

**United States Postal Service and American Postal Workers Union, Pittsburgh Metro Area Postal Workers Union, AFL-CIO.** Cases 6-CA-20755(P), 6-CA-20918(P)-1, and 6-CA-20952(P)

April 30, 1991

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND OVIATT

On September 27, 1990, Administrative Law Judge Arline Pacht issued the attached decision. The Respondent filed exceptions and a supporting brief.<sup>1</sup>

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 brief and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions<sup>3</sup> and to adopt the recommended Order as modified.<sup>4</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, United States Postal Service, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs.

<sup>1</sup>On December 10, 1990, American Postal Workers Union, AFL-CIO (APWU) filed a motion to intervene in this proceeding. Thereafter, the Respondent filed an opposition to the motion to intervene, APWU filed a motion to intervene out of time, the Respondent filed a response to the motion to intervene out of time, and APWU filed a response brief. We deny the APWU's motion to intervene as untimely filed.

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

We note that APWU has been recognized as the collective-bargaining agent for a nationwide unit of postal clerks, rather than certified by the Board, as the judge stated.

In sec. II.B, par. 10 of her decision, the judge states that the Respondent was "obliged" to bargain with the Charging Party over certain issues. Based on the collective-bargaining agreements and the judge's prior statements, we find instead that the Respondent was contractually permitted to bargain over such issues.

Member Oviatt does not find it necessary to pass upon the complaint's allegation that the Respondent engaged in a "pattern and practice of renegeing on agreements reached with the Union" and thus does not adopt the judge's finding that the Respondent has engaged in a "basic repudiation of the bargaining relationship" (quoting from *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063 (1973)). Member Oviatt finds that the other violations of Sec. 8(a)(5) are ample to support the bargaining order in this case.

<sup>3</sup>We insert the word "without" in Conclusion of Law 6(c) between "Facility" and "bargaining." We also correct the subsequent Conclusions of Law to be 7, 8, and 9.

<sup>4</sup>We shall modify the recommended Order to conform to the remedy specified by the judge involving the excessing of special delivery messengers.

"(c) Comply with the terms of the parties' March 23 and April 18, 1988 agreements regarding the excessing of special delivery messengers only after other noncraft employees no longer remain in the department."

2. Substitute the attached notice for that of the administrative law judge.

**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 in good faith with the American Postal Workers Union, Pittsburgh Metro Area Postal Workers Union, AFL-CIO, as the authorized bargaining agent for the appropriate units.

WE WILL NOT refuse to implement agreements reached with the Local Union at labor-management committee meetings, including an agreement to excess regular, career special delivery messengers only after casual or light and limited duty employees temporarily assigned to that department are excessed or otherwise removed from performing special delivery craft work.

WE WILL NOT unilaterally rescind agreements reached, including an agreement concerning rescheduling layoff days for maintenance department employees and

WE WILL NOT remove video game machines until we bargain in good faith and reach agreement or impasse with the Local Union.

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 rescind the layoff schedule for maintenance employees at the Bulk Mail Center, unilaterally implemented on February 12, 1988, and restore the status quo ante which existed prior to that date;

WE WILL, on request, bargain in good faith with the Local Union regarding rescheduling layoff days for these employees and implement any agreement which may be reached forthwith.

WE WILL comply with the terms of our March 23 and April 18, 1988 agreements with the Local Union regarding the excessing of special delivery messengers only after other noncraft employees no longer remain in the department.

WE WILL reinstall the video game machines, or comparable machines, at the General Mail Facility, and before taking any action with regard to such machines,

WE WILL bargain in good faith about them with the Local Union, and

WE WILL make whole the Social and Recreational Committee Fund for revenues lost because of the machines' removal with interest.

#### UNITED STATES POSTAL SERVICE

*Janice A. Sauchin, Esq.*, for the General Counsel.  
*Robert L. Sawicki, Esq.*, of Philadelphia, Pennsylvania, for the Respondent.

#### DECISION

##### STATEMENT OF THE CASE

ARLINE PACHT, Administrative Law Judge. Pursuant to charges filed by the American Postal Workers Union, Pittsburgh Metro Area Postal Workers Union, AFL-CIO (the Local or the Union), in Cases 6-CA-20755(P), 6-CA-20952(P), and 6-CA-20918(P)-1 on February 18 and April 13 and 21, 1988, respectively, complaints issued and were consolidated for hearing by Orders dated June 21 and October 20, 1989, which allege that the United States Postal Service (the Respondent), violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing to bargain in good faith.<sup>1</sup>

In substance, the complaints allege that Respondent (1) refused to execute and implement an agreement reached in a January 28 labor-management meeting concerning rescheduling maintenance department employees, and thereafter, unilaterally implemented a revised staff reorganization plan for these employees; (2) refused to implement an agreement reached in a March 23 labor-management meeting regarding the assignment of work outside their craft and the delivery of Express Mail to special delivery messengers; and (3) unilaterally removed video machines from the General Mail Facility employee cafeteria without notifying or bargaining with the Union. Respondent filed timely answers to the complaints challenging the representative status of the Local Union and denying that it had committed any unfair labor practices.

A hearing was held on these matters in Pittsburgh, Pennsylvania, on January 16, 1990, and March 26, 1990,<sup>2</sup> at which time the parties had full opportunity to examine and cross-examine witnesses, introduce documentary evidence and argue orally.<sup>3</sup> After considering the witnesses' demeanor, the parties' posttrial briefs and on the entire record,<sup>4</sup> pursuant to Section 10(c) of the Act, I make the following

<sup>1</sup> Unless otherwise noted, all events took place in 1988.

<sup>2</sup> A 2-month recess was granted between the first and second date of the hearing due to the medical condition of one of Respondent's witnesses, Pittsburgh Postmaster, Donald Fischer.

<sup>3</sup> Exhibits offered by the General Counsel and the Respondent will be referred to as GCX and RX, respectively, followed by the exhibit number. Joint Exhibits will be cited as JX; the transcript will be referred to as TR followed by the page number.

<sup>4</sup> On October 13, Respondent filed a Motion for Summary Judgment in Cases 6-CA-20755(P) and 6-CA-20918(P)-1, alleging that because the National Union was the exclusive bargaining representative, the Local Union, the Charging Party herein, had no authority to enter into binding arrangements with the Respondent. Therefore, the complaints which alleged that the Respondent had failed to execute and implement certain local agreements, failed to state a claim. Alternatively, Respondent argued that the complaints presented issues appropriate for deferral to the parties' contractual grievance-arbi-

#### FINDINGS OF FACT

##### I. JURISDICTIONAL FINDINGS

Respondent provides postal services for the United States of America and in performing such services, operates various facilities throughout the United States, including those involved in this proceeding—the Bulk Mail Center in Warrendale, Pennsylvania, and the General Mail Facility in Pittsburgh. I find that the Board has jurisdiction over the Respondent pursuant to Section 1209 of the Postal Reform Act.

##### II. THE ALLEGED UNFAIR LABOR PRACTICES

###### A. Introduction

At the national level, employees in the regular work force of the U.S. Postal Service who are represented by the American Postal Workers Union, AFL-CIO (the National Union) are covered by a series of national collective-bargaining agreements with the Respondent. The current agreement, effective from July 21, 1987, to November 20, 1990, addresses uniform wages, hours, and working conditions nationwide.

As authorized by the National Union's constitution, the Local Union was chartered in 1975 to represent employees in four craft units at multiple locations within its jurisdiction, including the two involved in this proceeding: the Bulk Mail Center (BMC) in Warrendale and the General Mail Facility (GMF) in Pittsburgh.<sup>5</sup> The Local has its own constitution, bylaws, and elected officers and maintains an office which is supported by dues received from its approximately 3000 members.

Pursuant to article 30 of the National Agreement, the Local is empowered to negotiate and administer labor contracts which govern unique local conditions, as long as they do not conflict with the National Agreement. Over the past 20 years, Respondent and the Local have concluded a series of collective-bargaining agreements, with the current one, subtitled "Memorandum of Understanding" effective from 1987 to 1990. In addition, the Local and the Respondent have negotiated subagreements affecting various craft departments.

The Local Union's functions include processing grievances based on alleged violations of either the National or Local Agreements through the first two of a four-step procedure. If the matter is appealed to step 3, it is referred to a national regional officer and finally, may be submitted to arbitration where the grievant is represented either by a Local or National union representative.

###### B. Case 6-CA-20755(P): Rescheduling BMC Maintenance Employees

The BMC in Warrendale is a large, highly automated facility where parcel post mail is processed and distributed. The maintenance department there included approximately 140 employees who were, at the time in question, covered by a local agreement between the Charging Party and the Postal Service.

tration procedure. The General Counsel filed a response in opposition on October 31. By Order dated June 9, 1989, the Board denied Respondent's motion. Respondents arguments, which were renewed in its posttrial brief, are considered below.

<sup>5</sup> The four crafts covered by the Union's contract are letter carriers, maintenance, special delivery messengers, and motor vehicle.

In the fall of 1987, Respondent informally notified the Local that because of extended hours of service at the BMC, a concomitant need had developed to have a sufficient number of maintenance employees on hand at all times. As a consequence, work schedules of some 20 to 30 craft members would have to be revised to ensure adequate staffing through the weekends.

Subsequently, by cover letter of January 4, 1988, Ray Pascarella, director of plant maintenance at the BMC, requested that the Union comment on an attached proposal re-scheduling days off (referred to as "layoff days") for a number of employees. The net effect of the proposal was to reduce the number of maintenance workers whose layoff days fell on the traditional Saturday-Sunday weekend and thereby expand the number of those scheduled for Friday-Saturday or Sunday-Monday layoffs.

On receiving this letter, Local Union President John Richards arranged a labor-management meeting with the Respondent for January 28. Such meetings are authorized by both the National and Local's labor agreements. Thus, the National Agreement provides that

the Unions party to the agreement, through their designated agents shall be entitled at the national, regional and local levels . . . to participate in regularly scheduled joint labor-management committee meetings for the purpose of discussing, exploring, and considering with management matters of mutual concern, provided neither party shall attempt to change, add to or vary the terms of this collective bargaining agreement. [JX 1, art. 17, sec. 5.]

Article 12 of the Local Agreement states more specifically that:

Regular labor-management meetings between the Union and Management will be held at least once a month on a date and time mutually agreeable to both parties. . . . Any interpretation of this Memoranda of Understanding which is disputed by the Union shall be placed on the agenda at the next labor-management meeting and the interpretations agreed to will be implemented by management. . . . Agreements reached at labor management meetings will be implemented by management.

Richards testified without dispute that pursuant to these provisions, the parties have entered into hundreds, perhaps thousands, of agreements. Although they rarely were reduced to writing, in the past, management invariably had implemented the agreements reached.

At the January 28 meeting, Richards presented a rescheduling counterproposal which preserved a greater number of Saturday-Sunday days off than did management's January 4 plan.<sup>6</sup> Speaking for management, Pascarella agreed to the Union's proposed revisions.<sup>7</sup> As a rule, under the National Agreement, management must comply with a time-consuming posting procedure which permits affected employees to bid upon the new schedules. However, on this occasion, as a quid pro quo for acceptance of its counterproposal, the

Union agreed to waive the posting and bidding requirements, and allow management to canvass the employees informally.

On February 3, Pascarella sent Richards a confirming letter together with a revised restaffing plan which adopted the Union's proposed changes. However, according to Pascarella, the employees did not react favorably to the agreed-upon proposal. He testified that two employees expressed negative comments to him directly while a third handed him a petition protesting the change allegedly signed by virtually all of the employees on the second shift.<sup>8</sup>

Two days later, Pascarella contacted the Local's executive vice president and business agent, Joseph Anthony, to express his concerns about the Union plan. Although Richards, the only union representative entitled to call a labor-management meeting, was absent, Anthony agreed to meet with Pascarella to review the situation while he was at the facility on other business on February 8. According to Anthony and union secretary treasurer, Joseph Gruener who accompanied him, during their brief exchange on that date, Pascarella told them that his superior, Post Office Manager Floretta Reed was pressuring him about their January 28 agreement. He asked them to speak to the stewards to determine if there was much animosity to the restaffing plan and to calm the employees down until the canvassing was completed.<sup>9</sup> After the meeting, Anthony and Gruener learned from maintenance department stewards that employees on the first and third shift were not opposed to the Union's restaffing proposal and that while some employees on the second shift were displeased, a vote had been taken with the outcome 12 to 10 in favor of the Union's position.

Pascarella offered a much different version of his February 8 meeting with Anthony and Gruener. He maintained that he told them he was encountering morale problems as a result of employee opposition to the Union's proposal and asked them to get back to him quickly with a version that would resolve the matter. Pascarella further testified that notwithstanding his request for a rapid response, the Union failed to contact him in the next 4 days. He claimed that he telephoned the Union every day from February 8 to 12, asking for either Richards or Anthony, but no one returned his calls. Consequently, having received no response by February 12, and believing that the outcome of labor management meetings was not binding on the Postal Service, he began implementing the Respondent's original restaffing plan.

Richards maintained that it was consistent practice in his office to respond to telephone calls no later than 1 day after a call was received, and that no messages were recorded from Pascarella. Rather, information soon came to his attention which led him to realize that management was reneging on its January 28 commitment and implementing its original proposal. When Richards telephoned Pascarella to question him about this, the plant maintenance director explained that he had decided to implement management's original proposal after encountering employee discontent with the Union's plan. Although Richards pointed out that either proposal would have been opposed, Pascarella did not suggest that they engage in further bargaining. Instead, by letter dated February 16, Pascarella advised Richards that "Very early in

<sup>6</sup>Even under the Union's counterproposal, however, some maintenance employees still would have their days off schedule revised.

<sup>7</sup>In addition to Pascarella, BMC Postmaster, Floretta Reed, and Labor Relations Representative Misicko attended the meeting.

<sup>8</sup>Without reading the petition, Pascarella told the employee to submit the matter to the Union.

<sup>9</sup>This account is based on a compilation of both Anthony's and Gruener's testimony.

the process, we found that the structure in your plan was not workable and did not fulfill the future needs of the Department. (JX 7.)

*C. Case 6-CA-20918(P)-1: Excessing Special Delivery Messengers*

The Local also represents postal employees, including special delivery messengers, at the GMF, a large, multipurpose post office serving the Pittsburgh metropolitan area. Richards testified that after learning that an audit was in progress which might reduce the number of special delivery messengers, he brought some concerns of these employees to a March 23 labor management committee meeting and entered into agreements with the Respondent to correct them.

Richards stated that the first problem discussed at the meeting had to do with "excessing" (that is, assigning) regular special delivery messengers to other departments while casual and light or limited duty employees, temporarily assigned to the department, remained to perform craft work.<sup>10</sup> According to Richards, the Respondent was supposed to excess noncraft employees to other departments before excessing the special delivery messengers. During the March 23 meeting, Richards protested that Respondent was not following this practice, and instead, was retaining noncareer employees to perform craft work while improperly excessing special delivery messengers. Richards testified, and minutes of the meeting show, that Jim McKoy, superintendent of the special delivery section and Donald Synborski, operations manager, agreed that Respondent would not excess career messengers while noncraft workers remained in the department.

Union witnesses asserted that a second agreement was reached at the same meeting regarding the delivery of Express Mail. According to Richards and Anthony, management agreed that the career special delivery messengers would be given priority in handling whatever express mail happened to be routed into their department. Richards further related that on receiving a copy of the minutes of this meeting, he was surprised to find no mention of this agreement.

In fact, minutes taken by the Respondent and introduced into evidence as a joint exhibit, contain only two brief references to the Express Mail issue. First, the minutes show that when Anthony stated that special delivery employees should have the right to deliver express mail, McKoy responded "we are doing it."<sup>11</sup> The second reference occurred when McKoy asserted that "no one has the exclusive right . . . (to deliver) express mail." At this, Anthony suggested that Respondent was deliberately excluding the special delivery personnel from such assignments, an accusation which McKoy denied. (JX 8.)

On the day after the March 23 meeting, Richards learned from Special Delivery Craft Director Martino that management did not intend to comply with either agreement. Consequently, Richards requested another meeting with management. At this meeting on April 18, Richards distributed a document titled "Minutes Problems" which set

forth the substance of the two agreements he understood had been reached at the previous session.

After caucusing, management again accepted the Union's position regarding excessing of special delivery messengers only after light duty carriers and casuals were removed from the Department. However, Respondent's representatives insisted that they again told the Union that while special delivery messengers would have their fair share of this work, delivery of express mail could not be the exclusive province of any craft.

Respondent's witnesses claimed that the Postal Service had taken the identical position at both the March 23 and April 18 meeting. Thus, John Price, special delivery supervisor from July 1987 to August 1989, and Operations Manager Synborski, both disputed Richards' contention that an agreement had been reached at the March 23 meeting by which special delivery messengers would be given the exclusive right to deliver express mail. As Synborski explained, the Postal Service could not grant such a right to the special delivery messengers since "with the hit and miss commercial flights of Express Mail, we didn't need the full labor force to (be there) on a standby basis." (Tr. at 213).<sup>12</sup>

In addition, Price testified that to his knowledge, Respondent had complied with the agreement regarding excessing of the career messengers. Taking issue with Price's testimony, Martino stated that as craft director, he routinely monitored computer printouts which recorded the operations of all employees in the special delivery department and from his review of the printouts, knew that on numerous occasions, up to the time of the instant proceeding, casual and light duty employees were performing craft work while special delivery employees were excessed into other departments, contrary to the parties' agreement.

*D. Case 6-CA-20952(P): Removal of Video Games*

As described in Respondent's Handbook (p. 29, Chapter 9), the Postal Service together with each union representing postal employees, formed a Social and Recreational Committee (S & R Committee) with the purpose of developing "well-rounded social and recreational programs that will contribute to the benefit of all employees." (JX 10.) This and other Postal Service Handbooks were incorporated by reference into the parties' National Agreement to the extent that they affected wages, hours, and working conditions. Article 19 of the Agreement provided that that the Respondent could amend a handbook as long as the Union was notified of the amendment.

The S & R Committee was composed of union representatives of each craft as well as a delegate for the Respondent. Local President Richards, a member of the Committee since the 1960's, testified that in the past, the S & R Committee sponsored a wide variety of programs, including bowling, golf, and fishing tournaments. The Committee also subsidized tickets to various athletic and cultural events. A por-

<sup>10</sup> According to the National Agreement, light or limited duty employees are those who while recuperating from injury or illness, are unable to perform their regular duties, and, until they fully recover, are assigned temporarily to other departments where the workload is lighter.

<sup>11</sup> I assume by this, McKoy meant that special delivery messengers were being assigned to deliver some of the Express Mail.

<sup>12</sup> On rebuttal, Richards claimed that he had no recollection that Price attended the March 23 meeting. In fact, although Price recalled the names of those who attended the March 23 meeting (except for Gruener), he could not explain why his name was not listed in the minutes of that meeting. Given his ability to accurately identify others who attended the meeting, even recalling that he sat next to McKoy, I conclude that Richards did attend the March 23 meeting and that the omission of his name from the minutes was an inadvertent error.

tion of the funds for these activities came from food vending machine profits, but the greatest source of revenue was derived from from video game machines stationed in the cafeteria.

The idea for the video game machines as a source of revenue for S & R events, came in 1983 from business agent Anthony while he was serving as acting president of the Local. On learning that other local unions had installed video machines to raise funds, Anthony brought the concept to the attention of the then Postmaster, George Harkins. Following a series of discussions in the spring and fall of 1983, Harkins agreed with Anthony that the machines could be installed and their proceeds devoted to the S and R Committee for the benefit of all employees, as long as the machines were located only in the GMF cafeteria.<sup>13</sup>

Initially, the video machines generated as much as \$20,000. This figure diminished as the games' novelty waned, so that by 1988, the proceeds amounted to approximately \$12,000. Richards testified that approximately two-thirds of the S & R Committee's funds came from the video machine proceeds. He believed that the food vending machine proceeds ranged from \$5000 to \$7000 annually.

In May, Postmaster Fisher caused the video machines to be removed without notice to the National or Local Union, or to the S & R Committee. He explained that he took this action because the following conditions were reported to him:

the video machines were . . . a safety hazard to us in the way of cleanliness. For example, around the machines we always had constant cigarette butts ground into . . . the tile. We had occasions when the wires were cut on the machines. We had occasions when employees were up there on a break and they extended their time, and we had to get the supervisors to move them down . . . We have evidence they were gambling up there at the machines. Called it to their attention many many times that they need to keep this place clean, but it never was clean . . . (Tr. at 213.)

Even before the video machines were removed, a general order was promulgated on the authority of Postmaster Fisher on April 19, announcing that all spring activities sponsored by the S & R Committee would be canceled due to the uncertainty of vending contracts. Subsequent to the machines' removal, pursuant to a vote at a June 24, 1988 meeting, the S & R Committee decided to sponsor no further events until the instant unfair labor practice proceeding was resolved. The revenues which remained at the Committee's disposal, amounting to several thousand dollars, was derived solely from the food vending machines.

### III. DISCUSSION AND CONCLUDING FINDINGS

#### A. *The Parties' Positions*

The General Counsel's position is simple and straightforward: the Respondent entered into agreements at labor

management committee meetings regarding the scheduling of maintenance workers, and the assignment of work to special delivery messengers. Pursuant to the terms of its collective-bargaining agreement with the Local, Respondent was required to implement these agreements. Instead, Respondent abrogated them by unilaterally rescheduling maintenance workers, improperly excessing special delivery messengers, and failing to assign them to the delivery of Express Mail which came into their department. The General Counsel further contends that the Respondent unlawfully removed video machines from the GMF cafeteria. This action deprived the Social and Recreational Committee of revenues used for various employee events and detrimentally altered their terms and conditions of employment.

The Respondent poses multiple and interrelated defenses to these allegations. Briefly stated, Respondent denies the Local Union is a labor organization or the exclusive bargaining representative for the affected employees. Rather, the Respondent maintains that the Local's role is severely circumscribed: it merely serves as the National Union's agent for purposes of bargaining solely about the 22 specific topics identified in article 30 of the National Agreement. The Respondent points out that the Local Union may initiate grievances arising under either the Local or National Agreement. Therefore, Respondent urges that the Board should refrain from deciding these consolidated cases until the issues in controversy are grieved and arbitrated.

Moreover, Respondent maintains that article 17, section 5 of the National Agreement, which authorizes joint labor management committee meetings for the purpose of "discussing, exploring and considering with management matters of mutual concern," simply means that the Local may contribute nothing more than nonbinding advice. The Respondent takes this position even though Local craft Memoranda of Agreement provide that "Agreements reached at Labor-Management Meetings will be policy which will be implemented by Management." (See, e.g., JX 2 at 51.) Respondent contends that these commitments in the Local Memoranda of Agreement contradict the limiting language in article 17, section 5. of the National Contract, and, therefore, are null and void. Consequently, Respondent continues, management was not compelled to adhere to agreements allegedly made at joint labor management committee meetings and any refusal to do so did not violate the Act. To the contrary, the unilateral actions it admittedly took were legitimate exercises of management rights guaranteed by article 3 of the National Agreement.

In addition, Respondent claims that the Local waived its right to bargain anew about rescheduling maintenance employees when offered an opportunity to do so. Further, Respondent asserts that it abided by its agreement regarding excessing of special delivery messengers, but denies that it ever entered into an agreement with the Local regarding the delivery of Express Mail by the special delivery carriers.

As to the case involving the loss of revenues from the removal of the video game machines, Respondent argues first that the Local Union lacks standing to challenge its action since such revenues did not accrue to the Local's benefit; rather, they were administered by a Social and Recreational Committee composed of representatives from a number of local unions and management officials at the facility for the benefit of all employees. Further, Respondent urges that

<sup>13</sup> Anthony originally wanted the machines installed in the breakrooms of all postal facilities in the area, but agreed to limit them to the GMF cafeteria in return for Harkins' concession that the proceeds would be managed by the Social and Recreation Committee, rather than allocated to a flower Fund as he initially preferred.

since video game income did not support projects which affected terms and conditions of employment, and was in the nature of a gift rather than a contractually mandated benefit to employees, the removal of the machines did not violate Section 8(a)(5) of the Act.

*B. Deferral to the Grievance/Arbitration Procedure is Inappropriate*

1. The applicable principles

Mindful of the Board's admonition that the question of deferral is a threshold matter "which must be decided in the negative before the merits of the unfair labor practice allegations can be considered," I turn first to Respondent's affirmative defense that these cases should be deferred to the parties' grievance/arbitration procedure. *L. E. Myers Co.*, 270 NLRB 1010 fn. 2 (1984).

In accordance with Section 203(d) of the Act,<sup>14</sup> the Board has long regarded the grievance/arbitration process as a preferred forum for the voluntary resolution of labor disputes. At the same time, Section 10(a) of the Act makes it clear that the Board's authority is dominant, for its power to prevent unfair labor practices may "not be affected by any other means of adjustment . . . that has been established . . . by agreement, law or otherwise."

To harmonize these statutory principles, the Board, in *Collyer Insulated Wire*, 192 NLRB 837 (1971), established firm standards to guide its decisions about prearbitral deferral to the parties' contractually established grievance procedures. In *Collyer*, which involved an 8(a)(5) allegation of unilateral changes in conditions of employment, the Board ruled that it would defer to existing grievance-arbitration procedures where: (1) the dispute arose "within the confines of a long and productive collective bargaining relationship" and there was no claim of "enmity by Respondent to employees' exercise of protected rights"; (2) "Respondent has . . . credibly asserted its willingness to resort to arbitration under a clause providing for arbitration in a very broad range of disputes and unquestionably broad enough to embrace the dispute before the Board"; and (3) "The contract and its meaning lie at the center of the dispute." *Id.*

The Board reaffirmed the *Collyer* doctrine in *United Technologies*, 268 NLRB 557 (1983). However, noting that deferral is "not akin to abdication" the Board stated that it would not refrain from exercising its jurisdiction where, inter alia, "the respondent's conduct constitutes a rejection of the principles of collective bargaining."<sup>15</sup> In conformance with this concern, the Board has refused to defer in cases where employers have denied that they are bound by collective-bargaining agreements whose applicability to the dispute was central to the controversy. See, e.g., *Rappazzo Electric Co.*, 281 NLRB 471, 478 (1986); *Mountain State Construction Co.*, 203 NLRB 1085 (1973).

<sup>14</sup>Sec. 203(d) provides: "Final adjustment by a method agreed upon by the parties is declared to be a desirable method for settlement of a grievance of disputes arising from the application or interpretation of an existing collective bargaining agreement."

<sup>15</sup>*United Technologies*, supra at 560, citing the dissent in *General American Transportation*, 228 NLRB 808, 817 (1977).

2. Applicability of *Collyer* standards to this case

Some aspects of this consolidated complaint appear to suggest that resolution through the parties' grievance/arbitration procedure could be productive. For example, the parties often have resorted to such procedures to resolve conflicts; the Respondent is willing, even eager, to submit these controversies to such processes, and portions of the dispute require contract construction, a function which arbitrators traditionally perform. Nevertheless, for the following reasons, I find deferral would be highly inappropriate here.

In its motion for summary judgment, throughout the hearing and in its brief, the Respondent asserts that it was not bound by any agreements which emanated from joint labor management committee meetings. Respondent takes this position on the grounds that the Local Union is not a labor organization within the meaning of the Act; that the Local has a narrowly circumscribed role which permits it to bargain solely about limited topics identified in article 30 of the National Agreement and that any purported agreements between the parties beyond those enumerated topics is without force and effect.

It is true, as the Respondent contends, that the National Union was certified as the collective-bargaining representative for a nationwide unit of postal clerks. See *Postal Service*, 273 NLRB at 1748 fn. 3. However, the National's status does not rule out a legitimate and significant role for the Local Union. The National Agreement recognizes that local unions will represent the National at various geographic locations in order to administer the National Agreement, handle grievances at the first two steps, and bargain collectively with Postal Service representatives regarding local issues as set forth in article 30. However, there is no language in article 30, or elsewhere in the National Agreement, which prevents bargaining on matters beyond the 22 enumerated, mandatory topics, so long as the parties are willing to negotiate, and any understandings reached do not conflict with the National.<sup>16</sup> Moreover, items 21 and 22 of article 30 are written broadly enough to allow the parties to address other local matters not specifically identified in article 30.<sup>17</sup>

<sup>16</sup>Accord: *Postal Service* (Helena, Montana), Case N 8-W-0406, an arbitration decision issued in October 1981. (GCX 15.) In that forum, the Postal Service raised the identical argument it poses here; i.e., that the parties may negotiate solely about the 22 items enumerated in art. 30 and any agreement outside of those items is unenforceable. Relying heavily on bargaining history, the arbitrator ruled:

that the local parties *are not required* to negotiate on any subject outside the 22 listed items . . . (but) "are free if they wish to expand their negotiating agenda to include subjects nowhere mentioned in XXX-B. [Id. at 6.]

*United States Postal Service and American Postal Workers Union*, an arbitration decision dated October 1, 1973, and appended to Respondent's brief as Exhibit B, does not contradict the above ruling. Indeed, the arbitrator assumes that the local agreements must be negotiated to cover a myriad of issues that cannot be encompassed within a master contract. However, in that matter, he held that a local union's proposal on seniority conflicted with the seniority provision in the National Agreement.

The General Counsel objected to RX A and B as untimely since offered after trial. Since RX A, a letter from an NLRB Regional Director, and RX B, an arbitration decision, are official documents and matters of public record, I may consider them even though they were not admitted into evidence. Accordingly, the General Counsel's motion to strike, in part, Respondent's posthearing brief is denied.

<sup>17</sup>Art. 30 prescribes local bargaining for, inter alia:

21. Those other items which are subject to local negotiations as provided in the craft provisions of this Agreement.

Uncontradicted testimony offered by Local Union President Richards, who served as director of industrial relations on the national level for a number of years, during which time he participated in negotiations for two national contracts, supports the conclusion that the parties did not intend to confine local bargaining solely to the 22 items outlined in Article 30. He testified that during bargaining, the parties recognized that every matter of local interest could not be expressly identified in article 30; therefore, the 22 listed topics referenced mandatory subjects for local bargaining, but were not intended to be exhaustive. In other words, it was recognized that as long as the parties were willing, bargaining at the local level could focus on subjects other than those specifically enumerated. He further stated that during his national tenure, he reviewed many local contracts which demonstrated that various parties across the country bargained over a multitude of matters other than those described in Article 30.

Respondent's position regarding the Local Union's limited role in collective bargaining also leads it to argue that its contractual commitment to implement agreements reached at joint labor-management committee meetings is null and void. Respondent's argument is specious. Nothing in article 17, section 5 precludes the parties from negotiating a local contract which provides, as here, that after "discussing, exploring, and considering . . . matters of mutual concern" at labor management committee meetings, any agreements reached "will be policy which will be implemented by management." JX 2 at 21. Indeed, a number of such agreements were appended to the parties' collective-bargaining agreement. (See, e.g., JX 2 at 99, 100, 102.) Moreover, undisputed evidence in the present case establishes that the parties entered into just such an agreement at a labor-management committee meeting described in this proceeding, which actually contravened a term of the National Agreement. I refer to the parties' agreement permitting Respondent to canvass maintenance employees regarding changes in their layoff schedule rather than follow the posting procedures required by article 38 of the National Agreement. Surely, Respondent does not claim that this agreement, which it sought and implemented, was null and void.

Plainly, pursuant to both the National and Local collective-bargaining agreements, the Local Union serves as the National Union's agent, and, with respect to local issues, including, but not limited to the 22 items specified in article 30 of the National Agreement, is the designated collective-bargaining representative for craft employees in the Pittsburgh Metropolitan area.<sup>18</sup> It follows that management is obliged to bargain collectively with its local labor counter-

22. Local implementation of this Agreement relating to seniority, re-assignments and posting.

<sup>18</sup> In *Pittsburgh Postal Workers v. Postal Service*, 463 F.Supp. 54 (W.D. Pa. 1978), affd. 609 F.2d 503 (3d Cir. 1979), cert. denied 445 U.S. 950 (1980), the District Court held that without consent from the National Union, the Local Union could not sue to enforce a grievance settlement of a local issue, since the grievance procedures leading to the settlement were those contained in the National Agreement. However, the present action is not being brought to enforce an agreement reached after the Local invoked national grievance procedures (see *Postal Service*, 289 NLRB 942 fn. 2 (1988)). Thus, the District Court case is inapposite and does not support Respondent's contention that the Local Union is without power to bargain collectively or enter into binding agreements about local issues with management, or to charge Respondent with unilaterally altering terms and conditions of employment by breaching those agreements in violation of the Act.

part regarding local issues which include, but are not limited to those set forth in the National Agreement. Respondent could and did enter into a valid and binding Local Memoranda of Agreement which required it to implement and abide by agreements reached at labor management committee meetings.

Although the factual circumstances are not identical, the employers in *Rappazzo Electric* and *Mountain State*, like the employer in this proceeding, urged that their cases be deferred, but maintained that they were not bound by their respective collective-bargaining agreements. The Board's conclusion in the cited cases that the employers' conduct constituted "a complete rejection of the principles of collective bargaining," is equally applicable here. *Rappazzo Electric*, supra at 478; *Mountain State*, supra at 1085.

To bolster its argument that it has no duty to bargain collectively with the Local, Respondent even denies that the Union is a labor organization. It is difficult to comprehend how Respondent can maintain this position in light of the Act's definition of a labor organization and the reality of its relationship with the Local for the past three decades.

As set forth in Section 2(5) of the Act, a labor organization is:

any organization of any kind, or any agency or employee representative committee or plan, in which employees participate and which exists for the purpose, in whole or in part, or dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Uncontradicted evidence in the instant case establishes that the Local Union has its own officers, elected by its members in accordance with provisions of its own constitution and by-laws. For at least three decades, the Local has negotiated collective-bargaining agreements with the Respondent, represented employees through the early stages of the grievance procedure, and received dues from its members for local activities which were rebated from dues forwarded to the National Union. In light of this record, the Local's status as a labor organization is beyond dispute. *NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (1959); *Alta Bates Hospital*, 226 NLRB 485 (1976).

Significantly, the parties' current Memoranda of Agreement, executed by Postmaster Fischer and Local Union President Richards for each craft, begins with the following Recognition clause acknowledging the Local's proper status:

#### A. PARTIES TO THIS AGREEMENT.

2. This Agreement covers the Maintenance (Custodial) Craft at the Pittsburgh, Pa. Post office for which the Pittsburgh Metro Area Postal Workers Union has been certified as the exclusive bargaining representative. [Emphasis added. JX 2 at 42.]<sup>19</sup>

By refusing to acknowledge the Local's status as a labor organization and denying that the Local has a significant and legitimate role in the collective bargaining process, Respondent reinforces the conclusion that it has "rejected the principles of collective-bargaining and the self-organizational

<sup>19</sup> An identical recognition clause appears in the local labor contract for the special messenger delivery craft.

rights of employees . . . .” *Mountain State Construction Co.*, supra.

What is more, the complaint alleges that Respondent engaged in a pattern and practice of bad-faith bargaining in violation of Section 8(a)(5) of the Act by repeatedly abrogating agreements and taking unilateral actions. It is unlikely that an arbitrator, whose function is limited to problems of contractual interpretation, would resolve or remedy, if necessary, allegations of statutory wrongs, or address such issues as the the Union’s status as a labor organization and authorized collective-bargaining representative in accordance with the Act or Board precedent. *Rappazzo Electric Co.*, supra at fn. 1; *AMF Inc.*, 219 NLRB 903, 912 (1975).

For the foregoing reasons, I agree with the Regional Director that these consolidated cases should not be “Collyerized.”

### C. Unilateral Rescheduling of Maintenance Craft Employees Violated the Act

As discussed above, the parties agree that Respondent acquiesced to the Local Union’s alternative days off rescheduling plan for maintenance employees at the labor-management committee meeting of January 28, 1988. They also agree that Respondent subsequently withdrew from that agreement and, without further bargaining, implemented its own plan. What is disputed is whether Respondent offered the Local a second opportunity to bargain about rescheduling days off and, assuming that such an offer was made, whether the Union waived its right to bargain by failing to respond.<sup>20</sup>

It is well settled that an employer may not unilaterally alter a mandatory term or condition of employment and that to do so violates Section 8(a)(5). *NLRB v. Katz*, 369 U.S. 736 (1962). It is equally settled that a union may waive its bargaining right, but the Board will not readily infer waiver based on inaction withhold evidence that the union “had clear notice of the employer’s intent to institute the change sufficiently in advance of actual implementation so as to allow a reasonable opportunity to bargain about the change.” *American Distributing Co. v. NLRB*, 715 F. 2d 446, 450 (9th Cir. 1983), quoted in *Rappazzo Electric Co.*, supra at 482.

It will be recalled that Plant Maintenance Director Pascarella testified that on February 8, he asked Local Union agents Anthony and Gruener to submit a revised restaffing plan to him quickly and that only when he received no response to this request or to his telephone calls to the union office thereafter, did he implement management’s original plan. The union witnesses denied that Pascarella had asked them for more input or that any messages from him were logged at the union office.

Although it is not essential to a resolution of this matter to decide whether Pascarella asked the union agents to get back to him quickly with a revised restaffing plan, I will as-

<sup>20</sup>As discussed above, Respondent’s principal argument in all three cases is based on its theory that any agreements reached with the Local Union were unenforceable, that it merely was required to consult with the Union. Having done that, it was free to act unilaterally. Alternatively, the Respondent posited that this dispute should be processed as a grievance. The conclusion that these arguments are lacking in merit are incorporated by reference in the appropriate sections of this decision and need not be discussed further.

Moreover, even assuming arguendo, I had found that Respondent was required to bargain with the Union solely about matters falling within the 22 topics set forth in art. 30 of the National Agreement, scheduling of days off clearly falls within the scope of the second item.

sume, for the sake of argument, that he did so.<sup>21</sup> However, the record contains no evidence that Pascarella also advised them that the matter was urgent, proposed specific time limits for the Union’s response, or suggested that if the Union did not address the problem immediately, Respondent would act unilaterally.

Pascarella’s statement that he telephoned the Union over the next several days is not convincing, for if he had done so and left his name with a message indicating that a response was urgent, I am certain, given Richard’s credible testimony regarding office practice, that his calls would have been returned. Consequently, even if Pascarella mentioned his concerns about restaffing to the union agents on February 8 and asked that the Union contribute further advice quickly, the Union’s failure to respond within the next 3 days in no way constitutes a clear and unmistakable waiver of its right to bargain before the Respondent changed this mandatory term of employment. Pascarella’s brief comments to the union agents did not provide the requisite “clear notice of the employer’s intent to institute the change” nor did the Union’s failure to respond to Pascarella within 3 days “allow a reasonable opportunity to bargain about the change.” *American Distributing Co. v. NLRB*, supra. The Union clearly demonstrated its interest in bargaining about this matter through its conduct at the January 28 meeting.

Respondent never explained why the rescheduling situation was so urgent that action could not have been delayed somewhat pending further bargaining. After all, as Pascarella acknowledged, the Postal Service was aware of and had been considering revising the days-off schedules of maintenance workers for 3 or 4 months. If Pascarella was interested in abating the employees’ opposition to the Union’s version, surely, he could have returned to the status quo for a brief period of time. Instead, Respondent acted unilaterally and precipitously, claiming that it was entitled to do so pursuant to the management rights prerogatives set forth in article 3 of the National Agreement.<sup>22</sup> Respondent’s reliance on that clause is misplaced, for its generalized language granting management the right to direct the work force does not show that the Union clearly and specifically waived its right to bargain about rescheduling the layoff hours of maintenance employees. *Johnson-Bateman Co.*, 295 NLRB 180, 186 (1989); *Owens-Corning Fiberglas Corp.*, 282 NLRB 609 (1987). To the contrary, it was the Respondent who forfeited a right to act unilaterally as to terms and conditions of employment for the maintenance workers when it became a party to that craft’s Memoranda of Agreement, supplemented by its January 28 agreement to implement the Union’s rescheduling proposal. Accordingly, by failing to adhere to that agreement and by unilaterally implementing its own resched-

<sup>21</sup>It should be noted that Respondent failed to call a second witness, Miscio, to corroborate Pascarella’s version of the February 8 meeting. However, I do not find this to be a serious oversight since Pascarella produced his daily diary which contained a notation confirming his account.

<sup>22</sup>Art. 3 of the National Agreement states in pertinent part that:

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

B. To hire, promote, transfer, assign and retain employees in positions within the Postal Service . . . . ;

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted . . . .

uling plan for maintenance department employees, Respondent violated Section 8(a)(1) and (5) of the Act.

D.

1. Respondent violated excessing agreement of special delivery messengers

Here, too, the parties concur that at a labor management committee meeting on March 23, Respondent agreed not to excess special delivery messengers to other crafts while casual and light or limited duty employees remained in the department performing special delivery craft work. Respondent apparently had little interest in abiding by this agreement. According to Martino's uncontradicted testimony, on the next day, when he brought another example of improper excessing to Respondent's attention, McKoy responded that the Union would not tell him what to do and "they were going to do whatever they felt they wanted . . ." <sup>23</sup> Without admitting that it abrogated this agreement, Respondent concedes that the parties again entered into an identical agreement at the next committee meeting on April 18. Clearly if Respondent had complied with the March 23 agreement, the Union would not have needed to raise the issue and confirm the bargain in writing the following month.

The parties' disagreement regarding the excessing of special delivery messengers centers on whether the Respondent complied with the April 18 agreement. Relying on the testimony of former Special Delivery Supervisor Price, and contrary to the testimony of Special Delivery Craft Director Martino, Respondent maintains that the Postal Service consistently adhered to the later agreement. However, Price ceased serving as special delivery supervisor in August 1989 and, consequently, could not credibly attest from personal knowledge that the Respondent faithfully honored the agreement after his transfer. Martino, on the other hand, remained on the scene on a daily basis. His testimony that special delivery messengers continued to be improperly excessed up to the date of trial was not based exclusively on his review of computer printouts, but also on personal exposure to practices in his department. <sup>24</sup> Accordingly, I conclude that Respondent disregarded the first agreement of March 23 and has not consistently followed the agreement of April 18 regarding the excessing of special delivery messengers. Its failure to do so violates Section 8(a)(5) and (1).

2. No Express Mail agreement was reached

The parties are in fundamental disagreement about whether there was a meeting of the minds at the March 23 meeting to preserve the delivery of Express Mail for the special delivery messengers. Richards and Anthony asserted that Re-

spondent approved such an arrangement, while Price insisted to the contrary. After carefully reviewing the record on this matter, I am compelled to conclude that while the question is close, the General Counsel has not satisfactorily proven by a preponderance of the evidence that the Respondent agreed that Express Mail routed into the department would be reserved for the regular special delivery carriers.

In claiming that the parties reached agreement, Richards and Anthony were compelled to rely on their recollections of the meeting, for there is no written recordation validating such an agreement. Although the Respondent's minutes contain some brief references to the Express Mail discussion, they do not mention any agreement on this matter. Richards asserted that the agreement on the Express Mail issue was incorrectly omitted from Respondent's minutes. I do not feel confident in relying on his recollection since the Union's minutes of the same meeting also fail to contain a word about the Express Mail issue. Surely, if an agreement had been reached about that matter, Gruener, a seasoned notetaker, would have recorded it. Richards' failure to remember that Price attended the March 23 meeting further undermines confidence in his ability accurately to recall precisely what occurred. <sup>25</sup> Unlike Richards, Martino, the special delivery craft steward who worked under Price on a daily basis, testified staunchly on two occasions that Price was at that meeting. <sup>26</sup> Given these contradictions, and in the absence of any reference to an agreement as to allocating Express Mail to the special delivery messengers in two independent sets of minutes, I hesitate to find that one existed.

What the minutes do show, and what may have misled Richards, Anthony, and Martino into believing that Respondent had expressed some sort of commitment, are McKoy's assurances that the special delivery messengers were getting a fair share of the Express Mail work. <sup>27</sup> However, McKoy's statement that "no one has the exclusive right of express mail" wholly supports Respondent's position that no agreement was reached. Accordingly, the Respondent cannot be found guilty of violating the Act by abrogating an agreement whose very existence was never satisfactorily established.

E. Respondent Improperly Removed Video Games Without Bargaining

The Respondent concedes that it removed the video machines without bargaining with the Union, but contends it was at liberty to do so because (1) the Union has no standing to contest an action which involved other unions as well as management; (2) the games did not affect terms and conditions of employment; (3) revenues from the machine were in

<sup>23</sup> It should be noted that as a current employee who testified against his employer's interest Martino's account is entitled to special weight. *Southern Paint & Waterproofing Co.*, 230 NLRB 429, 431 fn. 11 (1977). McKoy, on the other hand, was not called to testify about this matter.

<sup>24</sup> Price did not think that the computer records to which Martino referred would reveal the type of mail each employee carried. However, the printouts did show the time at which specific employees performed various operations. Therefore, as I understand it, the printouts would reveal if casual and limited duty employees were engaged in tasks that properly were the work of regular special delivery carriers. The introduction into evidence of the printouts would have been useful, but their nonproduction by either party is not fatal to the General Counsel's case in light of Martino's personal knowledge of practices in his department.

<sup>25</sup> Gruener's minutes did not name Price as a participant at the March 23 meeting. Curiously, however, his minutes list a Kim Howell as a representative for the Respondent at the meeting. Yet, Howell's name does not appear in the Respondent's minutes. Further, as mentioned previously, Gruener failed to record any discussion of the Express Mail issue in his minutes. These factors lead me to conclude that Gruener depended upon his sketchy and unreliable minutes in testifying that Price did not attend the March 23 meeting.

<sup>26</sup> Before Price testified and his attendance at the March 23 meeting became an issue, Martino volunteered that Price had been at that meeting. See Tr. 189, LL. 22-24; 191-192, LL. 25-2. I also note that Martino referred to just one agreement at Tr. 191.

<sup>27</sup> Martino indicated that the Union's chief concern at the March 23 meeting was the daily excessing of the special delivery messengers. His primary interest was in "maximizing" work for the special delivery employees in whatever way possible and his testimony about Express Mail seemed to be delivered as an afterthought.

the nature of a gift rather than a benefit; and (4) the machines had to be removed for safety and other reasons. I do not find the Respondent's defenses persuasive.

#### 1. Activities funded by video games are conditions of employment

The question to be resolved in this aspect of the case is whether the Respondent violated the Act by failing to bargain with the Union before removing the vending machines whose revenues funded social and recreational activities which took place outside the workplace and on nonworking time. The answer to this question turns on whether the social and recreational activities constituted mandatory conditions of employment. Both questions must be answered in the affirmative.

The Board, with court approval, has broadly construed the term "wages" in Section 8(d) of the Act to include "emoluments of value . . . which may accrue to employees out of their employment relationship." *Central Illinois Public Service Co.*, 139 NLRB 1407 (1962). In other words, the term "wages" does not merely refer to a sum of money given for actual hours worked; rather, it also encompasses numerous other forms of compensation. For example, in the *Central Illinois* case, supra, the Board ruled that the employer could not unilaterally discontinue granting employees a discount on gas used to heat their residences. In *Seattle First National Bank*, 176 NLRB 691 (1969), Respondent's long-established practice of making investment transactions for employees without charging a fee could not be abolished unilaterally. Similarly in *Southland Paper Mills*, 161 NLRB 1077 (1966), licenses granting employees hunting ground privileges on company owned property were ruled benefits which could not be unilaterally retracted. To the same effect are cases such as *Western Massachusetts Electric Co.*, 228 NLRB 607 (1977), and *Owens Corning Glass*, 282 NLRB 609 (1987), involving an employee appliance purchase plan and a lay-away plan, respectively. See also *Weston & Brooker Co.*, 154 NLRB 747, 749 (1965), *enfd.* 373 F.2d 741 (4th Cir. 1967) (unilateral abolition of canteen operation violated Sec. 8(a)(5) since removal affected employees who could no longer charge purchases). Compare *United Feldspar & Mineral Co.*, 189 NLRB 350 (1971) (removal of two soft drink vending machines did not impact working conditions where union did not request bargaining). These cases demonstrate beyond question that the Board has given the word-of-art "wages" an expansive construction so that it encompasses even those benefits enjoyed beyond the workplace during nonworking hours.

The above-cited precedents lead to only one conclusion: that the revenues from the video game machines funded wide-ranging activities which benefitted employees and supplemented their conventional wage payments. The availability of these activities constituted a mandatory condition of employment about which the Respondent was obliged to bargain before taking any action which would eliminate them.

#### 2. The Union has standing

Respondent submits that the Charging Party is but one of a number of groups, including other unions, unrepresented employees and management, whose delegates served on the

S & R Committee. Therefore, even if activities funded by the video games can be considered a condition of employment, the Respondent argues that the Local Union, standing alone, cannot seek relief on behalf of the entire Committee.

Respondent's argument misses the point. In challenging the Respondent's action, the Union did not style itself as the representative of the S & R Committee's interests (although its efforts could accrue incidentally to the Committee's advantage). Rather, the Local acted on behalf of its members, who among others, were deprived of substantial benefits when the Respondent removed the source of revenues which supported various activities. As the collective-bargaining representative of a significant number of employees who benefited from these activities, the Local Union was entitled to bargain with management before the machines were removed and to charge the Respondent with having violated the Act when it failed to do so.

#### 3. The video machine revenue was not a gift

Relying on *Benchmark Industries*, 270 NLRB 22 (1984), Respondent asserts that the grant to the S & R Committee of profits from the video games to underwrite employee events was a gift which did not amount to compensation; therefore, the Postmaster was privileged to have the machines removed without bargaining. Respondent's reliance on *Benchmark* is misplaced. In that case, the Board decided that the employer's 3-year practice of giving employees turkeys at Christmas amounted to a token gift which could not be characterized as compensation or a term of employment, so that discontinuing this practice did not require bargaining.

The substantial sums of money (\$12,000 to \$20,000 annually) which were realized from the video game machine profits, cannot possibly be characterized as token payments. Moreover, Respondent's rather brazen claim that these funds were its gift is misleading given the fact that the money to play the machines and the source of the S & R Committee's funds came from the employees' pockets, not the Respondents'.

#### 4. Safety concerns did not preclude bargaining

Postmaster Fisher claimed that he was driven to remove the machines because they gave rise to safety and litter problems and were enticing employees to overstay their break periods. Minutes of monthly Labor-Management Safety Committee meetings, held during the period of time that the Postmaster said these problems were rampant, contain no reference to his concerns.<sup>28</sup> However, even assuming that these problems existed, Respondent could and should have bargained with the Union before removing the machines for even the best of motives do not justify such unilateral action. *NLRB v. Katz*, supra at 742. Consequently, Respondent's removal of the video game machines, without bargaining with the Union, violated Section 8(a)(5) of the Act.

In conclusion, as found above, the Respondent failed to implement two agreements reached with the Union, and instead acted unilaterally by revising the layoff schedules of maintenance workers, and excessing special delivery messengers while other noncraft personnel remained in the department. The Respondent also acted improperly by removing the video game machines, a major source of revenue for employee activities, without bargaining with the Union. Each

<sup>28</sup>The Postmaster had his own delegate to this committee.

of these acts constitute unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

*F. The Respondent Engaged in Bad-Faith Bargaining by Reneging on Agreements*

The complaint alleges, and the General Counsel argues, that “By its overall acts and conduct, Respondent has demonstrated that it is engaged in a pattern and practice of reneging on agreements reached with the Union, thereby frustrating the collective bargaining process.” (GCX 1(q).) I agree.

In *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063 (1973), the Board found the employer violated Section 8(a)(5) by unilaterally reducing wages rates below those set in the collective-bargaining agreement. The Board recognized that the employer may have been motivated by economic considerations, but nevertheless, regarded the employer’s conduct as so critical, that it constituted

not just a mere breach of the contract but amounts, as a practical matter, to the striking of a death blow to the contract as a whole, and is thus, in reality, a basic repudiation of the bargaining relationship.

*Id.* at 1064. Accord: *Fairfield Nursing Home*, 228 NLRB 1208, 1210 (1977).

Although the unfair labor practices which the Respondent committed in this case do not involve alterations to employees’ basic wage rates as in *Oak Cliff-Golman or Fairfield Nursing Home*, the Respondent’s conduct is no less egregious and certainly as fundamental an assault on the parties’ collective-bargaining relationship. Respondent’s argument that its local contracts with the Union are unenforceable is contrary to longstanding bargaining history and border on the frivolous. For many years, the Respondent entered into and abided by agreements reached at joint labor management committee meetings. Its refusal to do so in the cases decided above is “a basic repudiation of the bargaining relationship.” *Oak Cliff-Golman*, *supra* at 1064. Such conduct should not be tolerated or repeated.

CONCLUSIONS OF LAW

1. Respondent, the United States Postal Service, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. American Postal Workers Union, AFL-CIO, and the Pittsburgh Metro Area Postal Workers Union, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

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

All employees in the regular work force of the U.S. Postal Service, as defined in Article 7 of the National Agreement between the parties; excluding managerial and supervisory personnel; professional employees; employees engaged in personnel work in other than a purely non-confidential clerical capacity; security guards as defined in Public Law 91-375, 1201(2); all Postal Inspection Service employees; employees in the supplemental work force as defined in the aforementioned Article 7; rural carriers and mail handlers.

4. The Local Union, which is a constituent local of the National Union, is now, and has been at all times material herein, an agent of the National Union, acting on its behalf in administering the collective-bargaining agreement between the National Union and Respondent at various facilities including Respondent’s BMC in Warrendale, Pennsylvania, and the GMF in Pittsburgh Pennsylvania, and has been recognized as such in successive collective-bargaining agreements negotiated at the local level, the most recent of which is effective by its terms from July 21, 1987, to November 20, 1990.

5. At all times material herein, the National and the Local Union have been and are, the exclusive representatives of appropriate units for the purposes of collective bargaining within the meaning of Sections 8(a)(5) and 8(d) of the Act.

6. Respondent violated Section 8(a)(5) and (1) of the Act by: (a) abrogating an agreement reached with the Local Union on January 28, 1988, and unilaterally implementing a restaffing plan for maintenance department employees; (b) abrogating agreements reached on March 23 and April 18 that special delivery messengers would not be excessed to other departments until other noncraft employees were removed first; and (c) removing video game machines from the General Mail Facility bargaining with the Local Union.

7. Respondent violated Section 8(a)(5) and (1) by engaging in a pattern and practice of reneging on agreements reached with the Union, thereby frustrating the collective-bargaining process.

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

9. Except as found herein, Respondent has not otherwise violated the Act as alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order the Respondent to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act, including the posting of the notice attached to this decision.

Specifically, having found that the Respondent unlawfully repudiated an agreement reached with the Local Union on January 28 regarding rescheduling layoff days for maintenance department employees and unilaterally implemented its own plan, I shall recommend that the Respondent rescind its plan and upon request, bargain in good faith until such time as the parties reach an agreement or bargain to impasse. The Respondent shall implement and abide by any agreement which may be reached.

Similarly, having found that Respondent has failed to abide by agreements reached on March 23 and April 18, 1988, regarding the excessing of special delivery messengers only after other noncraft employees no longer remain in the department, I shall recommend that the Respondent cease and desist from such conduct and adhere scrupulously to the commitments in those agreements.

Having also found that the Respondent wrongfully removed the video game machines without bargaining with the Union, I recommend that the machines or comparable ones be reinstalled and remain in the GMF pending bargaining with the Union until an agreement is obtained or the parties in good faith reach impasse. Further, I recommend that the

Respondent be ordered to restore the status quo ante to the extent feasible by making whole the Social and Recreation Committee Fund with appropriate interest for losses incurred as a result of its unlawful conduct.<sup>29</sup>

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>30</sup>

#### ORDER

The Respondent, United States Postal Service, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively in good faith with the American Postal Workers Union, Pittsburgh Metro Area Postal Workers Union, AFL-CIO.

(b) Refusing to comply with the terms of agreements reached at joint labor-management committee meetings by unilaterally implementing a plan to reschedule the layoff days of employees in the maintenance department; and by excessing regular, career special delivery messengers before casual or light and limited duty employees temporarily assigned to that department are excessed first or otherwise removed from performing special delivery craft work.

(c) Unilaterally removing video game machines which provided the major source of revenue to fund projects administered by the Social and Recreational Committee for the benefit of all employees, without first bargaining with and reaching agreement or impasse with the Union.

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

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

(a) Upon request, bargain in good faith with the Local Union about rescheduling layoff days for maintenance de-

partment employees and implement any agreement which may be reached forthwith.

(b) Rescind the Postal Service plan rescheduling layoff days for the maintenance department employees and return to the schedule which existed prior to February 12, 1988, until such time as the parties have bargained in good faith to agreement or impasse concerning a new rescheduling plan.

(c) Reinstall the video machine games, or substantially similar games, until such time as the parties as the parties have bargained in good faith in the matter, and, as set forth in the remedy section of this decision, make whole the Social and Recreational Committee Fund by payment of the revenues lost as a result of the unlawful removal of the games, with interest thereon computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the payment due to the Social and Recreational Committee fund under the terms of this Order.

(e) Post at its General Mail Facility in Pittsburgh, Pennsylvania, its Bulk Mail Center in Warrendale, Pennsylvania, and any other facility where employees who may be affected by this Decision are employed, copies of the attached notice marked "Appendix."<sup>31</sup> Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on 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.

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

<sup>29</sup> I recognize that the amount of revenues realized through the operation of video games varied from year to year. Using projections based on former year's profits, a reasonable sum can be calculated during the compliance stage of this proceeding. Interest on that sum is to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

<sup>30</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>31</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."