

Crafts Precision Industries, Inc. and Lodge No. 1836 of District 38, International Association of Machinists & Aerospace Workers, AFL-CIO.
Cases 1-CA-26573 and 1-CA-27070

December 20, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On March 29, 1991, Administrative Law Judge Martin J. Linsky issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs. The Respondent also filed an answering 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 conclusions² only to the extent consistent with this Decision and Order.

1. We reverse the judge's finding that the statement made by John Pappas, the Respondent's owner and chief executive officer, to the Union's chief steward, Thomas McCullough, on June 26, 1989,³ violated Section 8(a)(1).

The parties' collective-bargaining agreement covering the Respondent's employees at its Canton, Massachusetts facility did not provide for working foremen. In June, during the contract term, Pappas asked the Union to agree to modify the agreement to provide for working foremen. The Union agreed to allow Pappas to present his proposal to the unit employees, who would then vote on whether they wished to modify the agreement. Pappas subsequently met with employees to explain his proposal and further told them that if they did not agree to the modification he had other options available. That statement was not alleged to be unlawful.

On June 26, Pappas approached McCullough and expressed his displeasure that the employee vote on the Respondent's working foremen proposal would not take place at the facility. McCullough refused to change the location of the vote. According to

McCullough's version of the conversation, which was credited by the judge, Pappas then reiterated to McCullough what he had told the employees, that he had other options available if the employees rejected the proposal. He went on to mention as examples the elimination of the polycrystalline diamond (PCD) department or scrutiny of jobs in the carbide department, and that the result would mean layoffs.

The judge found Pappas' statement to be a threat of layoffs or other dire consequences if the employees did not agree to modify the collective-bargaining agreement. We disagree. As the Respondent's written memoranda to the Union and unit employees makes clear, it considered its proposed working foreman organizational structure essential in order to increase management efficiency.⁴ The confidential memo to the Union states management's view that the current level of performance under the existing structure was responsible for the steady loss of business activity. Thus, the Respondent was clearly putting forward its proposal as a means to accomplish an economic objective aimed at turning around its undisputed loss of business activity. In this context, we agree with the Respondent that Pappas' articulation of other legitimate means available to accomplish the Respondent's lawful economic objectives is more reasonably construed as a realistic prediction of the possible consequences if the employees rejected the Respondent's option of improving efficiency through adoption of the working foreman system. Without more, the evidence is insufficient to establish a threat in violation of Section 8(a)(1). The General Counsel, although showing that Pappas was angered by McCullough's refusal to change the location of the vote, has not shown that Pappas' explanation of possible alternatives to adoption of the working foreman system rose to the level of an unlawful threat to retaliate against the employees if they rejected the proposed midterm modification or was in reprisal for refusing to change the location of the vote. See, e.g., *Jefferson Ready Mix*, 284 NLRB 977, 979-980 (1987); *Kawasaki Motors Mfg. Corp.*, 280 NLRB 491, 492-493 (1986), *affd.* 834 F.2d 816 (9th Cir. 1987); and *Ohio New & Rebuilt Parts*, 267 NLRB 420, 420-421 (1983). See also *Hydro Logistics*, 287 NLRB 602, 613-614 (1987) (statements of economic duress made in the course of the respondent employer's efforts to obtain contract concessions held not to be unlawful threats of reprisals because the statements were capable of being evaluated as well as supported by an objective factual basis).⁵ Finally, we note that Pappas' statement

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.

²We adopt the judge's findings that Case 1-CA-27070 should not be deferred and that the 8(a)(3) and (1) allegations with respect to the layoffs of employees Nguyen, Crowley, Le, Ha, and Pham should be dismissed for the reasons stated by the judge.

³All dates are in 1989 unless otherwise indicated.

⁴These memoranda were not referred to by the judge but are contained in the record as G.C. Exhs. 3 and 4.

⁵In finding an unlawful threat, the judge relied on *Mid-South Bottling Co.*, 287 NLRB 1333 (1988). That case is distinguishable on the facts. In that case the respondent employer announced that it would never let a union in the facility and made repeated and fre-

to McCullough was merely a fleshed-out reiteration of the “other options available” remark he had previously made at the meeting with employees to explain the working foreman proposal. As stated above, that remark was not alleged to be unlawful.

2. The judge further found that the partial transfer of the PCD department was motivated, at least in part, by the employees’ rejection of the working foreman proposal. Thus, he concluded that the transfer violated Section 8(a)(5) and (1).⁶ The judge bases his finding of retaliatory motive on the timing of the events in question. Again, we disagree.

In late July, the Respondent transferred part of the PCD department from Massachusetts to its facility in Illinois.⁷ Specifically, the Respondent transferred some 15 pieces of machinery. The Union requested bargaining about the transfer. The Respondent essentially refused to bargain over the decision to relocate the machinery but agreed to bargain over effects.

The judge noted that discussions concerning the proposal took place months before the employees’ rejection of the Respondent’s proposed contract modification, but found, based on two pieces of documentary evidence and the lack of evidence to the contrary, that the final transfer decision occurred in early July, after the working foremen vote. The Respondent submits that, contrary to the judge’s determination, the final decision was made on May 31 before the vote. The Respondent refers to a memo in the record from Thomas Kuhl, who is its president and heads the Respondent’s Illinois operations, to support its contention that the final decision in fact was made on that date, which clearly preceded the employees’ working foremen vote.

We find, contrary to the judge, that the General Counsel has failed to establish a prima facie case that a motivating factor in Respondent’s action in partially transferring the PCD department was the employees’ rejection of the working foremen proposal. *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982). See also *Nu Dawn Homes*, 289 NLRB 554 fn. 1 (1988). First, regardless of when the final decision was made, it is clear from the record, as the judge conceded, that serious consideration of this transfer began months before the vote rejecting the working foremen proposal and

continued through July. The stated reason for the partial transfer was to create additional capability for growth of the Respondent’s regional division.

Further, there is no direct evidence that the partial transfer of the PCD department was linked in any way to the union vote. We have found, contrary to the judge, that the statement made by Pappas to McCullough on June 26, discussed above, was not a threat but rather a factual statement of the alternatives available to the Respondent if its working foremen proposal were rejected. Further, the alternative mentioned by Pappas regarding possible elimination of the PCD department with resulting layoffs is different from what occurred in late July.⁸ The Respondent did not eliminate the PCD department, but only transferred equipment to the Illinois operation, consistent with its stated goal of consolidating PCD operations in Illinois to take advantage of growth opportunities, while maintaining some PCD production in Massachusetts to service its regional customers. Moreover, it is unclear from the record and the findings of the judge that, in fact, any Massachusetts facility layoffs were the direct result of the equipment transfer. In light of all the circumstances, we do not find sufficient evidence of retaliatory motive rather than legitimate business motive, in the Respondent’s actions.

3. The judge concluded that the selection of employees McCullough, Hillson, and Kierstead for layoff in August violated Section 8(a)(3) and (1) based on his finding that these particular layoffs would not have occurred absent the employees’ protected, concerted activities.⁹ We agree for the reasons set forth below, consistent with *Wright Line*, *supra*. We thus find that in each instance the General Counsel has made a prima facie case of illegal motivation and that the Respondent has not met its burden of demonstrating a legitimate basis for that employee’s selection for layoff even absent any protected, concerted activity. See *General Combustion Corp.*, 295 NLRB 1103 (1987), and *Nu Dawn*, *supra*.

With respect to employee and Chief Steward McCullough, it is undisputed that McCullough had been the union steward, with one hiatus for health reasons, since 1978, and that the Respondent had substantial knowledge of his union activities. It is similarly

quent statements at all levels of management that the facility would close if the union were voted in.

⁶The General Counsel did not allege, nor did the judge find, that the Respondent had any obligation to bargain over the partial transfer apart from that arising from the Respondent’s alleged unlawful motivation. Thus, the General Counsel’s theory of the case at hearing was that the Respondent’s partial transfer of the PCD department without bargaining was not unlawful *per se*, but only a derivative 8(a)(5) violation based on the Respondent’s alleged illegal motivation in taking the action.

⁷This equipment was earmarked for, and ultimately was located in, a new facility in Illinois adjacent to the Respondent’s existing facility at Schiller Park.

⁸Even assuming the final decision to partially transfer the PCD department was made after the employee vote and further assuming that an alternative mentioned by Pappas in his June conversation was linked to the partial transfer decision, we still would not find the transfer to have been illegally motivated. To the contrary, the Respondent could reasonably wait for the results of the employee vote before deciding to proceed with other lawful options without violating the Act.

⁹The judge also found that other employee layoffs were economically justified due to the undisputed downturn in business activity at the Massachusetts facility. We adopt this finding without further comment. The layoffs of three employees in July were not alleged to be unlawful.

conceded that McCullough was the object of Pappas' anger in June when he refused to change the location of the working foremen proposal vote. After that vote, Pappas asked McCullough for more information, which McCullough refused to divulge.

McCullough's known union activities extended to pressing management with respect to employee grievances, including employee Hillson's grievance concerning his pay raise in early July and August. He also handled employee Kierstead's grievance in August concerning the latter's reinstatement at a lower pay rate. That such activities provoked the Respondent's displeasure is evidenced by McCullough's undisputed testimony, referred to by the judge, that his supervisor, Sauer, told McCullough in August before his layoff that McCullough's name had come up in a management conversation "in some disfavor" and that Sauer wanted McCullough to be on his best behavior. Although not mentioned by the judge, McCullough similarly testified without controversion to a conversation with Sauer around December 1988 in which the supervisor had confided to McCullough that he would have received a pay raise at least 2 years earlier had it not been for his chief steward activities. Thus, the General Counsel has demonstrated ample knowledge of and animus to McCullough's union activities by the Respondent up to the time immediately preceding his layoff.

The Respondent seeks to rebut the General Counsel's case by contending that its decision to lay off McCullough, although effectuated in August, had been made in July. On the basis of the above evidence of longstanding animus, we reject the Respondent's assertion that, even if the decision was made in July and effectuated in August, it would serve to negate the General Counsel's prima facie case. Moreover, as to the layoff decision, the Respondent showed that it was made with reference to the company's sales figures alone. Thus, the Respondent failed to show that its decision to lay off McCullough was based on any analysis with respect to his particular position, that of final inspector. In this regard, the Respondent conceded that no figures regarding the cost savings to be achieved if McCullough's position were eliminated were available at the time it made its decision. In light of all the above we find, in agreement with the judge, that the Respondent has failed to sustain its burden of showing McCullough would have been selected for layoff even in the absence of his union activities.

Employee Hillson, who was a maintenance mechanic, had successfully pursued a grievance over his pay in 1987. However, he did not receive the merit pay increase he was entitled to in January as part of his favorable grievance resolution. He complained and received part of the merit pay increase at that time, with the second part to be paid in July. In July, he did

not get the second installment of the pay increase and complained to Chief Steward McCullough, who pursued the matter with management. Subsequently, both McCullough and Hillson were selected for layoff. In light of the timing of the events in question, we find that the General Counsel has made a prima facie case that Hillson, like McCullough, was selected for layoff because of his protected concerted activity of pursuing his grievance through his chief steward at a time immediately preceding the Respondent's decision and implementation of its decision to lay off Hillson. We further find that the Respondent has failed to rebut the General Counsel's case by showing, with reference to the particular position in question, that Hillson would have been selected for layoff absent his union activities.

The General Counsel has similarly made a strong prima facie case for a finding of unlawful selection for layoff based on timing with respect to employee Kierstead. Kierstead was fired in 1987 for insubordination, and the case had been pursued by the Union through arbitration and the courts. On March 23, pursuant to a district court order, Kierstead was ordered reinstated. On August 2,¹⁰ the Respondent offered Kierstead reinstatement effective August 14 at a lower pay rate due, according to the Respondent's letter to Kierstead, to the termination of the PCD operations at the facility. When Kierstead returned to work on that date, he observed that work he had previously performed was being done by other employees. He spoke with Chief Steward McCullough, who filed a grievance on August 18 asserting that Kierstead should have been reinstated at his original higher rate of pay. The layoffs of Kierstead, McCullough, and the others occurred 4 days later.

It is clear that the Respondent fought the reinstatement of Kierstead vigorously and that it laid him off less than 2 weeks after it had reinstated him pursuant to a court order. During that time period, Kierstead had filed another grievance, thereby, engaging in further protected, concerted activity. Moreover, the stated reason for Kierstead's reinstatement at a lower wage rate was the Respondent's elimination of the PCD department. However, it is clear from the record that, although equipment was transferred, the PCD operation at the Massachusetts facility was not in fact terminated. To the contrary, the Respondent argued at hearing that no positions were eliminated as a result of the transfer of the equipment to the Illinois facility. In light of the timing of the events in question, as well as the Respondent's failure to rebut the General Coun-

¹⁰There is testimony in the record to the effect that the delay between the March 23 district court order and the Respondent's August offer of reinstatement was due to the Respondent's appeal of the district court decision to the circuit court, although the Respondent's August offer of reinstatement only makes reference to the district court order.

sel's case by showing that it selected Kierstead for lay-off based only on legitimate reasons, we agree with the judge that the layoff of Kierstead was unlawful.

ORDER

The National Labor Relations Board orders that the Respondent, Crafts Precision Industries, Canton, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off employees because they engage in union or other protected concerted activities.

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

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

(a) Offer Thomas McCullough, William Hillson, and John Kierstead full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed.

(b) Make Thomas McCullough, William Hillson, and John Kierstead whole for any loss of pay and other benefits suffered by them commencing from August 22, 1989, the date of their unlawful layoffs. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1989).

(c) Remove from its files any reference to the unlawful layoffs and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(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 amount of backpay due under the terms of this Order.

(e) Post at its facility in Canton, Massachusetts, copies of the attached notice marked "Appendix."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 1, 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

¹¹ 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."

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.

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 lay off employees because they engaged in union or other protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them under the National Labor Relations Act.

WE WILL offer Thomas McCullough, William Hillson, and John Kierstead immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

WE WILL make Thomas McCullough, William Hillson, and John Kierstead whole for any loss of pay or benefits they suffered because of the discrimination against them, plus interest.

WE WILL notify each of them that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

CRAFTS PRECISION INDUSTRIES, INC.

Joseph F. Griffin, Esq., for the General Counsel.
Harold N. Mack, Esq. and *Benjamin Smith, Esq.*, of Boston, Massachusetts, for the Respondent.
Eugene Marcaccio, of Stamford, Connecticut, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge. On August 8 and September 28, 1989, a charge and amended charge in Case 1-CA-26573 were filed by Lodge No. 1836 of District 18, IAM (Charging Party or Union) against Crafts Precision Industries, Inc. (Respondent).

On October 27, 1989, the National Labor Relations Board, by the Regional Director for Region 1, issued a complaint in Case 1-CA-26573.

On February 14 and April 23, 1990, a charge and amended charge in Case 1-CA-27070 were filed by the Union against Respondent.

On April 30, 1990, the National Labor Relations Board, by the Regional Director for Region 1, issued a complaint in Case 1-CA-27070.

It is alleged in Case 1-CA-26573 that Respondent violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act) when it threatened an employee with loss of work if he did not vote to modify, in midterm, a collective-bargaining agreement between the Union and Respondent, when it partially transferred the polycrystalline diamond (PCD) department from Canton, Massachusetts, to Schiller Park, Illinois, and when it refused to bargain concerning the partial transfer of the PCD department. Respondent denied it violated the Act in any way.

Hearing was held before me in Boston, Massachusetts, concerning the allegations in Case 1-CA-26573 on March 19 and 20, 1990. I granted the General Counsel's motion to consolidate Case 1-CA-6573 with Case 1-CA-27070, where the Regional Director for Region 1 had authorized the issuance of a complaint but the complaint had not issued as yet. As noted above, the complaint in Case 1-CA-27070 did not issue until April 30, 1990. Counsel for Respondent had no objection to the consolidation of Case 1-CA-26573 and Case 1-CA-27070 but argued that Case 1-CA-27070 should be deferred to the arbitral process, citing *Dubo Mfg.*, 142 NLRB 431 (1963).

Counsel for the General Counsel argued that deferral was inappropriate since the allegations in Case 1-CA-26573, which was to be tried before me, and the allegations in Case 1-CA-27070 were inextricably interrelated and deferral would be inappropriate under these circumstances. I agree with the General Counsel. See *SQI Roofing*, 271 NLRB 1 fn. 3 (1984). The complaint in Case 1-CA-27070 alleges that Respondent violated Section 8(a)(1) and (3) of the Act when it laid off eight employees which layoff was because some of the eight employees engaged in protected concerted activity and because of the partial transfer of the PCD department alleged to be violative of the Act in Case 1-CA-26573. Accordingly, the allegations in both cases are so interrelated that deferral would be inappropriate. *Dubo Mfg.*, supra, is distinguishable because in *Dubo*, unlike here, there was U.S. district court order directing the parties to arbitrate their dispute and in *Dubo* there was no outstanding interrelated case being tried before the Board. Again, Respondent denied it violated the Act in any way.

Hearing was held before me in Boston, Massachusetts, concerning the allegations in Case 1-CA-27070 on June 12, 13, and 14, 1990.

On the entire record in this case, to include posthearing briefs due by November 5, 1990, and timely filed by the General Counsel and Respondent, and on my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Respondent, a corporation, with offices and places of business in Canton, Massachusetts (Respondent's Canton facility), and Schiller Park, Illinois (Respondent's Schiller Park facility), has been engaged in the manufacturing of machine tools.

During the years ending December 31, 1988, and December 31, 1989, Respondent, in the course and conduct of its

business operations described above sold and shipped from its Canton facility products, goods, and materials valued in excess of \$50,000 directly to points outside the Commonwealth of Massachusetts.

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

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that the Union is now and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The 8(a)(1) Threat*

Respondent is in the business of manufacturing machine tools. It operates facilities in Canton, Massachusetts, and in Schiller Park, Illinois.

A collective-bargaining agreement covering the employees in the Canton facility was in effect from July 6, 1987, to July 5, 1990. The agreement did not allow for working foremen.

In early June 1989 John Pappas, the owner and chief executive officer of Respondent, met with Union Business Agent Charles Deignan and Chief Steward Thomas McCullough, who was an employee at the Canton facility.

At this meeting, Pappas told Deignan and McCullough that he wanted the collective-bargaining agreement modified to permit the use of a working foreman.

The International Union had okayed the use of working foremen in years past at some facilities where it represented employees. A midterm contract modification would be required, however, before a working foreman would be allowed at Respondent's Canton facility. The meeting ended with Pappas being allowed to present to the unit employees his arguments in favor of the working foreman proposal and the unit employees—who numbered 33 or 34 at the time—then voting on whether or not to modify the collective-bargaining agreement.

Pappas met with the unit employees and presented his arguments in favor of the unit employees approving the working foreman proposal. He told the employees that if they did not vote in favor of the working foreman proposal that he "had other options to exercise." Pappas did not tell the employees what he meant by other options. This statement is not alleged as violative of the Act.

Thereafter, Chief Steward Tom McCullough posted a notice advising that a vote on the working foreman proposal would be held right after work at a nearby church on June 28, 1989.

On June 26, 1989, Pappas approached McCullough at work. Pappas, by his own admission, was upset that the vote would take place away from the facility because, as he told McCullough, he thought a number of unit employees might go home right after work and not bother to vote. Pappas offered, as he had before, to let the employees have the vote at the plant and even be paid for their time. McCullough would not change the location of the vote. Pappas went on to tell McCullough, according to McCullough, "that he had other options, namely the elimination of the diamond, polycrystalline diamond section and very close company

scrutiny loser jobs in the carbide section and that the net result of that would mean layoffs.”

Two days later the unit employees voted at the nearby church and *not* in the plant to reject the midterm modification of the collective-bargaining agreement proposed by Pappas.

Right after the vote McCullough told Pappas that the unit employees voted against the working foreman issue. Pappas wanted to know what the vote was but McCullough would not tell him.

A collective-bargaining agreement is supposed to bring stability to the workplace. A threat of a layoff or other dire consequences if the unit employees did not agree to modify the collective-bargaining agreement is violative of Section 8(a)(1) of the Act. See *Mid-South Bottling Co.*, 287 NLRB 1333 (1988).

I credit the testimony of Tom McCullough. I found McCullough to be an honest witness. He impressed me with his demeanor. McCullough, who appeared to be a mild man, clearly and unequivocally testified that Pappas threatened layoffs as an option if the unit employees rejected the midterm contract modification. Pappas admits he told the unit employees at the meeting before the vote and told McCullough 2 days before the vote that if the unit employees rejected the working foreman proposal he had other options. He claims he never said what those options might be. At hearing he claims the option was to grant the wish of a supervisor who wanted to return to unit work and for Pappas himself to take on more supervisory responsibilities.

B. Transfer of Part of the PCD Department

In late July 1989 Respondent transferred part of the PCD department. It transferred from Canton, Massachusetts, to Schiller Park, Illinois, no less than 15 pieces of machinery, much of it used either exclusively or partially in the PCD department.¹

The General Counsel contends that the transfer of the equipment with resultant layoffs was to retaliate against the employees for rejecting the working foreman proposal. Respondent contends that the decision to transfer this equipment was made *prior* to the union rejection of the working foreman proposal but implemented *after* the rejection.

The evidence reflects that *discussions* months before the union rejection of the working foreman proposal may have been held but that the decision itself was made *after* the union vote of June 28, 1989, and not before.

Respondent concedes that no documents exist in which approval to transfer the equipment is noted which reflect a date prior to the union vote, whereas two documents introduced

into evidence at the hearing reflect that the decision to transfer the equipment was made *after* the union vote of June 28, 1989, i.e., an affidavit of CEO John Pappas, dated August 1, 1989, in which Pappas states, “In early July 1989 Crafts made a business decision to terminate the polycrystalline diamond operations of the diamond department at its Canton facility,” and a letter from Respondent’s attorney to a union attorney on September 6, 1989, wherein Respondent’s attorney states that the Respondent advises him that the decision to transfer the equipment was made “on or about July 7, 1989.”

There is nothing in the collective-bargaining agreement to prohibit the transfer of all or part of the PCD department or any other plant equipment. Generally, a decision to transfer all or part of a department and/or equipment is a managerial decision about which the employer need not bargain unless, of course, it does so for antiunion reasons, i.e., to retaliate against the Union. See *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981).

After Respondent formally advised its employees in a memo dated July 26, 1989, that it was consolidating all cutting tool manufacturing into a newly formed division, the Union, by letter dated August 2, 1989, requested that Respondent bargain about this transfer of work. Respondent, by letter dated August 7, 1989, refused to bargain about the transfer decision but did agree to engage in effects bargaining only.

On August 17, 1989, the parties met. The Union reiterated its request to bargain about the partial transfer of the PCD department. Respondent refused to do so but did agree again to engage in effects bargaining. If the Respondent partially transferred the PCD department but did so without antiunion animus it was relieved of any obligation to bargain concerning the transfer. However, it is my conclusion that the partial transfer of the PCD department was motivated, at least in part, by antiunion animus on Respondent’s part, i.e., anger against the unit employees for rejecting Respondent’s proposal to modify in midterm the collective-bargaining agreement to permit a working foreman. Accordingly, Respondent was *not* relieved of its obligation to bargain and its failure to do so is a violation of Section 8(a)(1) and (5) of the Act. See *Mid-South Bottling Co.*, 287 NLRB 1333 (1988).

The juxtaposition of events, at least by a preponderous of the evidence, persuade me that Respondent’s motivation for the transfer was antiunion. Any layoffs resulting from the transfer would also violate Section 8(a)(3) of the Act. See section C below.

C. Layoff of Eight Employees on August 22, 1989

In July 1989, but prior to the transfer of plant equipment, Respondent laid off three employees. It is not alleged that this layoff was in violation of the Act.

In late July 1989 the PCD department went through a consolidation and, as noted above, some equipment was moved from Canton, Massachusetts, to Schiller Park, Illinois. I have found that Respondent threatened to do this in its conversation with Tom McCullough on June 26, 1989, in violation of Section 8(a)(1), and actually did it in violation of Section 8(a)(3), if any employees were adversely impacted, which I find they were, and the consolidation and transfer, since done

¹ The equipment, according to a document relied on by all sides to the case, consisted of:

- “2 Coburn PCD grinding machines
- 3 OK tool cutter grinding machines
- 2 Cincinnati cutter grinding machines
- 2 Benches 3 ft. by 6 ft.
- 2 Model T C—10 J. & L. Bench comparators
- 1 Myford cyl. grinding machine
- 1 Landis surface grinding machine
- 1 Christen Drill grinding machine
- 1 Zygo Laser measuring machine

also various and sundry fixtures and tooling for the above machines which were designed specifically for them to fabricate and manufacture PCD inserts, drills, reamers, tools, and wear parts.”

with antiunion animus, was also done in violation of Section 8(a)(5) of the Act.

One thing, however, is crystal clear; the Respondent's business was falling off. Tom McCullough, who I credit, concedes that business was slow in the Canton facility for a year or more *prior* to the transfer of the equipment. Some layoffs may well be economically justified, e.g., the layoff of the three employees in July 1989.

On August 22, 1989, eight employees were laid off. The General Counsel alleges that all eight were laid off as a result of the unlawful partial transfer of the PCD department *and* in addition that three of the eight employees, Tom McCullough, William Hillson, and John Kierstead, were also selected for layoff because they had engaged in other protected concerted activity. McCullough, Hillson, and Kierstead filed grievances protesting their August 22, 1989 layoffs; however, as noted above, deferral to the arbitral process is not appropriate in this case.

Respondent maintains that no employees were laid off as a result of the partial transfer of the PCD department. In support of this position they state, and there is no evidence to the contrary, that no new employees were hired at Schiller Park, Illinois, the facility to which the equipment was transferred and those laid off at Canton, Massachusetts, did not work exclusively in the PCD area. Further sales figures clearly justified a layoff and Respondent laid off in the manner prescribed in the collective-bargaining agreement.

I will address the layoff of three of the eight employees who were laid off, i.e., Tom McCullough, William Hillson, and John Kierstead, separately from the other five employees laid off, i.e., Kien Nguyen, Terrance Crowley, Son Le, Minh Ha, and Thanh Pham.

I note at this juncture that based on demeanor, reasonableness of testimony, failure to be impeached, and other factors that I found McCullough, Hillson, and Kierstead to be very credible witnesses.

None of the eight employees laid off on August 22, 1989, were recalled. This was a permanent layoff.

1. Layoff of Chief Steward Thomas McCullough

On August 22, 1989, Chief Steward Tom McCullough was laid off. McCullough began his employment with Respondent in September 1977. He was a final inspector.

On July 6 or 7, 1989, the top management of Respondent, i.e., John Pappas, Tom Kuhl, and Wilford Sheehan, met and decided to lay off three employees and, it is claimed, to eliminate the positions of final inspector (Tom McCullough's job) and maintenance machinist (William Hillson's job). McCullough and Hillson were not laid off, however, until August 22, 1989.

McCullough was not only chief steward for the Union but had incurred the wrath of CEO Pappas in the performance of his union duties, e.g., it was McCullough who Pappas threatened with employee layoffs if the Union did not agree to the working foreman proposal, it was McCullough who refused Pappas' request to change the location of the vote on the working foreman proposal from a nearby church to the plant, it was McCullough who informed Pappas that the Union rejected his working foreman proposal, it was McCullough who refused to tell Pappas what the vote was, it was McCullough who pressed management in July on its promise of a pay raise to Hillson (see sec. III,C,2, below),

and it was McCullough who filed a grievance on behalf of John Kierstead alleging that Kierstead was not being paid at the proper rate of pay (see sec. III,C,3, below). Lastly, McCullough testified that Supervisor Robert Sauer, who did *not* testify, told McCullough in August 1989 before the layoff that McCullough had come up in a conversation in the office "in some disfavor" and he wanted McCullough to be on his best behavior.

As final inspector, McCullough inspected product from all departments to include the PCD department. The final inspector's position, after McCullough was laid off, was not filled by a new employee but rather the functions of the final inspector were taken over by the workers themselves, who inspected their own work, and by outside contractors. McCullough spent 20-25 percent of his time as final inspector involved with the PCD line product.

McCullough was working overtime up until June 1989. He admits, however, that there was not an overload of work in July and August. However, in light of all the evidence, I must and do conclude relying on the analysis of *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982), that McCullough would *not* have been selected for layoff but for his protected concerted activity recited above. Respondent violated Section 8(a)(1) and (3) of the Act when it laid off McCullough on August 22, 1989.

2. Layoff of William Hillson

Respondent made the decision, it claims, to eliminate the positions of final inspector (Chief Steward Tom McCullough's job) and maintenance machinist (William Hillson's job) in early July 1989 but did not implement the decision until August 22, 1989.

William Hillson began his employment with Respondent in 1978. He credibly testified that 30 percent of his working time was spent maintaining and repairing equipment on the PCD line, much of which was transferred to Schiller Park, Illinois, in late July 1989, the transfer of which equipment I find to be unlawful in section III,B, above.

Back in 1987 Hillson filed a grievance claiming that he should be compensated at a higher labor grade. He won the grievance. Hillson claims that in 1989 he was entitled to receive a merit increase of 20 cents per hour but did not receive it. He complained. An agreement was reached that Hillson would get a 10-cent-an-hour raise in January 1989 and a second 10-cent-an-hour raise in July 1989.

In July 1989 Hillson did not get the second 10-cent-an-hour raise. He complained to management about this and to Chief Steward Tom McCullough, who also complained to management that Hillson had not received the second 10-cent-an-hour raise promised to him many months before.

Hillson admits that he was not surprised by the August layoffs in the general grinding area but that he was personally busy at the time of his layoff but did detect less work after the equipment was moved in July 1989. Respondent claims that the job functions of the maintenance machinist (Hillson's old job) are now performed by employees left in the plant with assistance from outside contractors.

Considering all the facts, i.e., the transfer of the equipment in retaliation for the union rejection of the working foreman proposal, the concerted complaints of Hillson and McCullough for Hillson to receive the second 10-cent-an-hour raise,

the fact that Hillson spent 30 percent of his time on PCD department work, that outside contractors are being brought in to do some of the work Hillson formerly performed, I must conclude, considering the rationale of *Wright Line*, supra, that Hillson's permanent layoff on August 22, 1989, was in violation of Section 8(a)(1) and (3) and would not have occurred but for Hillson's protected concerted activities.

3. Layoff of John Kierstead

John Kierstead began his employment with Respondent in 1983. On September 14, 1987, Kierstead was fired for alleged insubordination. He filed a grievance. In April 1988 an arbitrator ruled that Kierstead should be reinstated but without backpay. Respondent appealed the arbitrator's decision to the U.S. district court in Boston, Massachusetts.

On March 23, 1989, Judge Keeton of the U.S. district court affirmed the arbitrator's award and ordered that Kierstead be reinstated. He agreed with the arbitrator that Kierstead should not receive backpay.

On August 2, 1989, Respondent wrote to Kierstead offering him reinstatement effective August 14, 1989, at a lower paid labor grade because "the polycrystalline diamond operations at Canton have been terminated."

The first 2 weeks of August were the annual 2-week summer vacation shut down.

When Kierstead returned to work on August 14, 1989, he observed work he had previously done being done by other employees. He concluded that as a result he should have been reinstated at the higher paid labor grade he held when discharged.

Kierstead consulted with Chief Steward Tom McCullough and McCullough filed a grievance on Kierstead's behalf. The grievance was filed on August 18, 1989. Four days later, August 22, 1989, Kierstead, McCullough, Hillson, and five other employees were laid off.

Although Kierstead had successfully pursued his earlier grievance from the fall of 1987 until August 14, 1989, when the April 1988 award of reinstatement was finally honored Kierstead was back at work for less than 2 weeks, i.e., from August 14 to 22, 1989, when he was laid off. The reason given Kierstead for his layoff was lack of work, but Kierstead credibly testified that he was busy at work at the time of his layoff. Most of Kierstead's work was in the PCD department, much of which had been relocated.

It is my conclusion that Kierstead was laid off in violation of Section 8(a)(1) and (3) of the Act. I reach this conclusion considering all the facts of the case. Kierstead, I find, was laid off because, among other reasons, he filed another grievance. I note that Kierstead won the right to be reinstated following his first grievance. Kierstead had been discharged in the fall of 1987 for insubordination and the insubordination was a refusal on Kierstead's part to work with the son of CEO John Pappas, the owner of Respondent, and teach the young man his job. Pappas fired Kierstead for refusing to train Pappas' son and it was Pappas, the owner of Respondent, along with Kuhl and Sheehan, who decided to lay off Kierstead less than 2 weeks after he was ordered reinstated.

D. Layoff of Five Remaining Employees

In addition to McCullough, Hillson, and Kierstead five other employees were laid off on August 22, 1989. None of the five testified before me. It is alleged that they were laid

off as a result of the PCD department consolidation and transfer of equipment and because they were unit employees in a unit which rejected Respondent's proposal to modify the collective-bargaining agreement and adopt Respondent's working foreman concept.

I note that documentary evidence reflects a downturn in Respondent's sales. Financial records reflect that Canton facility sales figures were \$4.7 million for the year ending December 1988, but only \$3.7 million for the year ending December 1989. Financial records further disclose that sales figures for February through July 1989 were down from sales figures for the same months in 1988. In addition, as noted earlier, General Counsel witness Tom McCullough candidly admitted work had been slow for some time and that he was not surprised by the early July layoffs of three employees.

Further, General Counsel witness William Hillson was not even surprised by the August 1989 layoff in the general grinding area.

I believe, in light of all the evidence, that five of the employees laid off on August 22, 1989, i.e., Kien Nguyen, Terrance Crowley, Son Le, Minh Ha, and Think Pham, were laid off because of economic reasons and their layoffs were not unlawful.

REMEDY

The remedy for the threat to transfer part of the PCD department with resulting layoffs if the Union did not agree to modify in midterm its collective-bargaining agreement with Respondent is a cease-and-desist order and the posting of notice.

The remedy for carrying out the threat to partially transfer the PCD department is a cease-and-desist order, posting of a notice, and an order to restore matters to the status quo ante, i.e., return the equipment transferred from Canton, Massachusetts, to Schiller Park, Illinois, back to Canton, Massachusetts. The layoffs of McCullough, Hillson, and Kierstead were caused, at least in part, by the partial transfer of the PCD department.

The facility in Canton still exists and can house the equipment if it is returned. The cost of transferring the equipment to Schiller Park, Illinois, was \$30,000. The equipment was housed in Schiller Park, Illinois, in a rental property which cost Respondent \$1700 a month in rent. Apparently other parts of Respondent's operation are housed in Schiller Park, Illinois, as well as in the same rental property in which the equipment is now housed. The duration of the lease where the equipment transferred from Canton to Schiller Park is housed is not part of the record.

It does not appear that restoring matters to the status quo ante will be unduly burdensome to Respondent; therefore, an order to restore matters to the status quo ante will be ordered. See *Lear Siegler, Inc.*, 295 NLRB 857 (1989); *Reece Corp.*, 294 NLRB 448 (1989).

With respect to the unlawful permanent layoffs of McCullough, Hillson, and Kierstead the appropriate remedy would include reinstatement with backpay.

CONCLUSIONS OF LAW

1. The Respondent, Crafts Precision Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Lodge No. 1836, District 38, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. When Respondent threatened partial elimination of the PCD department and layoffs, if the Union did not agree to a midterm modification of their collective-bargaining agreement, Respondent violated Section 8(a)(1) of the Act.

4. When Respondent partially transferred the PCD department with resultant layoffs because the Union rejected a proposal to modify in midterm its collective-bargaining agreement, Respondent violated Section 8(a)(1) and (3) of the Act

and when Respondent refused under these circumstances to bargain with the Union about the partial transfer of the department and the transfer of equipment, Respondent violated Section 8(a)(1) and (5) of the Act.

5. When Respondent permanently laid off Thomas McCullough, William Hillson, and John Kierstead because they engaged in protected concerted activity, Respondent violated Section 8(a)(1) and (3) of the Act.

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

[Recommended Order omitted from publication.]