

**Wire Products Manufacturing Corporation and District W3, International Association of Machinists and Aerospace Workers, AFL-CIO.** Cases 30-CA-13999 and 30-CA-14069

June 28, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX  
AND HURTGEN

On March 31, 1999, Administrative Law Judge Karl H. Buschmann issued the attached decision. The General Counsel filed limited exceptions.<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 has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.<sup>2</sup>

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Wire Products Manufacturing Corporation, Merrill, Wisconsin, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(d).

"(d) Within 14 days after service by the Region, post at its Merrill, Wisconsin, facility copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 10, 1997."

*Percy J. Courseault III* and *Miann B. Navarre, Esqs.*, for the General Counsel.

*Ray T. Blankenship (R. T. Blankenship and Associates)*, of Greenwood, Indiana, for the Respondent.

<sup>1</sup> The Respondent filed no exceptions.

<sup>2</sup> We shall modify the judge's recommended Order in accordance with our decision in *Excel Container, Inc.*, 325 NLRB 17 (1997).

In accord with the General Counsel's unopposed limited exception, we hereby amend the judge's recommended remedy to include the traditional statement that nothing in this Decision and Order is to be construed to require the Respondent to withdraw any benefit previously granted unless requested by the Union.

*Kristine R. Weirauch, Esq. (Daubert Law Firm)*, of Wausau, Wisconsin, for the Respondent.

*Joe Cooper, Grand Lodge Representative*, of Westchester, Illinois, for the Charging Party.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried in Wausau, Wisconsin, on November 5, 1998, upon a consolidated complaint, dated March 2, 1998, alleging that the Respondent, Wire Products Manufacturing Corporation, violated Section 8(a)(1), (5), and 8(d) of the National Labor Relations Act (the Act). The charges were filed in Case 30-CA-13999 on September 18, 1997, and in Case 30-CA-14069 on November 18, 1997, by District W3, International Association of Machinists and Aerospace Workers, AFL-CIO (the Union).

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

FINDINGS OF FACT

I. JURISDICTION

Wire Products Manufacturing Corporation located in Merrill, Wisconsin, is engaged in the manufacture and nonretail sale of wire forms and metal stripping. With purchases of goods valued in excess of \$50,000 directly from points outside the State of Wisconsin, the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

District W3, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On September 20, 1993, the Union was certified as the exclusive bargaining representative of the following unit of Respondent's employees, which numbered about 168:

All full-time and part-time production and maintenance employees employed by the Employer at its Matthews and Genesee Street operations in Merrill, Wisconsin; but excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

The number of employees in that unit decreased to about 60 in 1998.

On February 26, 1996, the Respondent and the Union executed a collective-bargaining agreement effective until February 26, 1999 (G.C. Exh. 3(a)). Representing the Company was R. T. Blankenship and Associates, Rayford T. Blankenship, and Stephen LePage, members of the firm. They are alleged in the complaint to be agents for the Respondent. That allegation is not contested.

The record also shows that the Respondent has been the subject of at least two prior proceedings, which resulted in findings that the Respondent had committed serious violations of the Act. In a decision dated, August 27, 1998,<sup>1</sup> the Board found that the Respondent and R. T. Blankenship and Associates violated Section 8(a)(1), (3), and (5) of the Act. The misconduct included threatening and interrogating the employees and re-

<sup>1</sup> 326 NLRB 625.

stricting them from distributing union literature, unilaterally changing the employees' working conditions, withdrawing recognition from the Union, and refusing to negotiate in good faith. Administrative Law Judge Wagman's decision of April 30, 1998,<sup>2</sup> also showed that this Employer committed numerous violations of Section 8(a)(1) and (5) of the Act, by unilateral changes of working conditions, refusals to comply with the collective-bargaining agreements, repudiations of certain contract provisions, and refusals to bargain in good faith concerning the employees' working conditions (G.C. Exh. 2).

In the present case, the Respondent is charged with unilaterally removing unit work from the bargaining unit by designating unit employees to nonunit personnel or supervisory positions, unilaterally paying wages to employees inconsistent with the contractual pay rates and refusing to provide certain information requested by the Union in a letter of October 2, 1997.

The record which is not contested by conflicting testimony shows that on May 18, 1997, employee Elroy Raasch, a booth welder assigned to the wire feed welding department, was promoted to a working foreman's position. As a welder in Respondent's welding department, Raasch was a member of the bargaining unit prior to this promotion. The record also shows that Joe Janikowski, an employee initially assigned to the tool room and who subsequently did maintenance work, was also promoted sometime during the summer of 1997 probably in September to the supervisor's position of the maintenance department.

Daniel Graf, Respondent's plant manager, testified that Raasch in his new position performed the same work which he did prior to his promotion "plus his other duties" which was described as training new employees, supervise them and direct them on different jobs. The "weekly resource performance summary" for the employee showed that the so-called "other duties" identified in that document as "indirect" labor amounted to no more than 1 or 2 hours per week (G.C. Exh. 7). It is accordingly clear that Raasch's actual work did not change significantly. In either capacity, as a unit employee or as a working foreman who was no longer a member of the unit, his primary duties consisted of welding in the welding booth. The additional duties or indirect labor such as training and directing other employees which the Respondent argues justified his supervisory status had been performed by Raasch also prior to his removal from the bargaining unit.

The record shows a similar scenario for the maintenance employee Janikowski. He performed maintenance work while he was a member of the bargaining unit. After his promotion to supervisor, he was frequently the only employee assigned to the maintenance department. At times there were two employees in the department. In this regard Graf testified (Tr. 69): "At the time Janikowski was supervisor he was sometimes alone and at—sometimes he had one other maintenance worker under him." As the only employee in that department, or at the most two, it is clear that Janikowski's duties had not changed significantly and that he was performing unit work as a "supervisor" even though he was no longer a member of the bargaining unit.

The Union filed grievances about the removal of the two employees out of their bargaining units, alleging violations of pertinent provisions in the bargaining agreement. The Respondent denied the grievances (G.C. Exhs. 4-6).

The record also shows that Rayford Blankenship informed James Cveykus, the Union's business representative, during a step-three grievance meeting on October 1, 1997, that the work was "a bargaining unit job" and "that the reason the company made him [Raasch] a foreman is so we can pay him more money and keep him because we [the Company] are losing too many people" (Tr. 100). Finally, it is also uncontested that the Company made these decisions unilaterally and without notice to the Union and without affording the Union the opportunity to bargain.

The General Counsel recognizes the obvious right of an employer to promote employees to supervisory positions, but citing *Duke University*, 315 NLRB 1291 (1995), and *Land O'Lakes*, 299 NLRB 982 (1990), he properly argues that the employer's unilateral action in removing a unit employee from the unit and promoting him to a supervisory position where he would continue to perform bargaining unit work is unlawful. Here, the Respondent failed to offer the Union an opportunity to bargain before designating Raasch to a working foreman's position and promoting Janikowski to maintenance supervisor. Both individuals were expected to perform essentially the same work, which they had done before. The practical effect of Respondent's actions was the removal of two employees from their unit, effectively reducing the number of employees in that unit. I accordingly find that the Respondent violated Section 8(a)(1) and (5) of the Act, as alleged in the complaint.

The Respondent's defense suggesting that this matter should have been deferred to arbitration is not persuasive. Where, as here, the Respondent's conduct has indicated a rejection of the collective-bargaining process and the organizational rights of its employees, deferral to arbitration is contraindicated. *Collyer Insulated Wire*, 192 NLRB 837 (1971). The Respondent summarily rejected the Union's grievances in this case. The record shows that the Respondent has been found in two recent cases to have violated the Act, profoundly affecting the employees' rights. In particular, the Respondent has violated Section 8(a)(1) and (5) of the Act to the extent that the Board found it necessary to issue a broad order. I accordingly find that the Respondent's request for a deferral of this case to arbitration must be denied.

The complaint next alleges that the Respondent unilaterally changed the employees' wage rates without notice to the Union or affording it the opportunity to bargain. The Union heard by word of mouth in August 1997 that employees were paid incorrectly. A comparison of the wage rates on an employee list of March 27, 1997, with those on an employee list dated August 15, 1997, showed that some rates of pay were inconsistent (G.C. Exh. 10). The evidence shows that eight employees (Karen Bushar, Phyllis Duellman, Chris Duginski, Clay Ossig, Jim Peterson, Jeanette Scheu, Richard Watroba, and John Wendt) received wage increases between March 27, 1997, and August 15, 1997 (G.C. Exh. 9). Yet the Respondent's plant manager testified unequivocally that according to the contract the employees should not have received any rate increases between March 27, 1997, and August 15, 1997 (G.C. Exh. 3(a)). The Respondent argues, however, that the wage increases were justified because these employees had been designated as trainers or group leaders (G.C. Exh. 5(e)).

The record does not support the Respondent's argument. Respondent's payroll records show that the employees were paid at the higher rate of pay as of May 29, 1997 (Jim Peterson on April 10, 1997) (G.C. Exh. 12).

<sup>2</sup> JD-71-98.

The trainer positions, however, did not come into being until after May 1997. For example, the prior decision by Judge Wagman established that discussions about trainer positions were first held in June 1997, and on July 8, 1997, the Company had posted a notice at the plant concerning a trainer position (G.C. Exh. 2(b)). Not until September 20, 1997, was the creation of a trainer position agreed to between the parties and made a part of the collective-bargaining agreement by addendum (G.C. Exh. 3(b)). The record accordingly shows that Respondent's justification for the higher pay rates for the employees, namely their promotion to trainer positions, is inaccurate.

The Respondent's alternate justification for the pay difference, i.e., that the employees were classified as group leaders, is also implausible. The Respondent provided information claiming that four employees (Jim Peterson, John Wendt, Clay Ossig, and Jeanette Scheu) were group leaders (G.C. Exh. 13). Out of these four, only Peterson's new wage rate accurately reflects a leadman's pay as provided in the collective-bargaining agreement. Relying upon payroll documents provided by the Respondent, the General Counsel compared the hourly pay of the four employees prior to the raise with that after the unilaterally implemented pay raise. Wendt went from \$6.48 to \$6.68; Ossig from \$7.42 to \$7.62; Scheu from \$7.07 to \$7.37; and Peterson from \$6.90 to \$8.64. The General Counsel then calculated the hourly pay for these employees based upon article X of the collective-bargaining agreement which provides that group leaders shall be paid "an additional 10% per hour over the highest rate (including shift premium) of the highest paid employee that they had." The correct rates would have been \$7.17 for Wendt, \$7.72 for Ossig, either \$7.16 or \$7.72 for Scheu, and \$8.64 for Peterson. Only the latter's pay accords with the contractual pay for a group leader. Indeed, at a meeting with the Union on September 16, 1997, Plant Manager Graf was able to identify only two of the purported leadpersons (G.C. Exh. 5(d)). Finally, Cveykus' testimony about his October 1 conversation with R. T. Blankenship confirmed that the Respondent gave titles to the employees to justify higher rates of pay. While an employer's intentions to augment the pay for its employees are commendable, the law simply requires management to notify the Union and be willing to bargain in good faith. Here, the Respondent unilaterally changed the terms of the bargaining agreement and implemented changes in the employees' rates of pay, without notice to the Union. I accordingly find that the Respondent violated Section 8(a)(1) and (5) of the Act.

The complaint's final allegation is that the Respondent failed and refused to provide the Union with information requested by letter of October 2, 1997 (G.C. Exh. 14). In it the Union requested that the Company furnish the Union on each Monday for the preceding workweek the following:

1. All Bargaining Unit Employees Names
2. All Bargaining Unit Employees Current Hourly Rate of Pay
3. All Bargaining Unit Employees Current Classification
4. All Bargaining Unit Employees that are transferred from a Bargaining Unit position to a Non-Bargaining Unit Position.

Any and all bonuses, benefits that are changed or granted to Bargaining Unit Employees that are covered by the Collective Bargaining Agreement or are mandatory subjects of bargaining.

The Respondent is correct that the letter is silent as to the reasons for the information. However, it should be clear by the nature of the request that its relevancy was the Respondent's unilateral actions, the changes in pay and the unit work, which had been the subject of the Union's grievances. More importantly, the Company knew precisely the reason for the Union's request, because the record shows that the Respondent, critical of the Union about the timing of the grievances, suggested: "If I was you, on this time limit, and you had that right, I would on a weekly basis I would make the Company give you everybody's name, the wages, the job classification, the jobs that they were transferred to." (Tr. 134.) The Union accepted the suggestion. Yet the Union did not receive any response to the October 2 letter.

The Respondent, conceding "that in the processing of grievances, the Union's right to information is generally liberally construed and the information deemed relevant," argues that the request was overly broad and burdensome and that in any case the information was provided through correspondence.

While the Company had supplied the names and wage rates at various times, it did not respond to the job classification request. For example, the Respondent faxed a list of employees to the Union on August 26, 1997. It predated the request and was obviously not in response to the October 2 request (R. Exh. 2). The next communication was a letter dated November 25, 1997, from the Respondent to the Union, enclosing a seniority list dated November 6, 1997 (R. Exh. 3). The Respondent's letter clearly shows that this seniority list was not a response to the Union's October 2, request, because it states that the information had been intended for a union steward who no longer worked for the Company. Another seniority list, dated December 15, 1997, was sent to the Union. That list did not show job classifications, pay rates or transfers (R. Exh. 4). The next communication was a letter, dated February 20, 1998, purporting to be a classification or listing. The list shows employees' labor grades, and whether they are a trainer or a group leader (R. Exh. 5). The list does not reflect transfers nor the type of work the employees performed such as maintenance work or welder positions. In any case, this information was not provided until 4 months following the Union's request.

The next piece of information was another seniority list dated February 17, 1998. The list does not show any pay rates, classifications or transfers (R. Exh. 6). Another list was supplied to the Union showing employees' pay rates and bonus information (R. Exh. 7). The list is dated December 18, 1997, but the record does not show whether the Union received this list in 1997 or at any time prior to the hearing in this case. But it clearly was not responsive to the Union's request. The testimony of James Cveykus supports the finding that the Respondent did not meet the Union's information request. The Respondent's argument that this information was responsive to the Union's information request must be rejected.

Information sought concerning bargaining unit employees is presumptively relevant for purposes of collective bargaining and must be furnished on request. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). The employer is obligated to furnish the information in a timely and reasonable time. *Barclay Caterers*, 308 NLRB 1025 (1992). The Respondent's failure and refusal to do so constitutes a violation of Section 8(a)(1) and (5) of the Act.

In conclusion, the General Counsel argues that the Respondent's exhibits purporting to be responsive to the Union's re-

quest for information should not have been admitted into evidence, because the Respondent had failed to comply with the subpoena duces tecum requesting the documents responsive to the October 2 request (G.C. Exh. 2(c); R. Exhs. 2-7). Ordinarily, the General Counsel is correct in its position that a Respondent should be estopped from introducing into evidence documents which it refused to produce pursuant to a legitimate subpoena request. The Respondent made a last minute effort to provide relevant information necessary for the trial as reflected in the record (Tr. 11-12). Here, the Respondent mounted a limited defense and did not call any witnesses. Under these circumstances, I exercised my discretion to admit the documents which, however, show conclusively that the Respondent failed to provide the Union with the necessary and relevant information.

#### CONCLUSIONS OF LAW

1. The Respondent, Wire Products Manufacturing Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. R. T. Blankenship & Associates, Rayford T. Blankenship, and Stephen D. LePage, as Respondent's labor relations consultants are admittedly agents of Respondent within the meaning of Section 2(13) of the Act.

3. The Union, District W3, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

4. All full-time and regular-part time production and maintenance employees employed by Wire Products at its Matthews and Genesee Street operations in Merrill, Wisconsin; but excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

5. At all times material to these cases, the Union has been the exclusive collective-bargaining representative of all the employees in the appropriate unit described above.

6. The Respondent has violated Section 8(a)(1) and (5) of the Act by:

(a) Promoting unit employees to supervisory or foreman positions and removing bargaining unit classifications included in the collective-bargaining agreement and removing unit work from the bargaining unit, without notice to the Union or affording it to the opportunity to bargain.

(b) Changing the unit employees' compensation or rates of pay as provided in the collective-bargaining agreement without notice to the Union and affording it the opportunity to bargain.

(c) Failing and refusing to furnish the Union the information which is necessary and relevant to the Union's function as the collective-bargaining representative of the unit employees.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent unilaterally removed the bargaining unit classifications and reduced the bargaining unit as provided for in the collective-bargaining agreement, the Respondent must be ordered to rescind the unilateral changes and to restore the bargaining unit

classifications and unit work to the former conditions. Having found that the Respondent unilaterally changed the rates of pay of its unit employee, which did not result in a loss of pay for the unit employees, the Respondent must be ordered to bargain in good faith about the changes upon request of the Union. Having further found that the Respondent failed and refused to provide the Union with necessary and relevant information, the Respondent must be ordered to provide the information without delay. Finally, the Respondent having shown a proclivity to violate the Act as found in the prior decision, it is necessary to issue a broad cease and desist order. *Hickmott Foods*, 242 NLRB 1357 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>3</sup>

#### ORDER

The Respondent, Wire Products Manufacturing Corporation, Merrill, Wisconsin, its officers, agents, including R. T. Blankenship & Associates, and Rayford T. Blankenship, and Stephen D. LePage, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively in good faith concerning wages, hours, and other terms and conditions of employment with the Union, District W3, International Association of Machinists and Aerospace Workers, AFL-CIO as the exclusive collective-bargaining representative of the employees in the following unit:

All full time and regular part time production and maintenance employees employed by Wire Products at its Matthews and Genesee Street operations in Merrill, Wisconsin; but excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

(b) Promoting unit employees to supervisory or foreman positions and removing bargaining unit classifications and unit work from the bargaining unit or making any other changes.

(c) Changing the unit employees' compensation and rates of pay as provided in the collective-bargaining agreements or making any other changes.

(d) Failing and refusing to furnish the Union with necessary and relevant information without delay.

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

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

(a) On request of the Union, rescind its actions of removing bargaining unit classifications and the removal of bargaining unit work from the bargaining unit and restore the working conditions as they existed prior to its unilateral actions.

(b) On request of the Union, bargain in good faith about any changes in the rates of pay of unit employees.

(c) Provide the Union without delay the information requested in its letter of October 2, 1997, and all other relevant and necessary records.

(d) Within 14 days after service by the Region, post at its plant in Merrill, Wisconsin, copies of the attached notice

<sup>3</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.

marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that 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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection

<sup>4</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."

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively in good faith concerning wages, hours, and other terms and conditions of employment with the Union, District W3, International Association of Machinists and Aerospace Workers, AFL-CIO as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part time production and maintenance employees employed by Wire Products at its Matthews and Genesee Street operations in Merrill, Wisconsin; but excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act.

WE WILL NOT promote unit employees to supervisory or foreman positions and remove bargaining unit classifications and unit work from the bargaining unit or make any other changes.

WE WILL NOT change the unit employees' compensation and rates of pay as provided in the collective-bargaining agreement or make any other changes.

WE WILL NOT fail and refuse to furnish the Union with necessary and relevant information without delay.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request of the Union, rescind the actions of removing bargaining unit classifications and the removal of bargaining unit work from the bargaining unit and restore the working conditions as they existed prior to the unilateral actions.

WE WILL, on request of the Union, bargain in good faith about any changes in the rates of pay of unit employees.

WE WILL without delay provide the Union with the information requested in its October 2, 1997 letter and all other relevant and necessary records.

WIRE PRODUCTS MANUFACTURING CORPORATION