units as follows: Cordova (Local 206); Clinton (Local 235); and Crystal River (Local 604).

"5. The Respondent has failed to bargain in good faith with the Union and has thereby violated Section 8(a)(5) and (1) of the Act by refusing to meet with the Union for purposes of collective bargaining at a place reasonably close to the location of each of the three bargaining units found appropriate."

ORDER

The National Labor Relations Board orders that the Respondent, BPS Guard Service, Inc. d/b/a Burns International Security Services, Lisle, Illinois, its officers, agents, successors, and assigns, at its facilities in Cordova and Clinton, Illinois, and Crystal River, Florida, shall

1. Cease and desist from

(a) Refusing to bargain collectively with International Union, United Plant Guard Workers of America (UPGWA) and its appropriate constituent local union by refusing to meet for the purposes of collective bargaining at a place reasonably close to the location of the bargaining unit. The bargaining units are:

All full-time and regular part-time guards employed by the Respondent at its client, Quad Cities Nuclear Generating Station, in Cordova, Illinois; but excluding all office clerical employees, professional employees and sergeants and lieutenants and other supervisors as defined in the Act, and all other employees.

All full-time and regular part-time armed and/or unarmed security officers within the meaning of Section 9(b)(3) of the Act, employed by the Respondent at Clinton Nuclear Power Station in Clinton, Illinois; but excluding all other employees, professional employees, office clerical employees, training coordinator and supervisors as defined in the Act.

All full-time and regular part-time nuclear security officers, watchpersons and firewatch persons employed by the Respondent, who are assigned to work at the Crystal River Unit 3 Power Plant; excluding all clerical employees, captains, lieutenants, and all supervisors as defined in the Act.

⁶The judge found that Thomas never qualified these statements by confining his assertions to the three units involved in this case or even to the Respondent's division which he represented in labor relations.

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

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

(a) On request, bargain in good faith with the Union at a reasonable location near each of the three facilities with respect to collective-bargaining agreements covering employees in the respective appropriate units set forth above and, if understandings are reached, embody such understandings in signed agreements.

(b) Post at its facilities in Cordova and Clinton, Illinois, and Crystal River, Florida, copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.⁸

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with International Union, United Plant Guard Workers of America (UPGWA) and its appropriate constituent local union by refusing to meet for the purpose of collective bargaining at a place reasonably close to the location of each of the following three bargaining units:

All full-time and regular part-time guards employed by us at our client, Quad Cities Nuclear Generating Station, in Cordova, Illinois; but excluding all office clerical employees, professional employees and sergeants and lieutenants and other supervisors as defined in the Act, and all other employees.

⁷If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

⁸If the owners of any of the properties where the respective bargaining unit employees work will not allow posting in conformity with this Order, the notice shall be mailed to each affected employee.

All full-time and regular part-time armed and/or unarmed security officers within the meaning of Section 9(b)(3) of the Act, employed by us at Clinton Nuclear Power Station in Clinton, Illinois; but excluding all other employees, professional employees, office clerical employees, training coordinator and supervisors as defined in the Act.

All full-time and regular part-time nuclear security officers, watchpersons and firewatch persons employed by us, who are assigned to work at the Crystal River Unit 3 Power Plant; excluding all clerical employees, captains, lieutenants, and all supervisors as defined in the Act.

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

WE WILL, on request, bargain in good faith with the Union at a reasonable location near each of the three facilities with respect to collective-bargaining agreements covering employees in the respective appropriate units set forth above and, if understandings are reached, embody such understandings in signed agreements.

BPS GUARD SERVICE, INC. D/B/A
BURNS INTERNATIONAL SECURITY
SERVICES

Judith T. Poltz, Esq., for the General Counsel.
Stewart J. Katz, Esq. (Keller, Thoma, Schwarze, Schwarze, DuBay, & Katz, P.C.), of Bloomfield Hills, Michigan, for the Respondent.
Scott A. Brooks, Esq. (Gregory, Moore, Jeakle & Heinen), of Detroit, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

DAVID L. EVANS, Administrative Law Judge. This case was tried before me on November 1-2, 1989, in Peoria, Illinois. The charges against BPS Guard Service, Inc. d/b/a Burns International Security Services (the Respondent) were filed by International Union, United Plant Guard Workers of America (UPGWA) (the Union). A consolidated complaint and notice of hearing (the complaint) issued on April 11, 1989, alleging that, by specified conduct,¹ Respondent had violated Section 8(a)(5) and (1) of the Act. Respondent duly filed an answer admitting jurisdiction but denying commission of any unfair labor practices.

On the entire record, and my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

¹The charge numbers and respective dates of filing are Case 33-CA-8548, on December 14, 1988; Case 33-CA-8648 (which was formerly Case 12-CA-13242), on January 11, 1989; Case 33-CA-8568, on January 12, 1989. A fourth charge, Case 33-CA-8590, was filed by the Union on February 2, 1989, and that charge was originally part of this case; however, the charge was withdrawn at trial, and the allegations based thereon were dismissed.

FINDINGS OF FACT

I. JURISDICTION

Respondent is, and has been at all times material, a corporation that maintains an office at Lisle, Illinois, and other places of business located, inter alia, at the Clinton, Illinois nuclear powerplant of Illinois Power Company, and the Cordova, Illinois nuclear powerplant of Commonwealth Edison Company, and the Crystal River, Florida nuclear powerplant of Florida Power Corporation. At each of these three locations, Respondent is engaged in the business of providing security guard services. During the 12 months preceding the issuance of the complaint, Respondent derived more than \$50,000 from Commonwealth Edison Company and Illinois Power Company for providing guard services within Illinois, and during the same period of time Respondent derived more than \$50,000 from Florida Power Corporation for providing guard services within Florida. Commonwealth Edison Company, Illinois Power Company, and Florida Power Corporation are employers who meet the Board's direct inflow and outflow jurisdictional standards. 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. *Facts*

Respondent provides guard services to all types of business entities nationwide. Concerned is Respondent's division, which provides guard services to nuclear power facilities throughout the nation. At 10 of these facilities the Union, along with constituent locals, represents the guard employees.

The specific operations out of which this case arose are three: two in Illinois and one in Florida. Respondent's Cordova, Illinois operation is at the Quad Cities Nuclear Generating Station. (The Quad Cities are Rock Island and Moline, Illinois, and Davenport and Bettendorf, Iowa.) Respondent's Clinton, Illinois operation is at the Clinton Nuclear Power Station. Respondent's Crystal River, Florida operation is at the Crystal River unit 3 powerplant.

Guards at each of these operations are represented by constituent locals of the Union: Local 206 at Cordova; Local 235 at Clinton; and Local 604 at Crystal River.

Respondent does not have any physical facilities at any of the three involved locations; Respondent's operations are performed entirely on the properties of the public utilities that own the powerplants. In the immediate geographic areas of the powerplants, neither the Union nor the Respondent has any offices or other places of business where bargaining could be conducted.

Guy Thomas is Respondent's labor relations manager; his office is in Lisle, Illinois, a western suburb of Chicago. The complaint alleges that Respondent, by Thomas, refused to meet with the Union at reasonable places for the purposes of bargaining for each of the three involved bargaining units.²

²These refusals are alleged to have occurred in the second half of 1988 and early 1989; accordingly, dates subsequently referred to are between September 1, 1988, and March 1, 1989.

1. The Cordova, Illinois unit

The Cordova facility is 15 miles from the Quad Cities; and the employees are often referred to by the parties as the "Quad Cities" unit. The location of the bargaining unit is about 160 miles from Thomas' office at Lisle.

In 1982 and 1983 bargaining for the Cordova unit was held in the Quad Cities area. In 1985, the parties met in Morris, Illinois, which is about 36 miles from Lisle, and 125 miles (or about three-fourths of the way across the State) from Cordova. The 1985 bargaining session produced a contract in 4 days. At the end of the bargaining, Union Representative John Baumler told Thomas that the Union's bargaining committee members were upset at having to come so far to bargain and would not do so again; Thomas shrugged and said nothing.

During the life of the 1985-1988 contract, the parties met several times for grievances and arbitrations in the LaSalle-Peru, Illinois area, which is about 60 miles from Lisle and 90 miles from Cordova; and once they met at Ottawa, Illinois (which resulted in about 16 more miles of travel to the Union and 16 less to Thomas).

At the expiration of the 1985-1988 contract in August, the parties met first for renewal negotiations at LaSalle on August 23-25. The bargaining was unsuccessful, and the parties parted without an agreement being reached or further negotiations scheduled.

Through no fault of Respondent, there were no negotiation sessions between August 26 and September 26.

On September 26, Ronald Warfield, director of the Union's region 4 and chief spokesman for the Union in the Cordova negotiations, wrote Thomas stating a desire to resume negotiations at Cordova (and another facility not involved) and adding:³

Furthermore, it is the Union's request that said meetings be held at each of the facilities or as near such facilities as possible, due to changed financial conditions of the Locals that makes it unreasonable and they can no longer afford lengthy travel assignments, overnight lodging, etc.

Also on September 26, Thomas sent a letter to Warfield. Thomas recites that, in a telephone call of September 21, Thomas had proposed meeting on October 13-14, but that Warfield had declined because of previous commitments. Thomas further recited that he had offered to meet for the Cordova negotiations on October 20, again in the LaSalle-Peru area. Finally, Thomas states that he had received no reply to this proposal, and he requested one.

On September 27, Thomas wrote to Warfield, first proposing to meet on October 10-11, then concluding:

With respect to a meeting facility, it is and remains the Company's position that we will meet in a reasonable, mutually agreeable location. With respect to the location, Burns would propose that we continue the practice of meeting in the LaSalle area. While I deeply regret the "changed financial conditions of the [Locals]" which you reference in your letter, I would remind you

³In this narrative there are extensive quotations of correspondence and the transcript. Where spelling and punctuation errors are obvious, I have corrected them without editorial indication.

that the location should be one that represents an equal travel distance for both committees. Accordingly, in order to insure that adequate arrangements are made, the Company will take measures to secure a meeting room at the LaSalle Holiday Inn on October 10–11, 1988. Please advise if the foregoing is acceptable.

On October 7, Thomas again wrote Warfield indicating that he had been informed by a mediator that the Union could not meet on October 10–11. Thomas then proposed November 14–15 and added:

Further, the sites proposed by the Union [apparently] through the mediator, Rock falls and Sterling, are unacceptable to the Company. In an effort to agree upon a reasonable site which is mutually acceptable to both Parties, the Company would propose meeting in the Peoria area.

Sterling/Rock Falls is 35 miles from Cordova. Peoria is 125 miles from Cordova and 225 miles from Lisle.

On October 26, Warfield wrote Thomas again. Warfield did not respond to the November 14–15 proposed meeting date, but did, again, ask that any future sessions be held nearby such facilities as possible, and again stated that the Union was making its request because of financial hardship.

On November 1, Thomas replied:

It is Burns' understanding of the law that we [must] meet in a mutually acceptable, reasonable location. The law, as understood by the undersigned, does not make any differentiation relative to the cash flow of a Union for its financial status or problems [related] thereto, real or perceived. Simply stated, any financial difficulties which this Local may be having does not serve as a practical or legal consideration as to a meeting location. It is Burns' position that the meeting place for the Quad Cities site should represent a relatively equal travel distance for the Parties. Accordingly, I would propose to recognize the Parties' practice at these negotiations of meeting in the LaSalle area.

Thomas then suggests that Warfield propose a meeting date in any future communication, and then he concludes:

So there is no misunderstanding, Burns' position was, is, and will continue to remain that we will agree to meet, in accordance with the law, in a reasonable, mutually acceptable location.

On November 7, Warfield responded to Thomas:

[T]he meeting dates of November 14 & 15, 1988 for Cordova, Il., were rejected by the Union whereas [sic] the company was wanting to meet in Peoria, Il. which [requires] further travel distance and needed time off from work to accomplish the same.

Warfield concludes his letter by asking Thomas for citation of any authority for Thomas' position that "equal travel distance" is a consideration in determining a reasonable location for bargaining.

On November 15, Thomas replied, first pointing out that Warfield had proposed no alternate location for a meeting on November 14–15, then:

With respect to the meeting location, it is and remains the Company's position that we are required by requisite labor laws to meet in a reasonable and mutually acceptable location for the purpose of collective bargaining agreements. This requirement is clearly set forth in the appropriate labor law and, I am sure, given your position of significant responsibility within the International Union, you have at least a modicum of understanding of the applicable labor laws. It is Burns' position that equal travel distance between the parties is an inherent criterion in establishing a reasonable and mutually acceptable location.

With respect to your request that I provide you with a reference to laws which I am relying upon, as I am aware that you have a law firm on retainer, I believe it would be presumptuous of me to provide you with advice in this area.

Thomas concluded his letter with:

In order to attempt to resolve this matter of the Quad Cities negotiations, the Company offers December 28–29, 1988, as dates to resume the Quad Cities negotiations. The Company would also propose the meeting be held at the LaSalle Holiday Inn.

By letter dated November 23, Warfield responded that "equal travel distance" was not a relevant consideration in determining the places of bargaining, and he again asked for citations to any authorities that held to the contrary. Warfield further asserted that negotiations should be "in an immediate area" such as Quad Cities or Sterling/Rock Falls, Illinois (as he had previously proposed through the mediator) or Clinton, Illinois (which is about 16 miles away from the Cordova worksite). Warfield also indicated that he was unavailable for negotiations, apparently anywhere, on December 28–29.

On December 2, Thomas replied, refusing again to cite any authority for Respondent's position, and proposing January 10–11 as dates for the next sessions, but also proposing that they be held in Rockford, Illinois. Rockford is 100 miles from Cordova and 110 miles from Lisle.

On December 5, Warfield replied to Thomas that the Union was available for bargaining on January 10 and 11, but that the Union would not agree to meet in Rockford and that the Union would take further action to resolve the issue.

On December 12, Thomas replied, first noting that the December 5 letter had not proposed an alternate location, then:

Burns advised you at the outset of this correspondence that, in view of the inequities involved in travel distances, the Quad Cities and the immediate surrounding areas are inappropriate meeting locations.

. . . .
In an attempt to try and resolve this matter, I would ask you to contact me as soon as possible in order that we can attempt to agree upon a site that represents an equal travel distance for the respective bargaining committees.

On December 14, the Union filed the charge regarding the Cordova matter.

On February 13, Warfield again asked for bargaining “at the facility or as nearby the facility as possible,” but he did not suggest a date.

On February 23, Thomas responded that, while Respondent would be “within its rights to await a decision by the National Labor Relations Board”:

[t]he Company will agree to meet in the Quad Cities area under protest. However, in doing so, it is expressly agreed and understood, that this action by the Company does not in any way constitute a waiver of its position in the matter of NLRB 33-CA-8548, and, as such, the Company reserves all rights and defenses thereto.

Thomas proposed meeting on March 9, which the parties did. The record does not disclose if a contract was reached.

2. The Clinton, Illinois unit

Respondent succeeded Pinkertons as the provider of guard services at the Clinton facility in December, and on December 21, by letter of that date from Thomas to Warfield, Respondent recognized the Union as the representative of the unit employees.

On December 30, there was a telephone conversation between Warfield and Thomas. Warfield was asked on direct examination and testified:

Q. Please go on and tell us what was said.

A. I proposed Bloomington, Illinois. Mr. Thomas said—proposed Pontiac, Illinois, and I informed Mr. Thomas that Pontiac, Illinois, didn’t have proper facilities to my knowledge to conduct proper negotiations.

And I asked why he wanted to go to Pontiac, and he said, “To cover my butt because of our attitude in Cordova.”

Q. And when you say “our attitude,” who does the “our” infer?

A. The Union’s attitude in Cordova had established a nearby facility [sic].

Q. Do you recall whether anything else was said during this conversation?

A. He then proposed Lisle, Illinois, and I told Mr. Thomas that was more ridiculous to the committee and Union and to confirm what his position was in a letter.

Bloomington is 30 miles from the Clinton facility and 125 miles from Lisle. Lisle is about 150 miles from the Clinton facility; Pontiac is 75 miles away from the Clinton facility, and about 100 miles from Lisle.

Thomas testified that he proposed Pontiac because he had heard that the Union had, at least once, met with Pinkertons in Pontiac. Pontiac, at the time of the December 30 conversation, had no meeting facilities, although there is no evidence that Thomas then knew that fact, independent of Warfield’s statement that he (Warfield) knew of no meeting places there.

Thomas denied that he told Warfield in the December 30 conversation that he was proposing Pontiac “[to cover my butt] because of [the Union’s] attitude in Cordova.” However, Thomas did not deny that Warfield had asked Thomas why he (Thomas) was proposing Pontiac, and he did not tes-

tify that he gave any response to the question, if it was not the response as described by Warfield. Because of this, and because Warfield impressed me more favorably, I credit Warfield’s account of the conversation.

Thomas did send a confirming letter, dated January 3, stating:

Specifically, at the outset of [the December 30] discussion, you proposed Bloomington, Illinois. As there exists no previously established practice between the parties relative to a meeting location, it is the Company’s desire that the travel distance of the parties reflect an approximately equal and like distance. Accordingly, the Company proposed Pontiac, Illinois. You advised that Pontiac, Illinois, was not acceptable to the Union. However, the Company will hold January 27, 1989, open in anticipation of resolving the issue of an acceptable meeting location.

By letter of January 11, Warfield responded, pointing out that Thomas had proposed Lisle, as well as Pontiac, and further objected to Thomas’ premise of “equal and like distances for the parties to conduct negotiations.” Warfield again proposed Bloomington as the site of negotiations.

Also, on January 11, Warfield and Thomas had another telephone conversation in which Thomas agreed to meet in Bloomington, but only if the Union would assume all administrative costs of typing and printing of any contract finally agreed on. Warfield said that he would get back to Thomas on that proposal.

On January 12, Warfield filed the charge over the Clinton bargaining.

On January 17, Thomas again wrote Warfield restating his conditional offer to meet in Bloomington and adding:

This offer was made, and, if accepted, will be done on a non-precedent setting basis. Simply stated, it will be agreed that the parties will not use or attempt to use the settlement of a location in this negotiation as precedent for other meeting locations between the parties.

On or about January 26, Thomas had a telephone conversation with the Regional Director. On that date, Thomas sent a confirming letter to the Regional Director stating:

[U]pon review of the geographic area involved in this case, a meeting location as initially proposed by the Company would not be conducive to the most effective manner of negotiations. Accordingly, the Company will agree to the Union’s proposed meeting location of Bloomington, Illinois. However, the Company is taking this action in order that the parties might commence the negotiation process for its bargaining unit members at the Clinton site.

. . . .

This action by the Company is done with the understanding that same is done without prejudice to the Company’s position in any other similar matter before the National Labor Relations Board and the Company does not, by this action, admit, agree, or indicate that its position in the instant case was violative of the Act. To the contrary, it is the Company’s position that it has,

throughout the events that precipitated this charge, acted in strict accordance and compliance with the Act.

Negotiations did commence on January 27, the date established in the December 30 telephone conversation between Thomas and Warfield according to the undisputed testimony of Thomas.

3. The Crystal River, Florida unit

Respondent also acquired the contract to provide guard services at the Crystal River, Florida powerplant in December 1988. By letter of December 30, which was addressed to Gerry Hartlage, director of the Union's region covering Florida, Thomas extended recognition and requested that Hartlage contact him for the scheduling of negotiations.

On January 5, Hartlage and Thomas had a telephone conversation. They agreed to meet on February 8 and 9, but there was no agreement as to place. Hartlage proposed the Holiday Inn in Crystal River. Then, according to the undisputed testimony of Hartlage:

He mentioned Orlando, and I told him that it was too far to go from Crystal River. That historically we had always negotiated at Crystal River or Homosassa Springs for Local 604 for the nuclear power plant there at Crystal River.

[He] said that he would agree to negotiate at Crystal River or Homosassa Springs on a non-precedent setting basis. And I rejected that offer. . . . I said to Mr. Thomas that the reason I could not sign a non-precedent setting letter was due to the fact that I knew that there [were] problems being had in [Illinois].

Mr. Thomas said that he needed a non-precedent setting letter. I said to Mr. Thomas, "well, I can't do that. I will be back in contact with you." We agreed to keep . . . the 8th and 9th [of February] open, until I could get back with him.

Hartlage testified that Leesburg, Florida, was also mentioned:

That came up through discussion of Orlando and the distance and Crystal River and Homosassa Springs and the distance from that area to Orlando. And I believe Mr. Thomas said that Leesburg looked to him to be about halfway.

The Crystal River powerplant is in the immediate area of the town of Crystal River, Florida. Homosassa Springs is about 10 miles from the plant. Orlando is 90 miles from Crystal River, and Leesburg is about half the distance between.

Finally, Hartlage testified that when he refused to send the "non-precedent setting" letter, Thomas replied that his (conditional) offer to meet in Crystal River or Homosassa Springs was off the table.

On cross-examination, Thomas was asked about his initial contact with Hartlage; he testified:

I had asked Mr. Hartlage to work out some type of meeting arrangement between the site and Orlando. Originally, I had proposed meeting in Orlando. I had

subsequently, to try to get a resolution, asked him to work out something between Orlando and the site.

Basically, it was about a seven and a half hour trip from Chicago, Lisle, to Crystal River. And I was trying to ask that that seven and a half hours be offset by the Union meeting me part of the way from the Orlando airport.

Scott Brooks is the Union's attorney. Brooks testified that he received a telephone call from Hartlage on January 5, and immediately thereafter he called Thomas. According to Brooks:

I told Mr. Thomas that I understood he had offered to Mr. Hartlage that Burns Security would negotiate the Crystal River contract in either Crystal River or Homosassa Springs on a non-precedent setting basis. And that the Union was prepared to accept that offer.

Mr. Thomas told me that Mr. Hartlage had rejected the offer, and the offer was "off the table." I then asked Mr. Thomas where he was prepared to negotiate a contract for the Crystal River facility. He told me Orlando, Winter [Garden,] or Leesburg . . . I then again suggested that the negotiations take place in Homosassa Springs or Crystal River which are immediately adjacent to the facility. Mr. Thomas told me that it was unreasonable for us to expect him to have to make the round trip from Orlando to there.

I asked him if Leesburg was as close to the facility as Burns was willing to go. Mr. Thomas responded something to the effect of, "Yes, let's see. Leesburg it is. We can beat a charge there."

Mr. Thomas then suggested to me that if I was unhappy with his decision that I file an unfair labor practice charge with the National Labor Relations Board.

Winter Garden is halfway between Leesburg and Orlando, and approximately 60 miles from Crystal River.

Thomas denied Brooks' testimony that he had stated that he could "beat" a charge if he agreed to Leesburg or that he suggested that Brooks could file a charge. However, Thomas appeared truthful as he gave that testimony, and I credit his testimony.

Thomas and Brooks had two telephone conversations on January 6. In the first, according to the undisputed testimony of Brooks:

Mr. Thomas suggested to me alternating sites for the negotiations for the Crystal River facility between Orlando and the Crystal River/Homosassa Springs, Florida, area. And I rejected that offer.

In the second conversation, Brooks proposed Leesburg, but on a nonprecedent-setting basis. Although the testimony is not clear, Thomas apparently agreed to Brooks' proposal at that time. However, Thomas later found out that there was no meeting space in Leesburg.

On January 11, the Union filed the charge over the matter.

On January 12, Thomas, in a telephone call to Brooks, proposed that the parties meet in Homosassa Springs for bargaining, but only if the Union assumed all administrative costs of preparing any contract reached. Brooks said he

would get back to Thomas on that proposal, but, at least according to this record, he did not.

On January 19, Thomas wrote Hartlage that his office had been unsuccessful in securing facilities in Leesburg and that his assistant had reserved a meeting room at the Sheraton Inn in New Port Richey. New Port Richey is about 45 miles from the Tampa airport, to which Thomas would have flown, and about an equal distance from Crystal River. There had been no prior contact with the Union about New Port Richey.

On January 26, Thomas wrote the Board's Regional Director:

[T]he Company will agree to the Union's proposed meeting location of Homosassa Springs, Florida. The Company is taking this action in order that the parties might commence the negotiation process for its bargaining unit members at the Crystal River site.

Then follows the same paragraph of the January 26 letter to the Regional Director, as quoted above, which states that Respondent's position was taken only because of a lack of facilities where Respondent had been proposing to meet and disavowing any implication that Respondent had violated the Act.

The parties did meet on February 9–10, as scheduled.

B. Analysis and Conclusions

Section 8(d) requires the parties "to meet at reasonable times and confer in good faith." Inherent in this duty to meet at reasonable times is a duty to meet at reasonable places. In determining what is a reasonable place, the Board has frequently stated that the paramount consideration is the locus of the bargaining unit. As was observed early in the history of the administration of the Act, in *NLRB v. P. Lorillard Co.*, 117 F.2d 921, 924 (6th Cir. 1941):

The collective bargaining features of the statute cannot be made effective unless employer and employees cooperate in the give and take of personal conferences. . . . [The employer] must make his representatives available for conferences *at the plant where the controversy is in progress*, and at reasonable times and places so that personal negotiations are practical. [Emphasis added.]

This language, strictly construed, would require meetings at the nearest place physically possible. However, in *Tower Books*, 273 NLRB 671 (1984), the Board quoted the above language, but added, at footnote 8:

Contrary to the assertion made by the dissent, we do not, by any means, advocate a per se approach to deciding where bargaining should take place. . . . We have considered all the relevant circumstances bearing on the issue in this case and have concluded that all the factors, taken as a whole, lead to the conclusion that the Respondent was not bargaining in good faith, but was merely using this issue as a stratagem to delay or avoid bargaining.

The circumstances noted by the Board were that the employer had insisted on meeting 700 miles away from the bar-

gaining unit site; it suggested no reason why bargaining could not have been conducted near the bargaining unit; and its proposal to meet halfway between its corporate office (or attorney's office) constituted an acknowledgement that some travel would be necessary for bargaining.

Although the distances proposed in this case are not so great, there are present two of the factors mentioned in *Tower Books* as circumstances indicating a lack of good faith: Respondent failed to suggest any reason why bargaining could not be held near to the sites of the bargaining units (Quad Cities in the case of Cordova, Bloomington in the case of Clinton, and Crystal River-Homosassa Springs in the case of Crystal River), and all of Respondent's proposals acknowledged that some travel by it would be necessary.

Moreover, while Respondent was not proposing dramatic distances for the Union to travel, it must be questioned why the Respondent was requiring the Union to travel at all. Respondent was not proposing that the Union, and the employee-members of the bargaining committees, travel to secure more serviceable, or even more pleasant, accommodations.⁴ Respondent was making its proposals on the premise that the Union (and, necessarily, the employee-members of the negotiating committees) should incur transportation and lodging costs simply because it was incurring those costs; that is, the proposals were punitive, or the product of a desire for retribution.

It is further noted that Thomas advanced Respondent's proposals in an disingenuous manner: Thomas, in writing, premised his proposals on an alleged duty on the part of the Union to meet him halfway between his office and the bargaining unit locations (in the Illinois cases) or halfway between the location of the Florida unit and the airport of Thomas' choice.⁵ Of course, there is no such duty on the part of the Union or the employee-members of the Union's bargaining committees. Indeed, the Board has never held that the location of an employer's (or a union's) chosen negotiator is a relevant consideration in deciding what is a reasonable place for bargaining to occur.⁶ Nevertheless, when Warfield questioned Thomas on the proposition that the Union was legally required to travel to places remote from the location of the bargaining unit, Thomas did not back down; in the most arrogant, disdainful, and belittling of terms, Thomas referred Warfield to the Union's attorney.

Using such a direct lie as a premise for a position, then arrogantly refusing to back down when called on it, is hardly a bargaining technique designed to achieve agreement through accommodation. Indeed, it was not an attempt to achieve agreement at all. Thomas knew that Warfield would not meekly accept the outrageous lie that a union has a duty to travel away from the bargaining unit locale just because an employer's chosen negotiator is required to engage in

⁴Thomas testified that he proposed Peoria for the Cordova negotiations because there were free meeting rooms there, and this would, to some extent, lessen the financial burden on the Union. Thomas did not testify that he told Warfield, at any point, that this was the reason he was proposing Peoria, and he did not venture that any savings on the room would make up for travel, meals, and lodging expenses of the employee committee members.

⁵No reason is suggested about why Thomas announced an intention to fly to Orlando rather than Tampa, which is much closer to the Crystal River site.

⁶In *Tower Books*, supra, the dissent argued that proposals to meet halfway between the location of the negotiator and the locus of the bargaining unit weighed in favor of a finding of good faith; this was, sub silentio, rejected by the majority.

travel for negotiations. Thomas' only possible purpose in advancing the proposition was a desire to delay bargaining while Warfield did check with his lawyer and otherwise attempted to get Respondent to meet at a reasonable location.

As stated in the above quotation of *Tower Books*, a bad-faith refusal to meet at reasonable locations violates Section 8(a)(5), whether the action is designed to delay bargaining or to avoid bargaining altogether.

In the case of the Cordova unit, Respondent argues that it was privileged to insist on LaSalle/Peru because the parties had previously conducted grievance and arbitration sessions there. This argument is without merit. Just because the Union had previously agreed (for whatever reasons) to meet at that remote location, even several times, does not forever estop the Union from insisting on its statutory right to require Respondent to meet at a location closer to the bargaining unit. In a converse situation (where the parties had bargained at a remote location, but the employer later refused to meet there for grievance and arbitrations) the Board has held that meeting for bargaining and meeting for grievances cannot be equated.⁷ This must be so as the two functions may raise decidedly different considerations (none the least of which is the convenience to, and expenses of, the arbitrator chosen).

Respondent further contends that, since proposing remote locations for bargaining is not prohibited by the statute, it was free to continue proposing remote locations as long as an impasse was not reached over the matter.

In the case of Cordova, Respondent proposed remote locations for bargaining for 5 months, from Thomas' letter to Warfield on September 27 until Thomas' letter to Warfield on February 23. During this period no negotiations were conducted. Arguably, the exchange of letters between Warfield and Thomas indicates that Warfield would not have been available for some dates during the initial portion of that 5-month period. However, at least 3 months of the delay were directly attributable to Thomas' insistence that the parties meet at a remote location; Warfield's letter of November 7 bases his rejection of November 14 and 15 solely on the fact that Thomas was demanding that negotiations be conducted at remote locations. Warfield acknowledged (in his letter of November 23) that he could not meet on December 28-29, but the remainder of the November 14 to February 23 period was blocked off from meeting by Respondent's insistence that the Union incur enhanced, and totally unwarranted, expenses of traveling to a remote location before negotiations could occur.

Therefore, assuming that Respondent had taken its position in good faith, it is clear that, by the elapsed time alone, the matter had been taken to impasse for the Cordova unit.

But Respondent's proposals that the Union meet at a remote location were not made in good faith. I have already concluded that Respondent's demands were punitive in nature, were premised on some nonexistent legal precedent, and were advanced only for the purpose of delay. Therefore, Respondent's consumption of *any* amount of time that would otherwise have been used for negotiations was bad-faith bargaining, or a refusal to bargain under Section 8(a)(5), as I find and conclude.

In the cases of the Clinton and Crystal River units, however, no time at all was consumed while the parties, and the

Regional Directors in Peoria and Tampa, dispensed with Thomas' frivolous, and bad-faith, contentions that the Union should incur unwarranted expenses by traveling to remote locations for the purpose of negotiations. Thomas' original proposal for a date to meet for the Clinton negotiations was January 27; the Union did not object or demand an earlier date (at any place); and the parties did, in fact, meet on January 27. Thomas' original proposal for a date to meet for the Crystal negotiations was February 8; the Union did not object or demand an earlier date (at any place); and the parties did, in fact, meet on February 8. It would be sheer speculation to argue that the Union would have asked for earlier dates for bargaining for either unit had Respondent not, in bad faith, demanded that the Union meet at remote locations. In both cases, for reasons totally unrelated to Thomas' demands that bargaining occur at remote locations, the Union may well have been unable to meet Respondent on any dates that were earlier than those proposed by Thomas. (Indeed, neither Warfield nor Hartlage testified that they told Thomas that they wanted earlier negotiations, or that they were, in fact, available for earlier negotiations.)

The absence of any delay of either the Clinton or Crystal River negotiations precludes the finding of a violation in either case. Section 8(d) speaks of meeting at "reasonable times" but not "reasonable places." This was no legislative oversight; delay was the evil addressed by the framers of the statute, and in all cases where a refusal to meet at reasonable places has been found to be violative, at least some delay was incurred. That is, the Board has never held that proposing, or even insisting on, meeting at remote locations constitutes a per se violation; proof of delay, or impact on unit employees, has always been shown.

Therefore, as Thomas' conduct caused no delay in either the Clinton or Crystal River negotiations, there was no conceivable impact on the employees, and there was no violation of Section 8(a)(5), as I further find and conclude.

CONCLUSIONS OF LAW

1. Respondent BPS Guard Service, Inc. d/b/a Burns International Security Services is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Plant Guard Workers of America (UPGWA) is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time guards employed by the Respondent at its client, Quad Cities Nuclear Generating Station, in Cordova, Illinois; but excluding all office clerical employees, professional employees, and sergeants and lieutenants and other supervisors as defined in the Act, and all other employees.

4. Since on or before January 1, 1975, the Union, along with its constituent Local 206, has been the exclusive collective-bargaining representative of all of the employees in the above-described appropriate unit within the meaning of Section 9(a) of the Act.

5. Since on or about November 14, 1988, Respondent has failed to bargain in good faith with the Union, and has there-

⁷ *Indiana Bell Telephone Co.*, 252 NLRB 544 (1980).

fore violated Section 8(a)(5) and (1) of the Act, by refusing to meet with the Union for purposes of collective bargaining at a place reasonably near to the location of the Cordova bargaining unit found appropriate.

6. Respondent has not otherwise violated the Act as alleged.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

General Counsel requests an order against Respondent that would encompass all of its operations, nationwide. General Counsel further requests an order that any notice to employees be posted at every facility where Respondent employs members of the Charging Party.

In his letters to both Warfield and the Regional Directors, Thomas stated unequivocally that it was the position of Respondent that the Union was obligated to bargain at remote locations. Thomas did not qualify his statements in any respect; specifically he did not confine his assertions to the three units involved, and he did not confine his statements to the division of Respondent that handles guard contracts at nuclear facilities.

That is, Thomas made unrepentant written statements that it was companywide policy to insist that Respondent's em-

ployees' bargaining agents meet at locations remote to the locations of bargaining units. In so doing, Respondent has announced that it is going to do the same thing again anywhere it thinks it can get away with it, and an order limited to the situs of the specific violation proven herein, Cordova, would be no more than an empty, impotent plea that Respondent behave itself elsewhere. Therefore, it is necessary for the prevention of future unfair labor practices to order Respondent not to invoke its announced policy anywhere else. Otherwise, Respondent will feel free to try this stratagem again, and direct interventions by Board Regional Directors may not be as successful in the future as they were in this case.⁸

Therefore, the recommended Order will not be confined to the locus of the unfair labor practice found.

However, there is no necessity for postings of the notice at Respondent's facilities other than Cordova as no employees, other than those at Cordova, have been adversely affected by Respondent's conduct.⁹

[Recommended Order omitted from publication.]

⁸The Board condemned the tactic of refusing to meet at a reasonable place for bargaining until Board processes were invoked (and thereby causing delays in bargaining) in *Westinghouse Pacific Coast Brake Co.*, 89 NLRB 145 (1950).

⁹As it appears that Respondent does not own the property at which the Cordova, Illinois bargaining unit employees work, the notice shall be mailed to the employees if the owner of the property will not allow posting in conformance with this Order.