

Bell Atlantic Corporation and Communications Workers of America, AFL–CIO. Case 2–CA–32010

November 30, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS
LIEBMAN
AND WALSH

On April 5, 2000, Administrative Law Judge Michael A. Marcionese issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs and the Respondent filed an answering brief. The General Counsel and the Charging Party filed reply briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Olga C. Torres, Esq., for the General Counsel.

Charles P. O'Connor, Esq., and *Gregory R. Talbot, Esq.* (*Victoria E. Houck, Esq.* (*Morgan, Lewis & Bockius LLP*), on brief; and *Ronald G. Burden, Esq.*, for the Respondent.

Gabrielle Semel, Esq. (*Semel, Young & Norum*), for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. MARCIONESE, Administrative Law Judge. This case was tried in New York, New York, on October 6, 7, 8, and 29, 1999. The Communications Workers of America, AFL–CIO (the Union) filed the charge on February 23, 1999, and the complaint issued on June 28, 1999. The complaint alleges that the Respondent, Bell Atlantic Corporation, violated Section 8(a)(1) and (5) and Section 8(d) of the Act by closing, and permanently transferring bargaining unit work, from facilities in Manhattan and Brooklyn, New York, to locations in Upper Darby, Pennsylvania, and Braintree, Massachusetts, respectively, without affording the Union sufficient notice and an opportunity to bargain regarding this decision. The Respondent filed its answer to the complaint on July 14, 1999, denying the commission of any unfair labor practice and asserting, as an affirmative defense, that the Union waived its bargaining rights

¹ The General Counsel and the Charging Party have 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.

by inaction and by contract. The Respondent asserted, alternatively, that it had satisfied whatever duty it had to bargain with respect to this decision.¹

On the entire record,² including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Charging Party, and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Telesector Resources Group, Inc., doing business as Bell Atlantic Network Services, is a Delaware corporation, with a principal place of business in New York, New York, engaged in the business of providing management services to New York Telephone Company and other Bell Atlantic Operating Telephone Companies. New York Telephone Company, doing business as Bell Atlantic–New York, is a New York corporation, with a principal place of business in New York, New York, engaged in the business of providing telecommunications products and services. Telesector Resources Group, Inc. and New York Telephone Company are indirectly wholly owned subsidiaries of the Respondent and shall be collectively referred to as the Respondent.

The Respondent annually derives gross revenues in excess of \$500,000 and purchases and receives at its New York facilities equipment and other goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of New York. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Respondent is the successor, through various mergers and acquisitions, of the New York Telephone Company whose employees have been represented by the Union for many years. The most recent change in corporate identity occurred in August 1997, when Bell Atlantic merged with NYNEX. The Union represents the Respondent's employees in a number of separate bargaining units represented by different local unions. Collective bargaining for contracts covering the different units is coordinated regionally by the International Union with common issues such as wages and benefits negotiated at one table and local issues, such as job upgrades, work assignments, etc., negotiated at another. Each local union has its own contract incorporating terms and conditions of employment negotiated at the regional and local bargaining tables. The unit involved in this proceeding consists of all accounting financial clerks and accounting operations clerks employed in the New York metropolitan area. Local 1100 of the Union is the designated collective-bargaining representative of this unit. The current col-

¹ The Respondent's affirmative defense premised on Sec. 10(b) of the Act was withdrawn at the hearing.

² The transcript of the hearing contains numerous misspellings and typographical errors and often misidentifies the speaker. No party has requested any corrections to the record. To the extent there are significant discrepancies, I will note corrections in this decision.

lective-bargaining agreement covering this unit is effective for the period August 9, 1998, through August 5, 2000.

The background to the current dispute begins in 1994 when the Respondent's predecessor, NYNEX, negotiated the previous collective-bargaining agreement with the Union. The Respondent began negotiations with the Union at that time by announcing that, as a result of a plan called "Process Re-engineering" it anticipated a reduction in the work force of 16,000 employees. The parties then proceeded to negotiate a retirement incentive plan to facilitate the Respondent's efforts to downsize while avoiding as much as possible the involuntary termination of unit employees. The incentive plan negotiated in 1994 became known as the "6 and 6," a reference to the provision adding 6 years to an employee's age to make him or her eligible to retire and 6 years to length of service to increase the employee's pension benefit as an inducement for employees to leave voluntarily. This retirement incentive would be offered to employees in classifications and work areas declared to be surplus under the Respondent's process reengineering. Under the terms of the 6 and 6 negotiated by the parties in 1994, all employees who would be eligible to retire with these enhancements who had not been offered the opportunity to do so by the end of the contract would receive an offer at that time, i.e., in August 1998. The 6 and 6 Retirement Incentive plan was incorporated in the 1994-1998 collective-bargaining agreement at article 36.³

All witnesses agreed that the Respondent's "Process Re-engineering" was a failure and that, instead of downsizing, the Respondent was required to add employees to meet the rising demand for telecommunications services. As a result, by August 1998, a large number of employees would be entitled to receive retirement incentive offers under the 6 and 6. Those accepting this offer would then have to leave the Respondent's payroll within 30 days under the terms of the 1994 collective-bargaining agreement. In the fall of 1997, after the merger of Bell Atlantic and NYNEX was complete, the Respondent became concerned about the prospect of a mass exodus of experienced employees needed to conduct its business upon expiration of the agreement. The Respondent's representatives approached union representatives with the idea of early negotiations for a new agreement with the goal of obtaining relief from the impact of the 6 and 6 plan. The Union agreed and contract negotiations commenced in early January 1998,⁴ a full 7 months before expiration of the contract.

Contrary to the Respondent's hope for quick resolution of the 6 and 6 issue, the negotiations became protracted. Final agreement on the collective-bargaining agreement, including revisions to the 6 and 6 intended to encourage employees to stay and to delay the departure of those accepting the offer, was not reached until August 11, after a 2-day strike.⁵ In pertinent part, the parties agreed to extend the offer to all eligible em-

ployees, as envisioned by the 1994 agreement, upon the effective date of the new agreement and that employees would have 30 days to elect to take the offer. The parties agreed further that employees electing to take the offer could choose one of six alternative retirement dates (ARDs), at the end of each calendar quarter between September 30 and December 31, 1999. The parties agreed to a quota of employees who could leave on each ARD. If the number of employees choosing to leave on a particular ARD exceeded the quota, the ARD would be assigned by seniority. In addition, to encourage people to stay, the parties agreed that employees who did not elect to take the 6 and 6 would have another opportunity to retire with at least the same benefits in calendar year 2001. In addition, the parties negotiated wage increases, pension band increases, job upgrades, training pay, and other incentives to encourage employees to stay.

It is undisputed that, during the 1998 negotiations, union representatives advised the Respondent that a majority of employees, including those in the unit involved in this proceeding, wanted to take the 6 and 6 and leave the Respondent's employ. Gail Murcott, president of Local 1100 of the Union and a participant in the regional bargaining, testified that she anticipated even before bargaining commenced that 60 percent of the employees in her unit would take the 6 and 6 as it existed under the 1994 agreement. The record reveals that all but a handful of employees in the Manhattan payroll office and more than half of those in the Brooklyn Revenue Accounting Office (RAO), the two offices at issue here, were eligible to receive a 6 and 6 offer in August 1998.

It is undisputed that at no time during the 1998 negotiations did any representative of the Respondent advise the Union that a transfer of work out of the unit was under consideration.

B. The Respondent's Decision

Dennis Jacobs is the Respondent's vice president of finance operations with responsibility for the Respondent's billing, revenue accounting, payroll, and related functions for its core business in the 13 northeastern States from Maine to Virginia. He has not been a participant in contract negotiations with the Union, although he has occasionally been consulted by individuals in labor relations and human resources regarding issues pending in negotiations. In 1998, he reported to Ellen Wolf, the Respondent's vice president and treasurer. Reporting to him were Thomas Daley, the Respondent's executive director of billing operations, and Sherry Hessenthaler, the Respondent's executive director of payroll operations. Daley had responsibility for the Revenue Accounting offices in Brooklyn and Braintree, Massachusetts, and Hessenthaler was responsible for the payroll offices in Manhattan and Upper Darby, Pennsylvania.

Jacobs testified that Wolf approached him in early February and asked him to look for ways to take advantage of the 6 and 6 incentive plan to save the Respondent money. According to Jacobs, extension of the 6 and 6 offer to all remaining eligible employees at the expiration of the 1994 agreement would cost the Respondent billions of dollars and leave it with fewer employees to do the work. Jacobs was assigned to find ways to take advantage of the anticipated exodus of employees to reduce the Respondent's costs of operations. With input from

³ The actual terms of the 6 and 6 were set forth in an April 3, 1994 Memorandum of Understanding which is not in evidence. There is no dispute however regarding the substance of the agreement.

⁴ All dates hereafter are in 1998, unless otherwise indicated.

⁵ It is undisputed that the strike was not caused by any disagreement over the 6 and 6 offer.

Daley, Hessenthaler, and David White, the Respondent's director of remittance processing, Jacobs prepared a memo to Wolf outlining two alternative scenarios.⁶ The memo is dated February 17. Under the first scenario, the Respondent would achieve approximately \$2.6 million in annual savings by not replacing all employees who left with the 6 and 6 offer. This scenario did not involve the movement of any work and could be effectuated unilaterally. In his memo, Jacobs advised Wolf that he could immediately commit to implementing this plan.

In the February 17 memo, Jacobs described his second scenario as "higher risk" because it involved closing the Brooklyn revenue accounting office and moving the work performed there to other offices, including the revenue accounting office in Braintree, Massachusetts. The employees at Braintree are represented by a different union, the IBEW. As part of this scenario, Jacobs also proposed moving some bill print operations from Braintree to Massapequa, Long Island, a facility within the bargaining unit represented by Local 1100. Jacobs projected that the savings from this scenario would exceed \$5 million a year, including reductions in management personnel associated with the closure of the Brooklyn office. When combined with the savings projected from the first scenario, the total savings to the Respondent would be almost \$8 million a year. All of the savings in Jacobs' memo are based on the wages and benefits saved by reducing headcount. Jacobs projected that the unit represented by Local 1100 would be reduced from 308 to 197 employees while the IBEW-represented unit would increase by 15 employees.

In his memo, Jacobs advised Wolf that his second scenario could not be pursued unilaterally. "It would require substantial support at the officer level because it has major labor relations impact at a critical time." In pertinent part, he detailed the support requirements as follows:

1. The plan to move work would have to be communicated at the time of the CWA 6/6 offer.
2. The labor relations risks would have to be recognized. Labor Relations must commit to bargain with both the CWA or IBEW any requirement needed to effect movement of work.
3. The option to extend employees who have accepted the 6/6 would have to be available.

Jacobs testified that a movement of work from the Manhattan payroll office was not under consideration at the time because the Respondent was already in the process of moving the payroll office to a new location in Manhattan. Instead, Jacobs' second scenario envisioned using vacancies created by the departure of payroll employees accepting the 6 and 6 offer to accommodate employees from Brooklyn whose jobs were moved to Braintree. He described this scenario as follows:

⁶ Daley testified that he came up with the two scenarios after Jacobs called him and said that Wolf wanted to know whether there was any way the Respondent could take savings out of the 6 and 6 program. Daley worked with his staff manager, Joe Osburne, to come up with the numbers used in the memo. Daley was a member of the Respondent's negotiating committee at the local table in 1998.

Of great importance, we do believe we could care for most of our associates and management employees who are displaced in Brooklyn. If the 6 and 6 and the closing of the Brooklyn RAO were announced simultaneously, the acceptance would probably be greater than the estimates shown on the attached. In addition, some employees could fill vacancies that will occur in Massapequa and also in the New York payroll office. Vacancies will be substantial in both of these locations as well as other work locations in Brooklyn, Queens, the Bronx, and Manhattan.

Jacobs testified that he met with Wolf to discuss his memo and that they committed to the first scenario unequivocally. She expressed interest in the second scenario but had reservations whether it was doable. According to Jacobs, he and Wolf then held an impromptu meeting with Don Sacco, the Respondent's senior vice president of human resources responsible for administering the 6 and 6 plan. Daley was also present for this meeting. After reviewing the two scenarios for Sacco, Sacco agreed that the second scenario was something the Respondent should pursue in connection with the 6 and 6 but that implementation would depend on the outcome of the 6 and 6 negotiations taking place simultaneously with these discussions. Daley corroborated Jacobs regarding these meetings. Sacco and Wolf did not testify.⁷ According to Jacobs and Daley, there was no further discussion of the second scenario until after agreement was reached on the new collective-bargaining agreement.

Jacobs acknowledged being asked during the negotiations by company negotiators, whom he did not identify, whether there was "anything in the pipeline like this under consideration." According to Jacobs, he advised the negotiators that there were "concepts" being considered. Daley did have more regular contact with the Respondent's human resources department, fielding "what if" questions regarding different proposals for implementing the 6 and 6, such as questions regarding the number of accounting department employees who could be allowed to leave the payroll in 1998 and 1999. Daley recalled that the numbers being discussed kept changing over the course of the negotiations. Whenever he asked about the status of negotiations on the 6 and 6, he was told nothing was firm, not even with respect to staggering off-payroll dates. Daley admitted that he never apprised any of the negotiators about the second scenario he discussed with Wolf and Jacobs in February.

According to Jacobs and Hessenthaler, consideration of closing the New York payroll office did not come up until June. As previously noted, in 1998, the Respondent was in the process of planning for the relocation of the payroll office from 1166 Avenue of the Americas to East 30th Street in New York as a result of the Respondent's decision to sell 1166. Christopher Kelly, the Respondent's executive director of real estate portfolio management, testified that the Respondent did not begin preparation of the new office space on 30th Street until August 1998. According to Kelly, it cost the Respondent \$1.6 million to renovate the space on 30th Street to accommodate the New York payroll office. Hessenthaler testified that, in addition to this move within New York, the Respondent was in the process

⁷ Wolf is no longer employed by the Respondent.

of combining the formerly separate Bell Atlantic and NYNEX payroll systems and converting to new software in 1998.

In early June, Wolf asked Hessenthaler a question similar to the one she posed to Jacobs in February. In the course of discussing the status of the payroll system conversion and the impact of the 6 and 6, Wolf asked Hessenthaler to look at process improvements and efficiencies that could be achieved through the 6 and 6. In response, Hessenthaler drafted a memo, which is undated, laying out a proposal to consolidate the Respondent's payroll offices in Upper Darby, Pennsylvania.⁸ In her memo, Hessenthaler suggested that the Respondent take advantage of the upcoming 6 and 6 offers to close the New York payroll office and consolidate all payroll operations in Upper Darby. She reasoned that, because 95.5 percent of the unit employees in New York were eligible for a 6 and 6 offer, there would be minimal employee displacement. In addition, conversion to a common payroll computer system and new software would reduce the number of employees needed to process payroll. Hessenthaler projected annual savings in excess of \$1.6 million from closing the New York office. These savings would result from fewer employees and lower wage and benefit costs in Upper Darby.⁹ Hessenthaler did not calculate nonwage related savings associated with the move, such as lower real estate and utility costs. According to Hessenthaler, there were no meetings or any other discussions regarding her memo before negotiations concluded. The only followup she had was to talk to Daley about it because Jacobs told her that he was considering a similar plan for the revenue accounting operations. Hessenthaler had no involvement in contract negotiations.

On July 31, Hessenthaler sent Jacobs an e-mail in response to an inquiry from him regarding the impact of the 6 and 6 on payroll operations. Her e-mail assumes the continued presence of the New York payroll office. Hessenthaler reported to Jacobs that she anticipated that all 60 employees eligible to receive a 6 and 6 offer would accept it and that 57 of these would be replaced in the New York office. She anticipated further that the employees' departures would be equitably spread out over the next five quarters, through calendar year 1999. Hessenthaler indicated that these projections were "arbitrary" and depended on resolution of the 6 and 6 negotiations, the timing of the offers, and the relative seniority of payroll employees compared to other accounting department employees accepting the 6 and 6 offer.

Jacobs, Daley, and Hessenthaler denied being aware of the terms of the parties' agreement to extend the 6 and 6 until after the contract was settled on August 11. However, a memo to the Respondent's managers dated July 9, 1998, updates the status of negotiations, including the negotiations over the 6 and 6. The memo's description of the Respondent's 6 and 6 proposal on the table at that time is identical to the agreement ultimately

reached on August 11. The only open question was the number of employees in the various bargaining units who would be permitted to leave on any given ARD. This is consistent with the testimony of the witnesses who were present at the regional bargaining table where the 6 and 6 issue was discussed, i.e., that the 6 and 6 had been substantially resolved by July 1998. Jacobs, Daley, and Hessenthaler would presumably have received this memo because they occupied positions at and above the director level. Hessenthaler's July 31 e-mail to Jacobs indicates that she was at least aware of the staggered ARDs being negotiated in order to spread out the departure of employees accepting the 6 and 6. In his direct testimony, Daley conceded that the 6 and 6 extension with staggered ARDs was not a "total surprise." According to Daley, the only aspect of the agreement that was a surprise was the 30-day time period for employees to elect to take the offer. In any event, all three witnesses testified that, upon learning the details of the agreement after August 11, they discussed among themselves whether the Respondent should go forward with the proposed relocations and decided to convene a meeting with representatives from labor relations and human resources.

On August 18, Jacobs, Daley, and Hessenthaler met with John Hann from labor relations, and John Abeles and Anna Shuster from human resources. Osburn, Daley's staff manager, was also present. Jacobs testified that this "meeting" was via conference call. Daley recalled that it was a face-to-face meeting. Neither Hessenthaler nor Hann testified one way or another regarding the type of meeting. No other participant testified. The minutes of this meeting prepared by Jacobs are in evidence. Two "initiatives" were discussed at this meeting. The first was a modification of Jacobs' and Daley's second scenario laid out in the February 17 memo. Instead of retaining some of the Brooklyn office's revenue work in New York, the plan was to move all of it to Braintree. This initiative still included movement of bill print work from Braintree to Massapequa. The second initiative was Hessenthaler's proposal to consolidate payroll operations in Upper Darby. At the meeting, the participants discussed a number of "issues/concerns" related to the proposal. Daley asked about rumors that Larry Mancino, a vice president of the Union, had said after negotiations were concluded that, "there will be no geographical movement of work." Hann reported that, "nothing happened in bargaining that would support" Mancino's comment. The participant's then discussed the terms of the merger agreement between Bell Atlantic and NYNEX limiting the amount of work that could be moved between the two formerly separate companies. Hann was assigned to determine whether the payroll move would exceed the limit. There was also discussion of the impact of announcement of these moves on contract ratification, which had not yet occurred. Hann advised that he did not think it would affect ratification. The minutes of the meeting and the testimony reflect that the participants at the meeting also discussed contractual requirements of 6-months notice to the Union of such moves and the requirement for collective bargaining over the decision. Daley also expressed concerns about "external intervenors." From past experience with the Union, he anticipated that the Union would enlist public figures to intervene in an attempt to stop the movement of work. It was decided that

⁸ The Respondent had three payroll offices at the time. Upper Darby and Princeton, New Jersey, handled the payroll for the premerger Bell Atlantic offices south of New York. Hessenthaler's memo indicates that there was already a plan to consolidate these offices into the Upper Darby office by late 1999-early 2000.

⁹ The record indicates that the employees in Upper Darby are represented by a different local of the Union.

the Respondent's officers should be prepared to respond to such overtures. Jacobs' minutes also reflect that someone raised the possibility that the Union might ask for an extension of the deadline for employees to respond to the 6 and 6 offer so employees could think about the new initiatives. Hann is reported to have advised against this, indicating that an extension of the deadline could make the 6 and 6 process "unmanageable."

After discussing these issues/concerns, the participants at the meeting were assigned various individuals in upper management to brief. A timeline for making a decision and announcing it was prepared, which anticipates that the various approvals would be obtained by August 24, and that Daley and Hessenthaler would inform the executive board of Local 1100 and the affected unit employees on August 25. Jacobs' minutes also include savings and cost figures. According to the minutes, the movement of work from Brooklyn and Manhattan to Braintree and Upper Darby, respectively, would cost the Respondent approximately \$4.4 million in 1998 and 1999. This includes the cost of training employees, site preparation, equipment and personnel relocation costs and capital expenditures. By calendar year 2000, after the move was completed, the Respondent would save in excess of \$7 million a year in wages and benefits alone.

Following the August 18 meeting, according to the Respondent's witnesses, the meeting participants carried out their respective assignments to investigate and close down the open issues and concerns related to the proposed move. For example, Hann testified that he checked with Jim Dowdall, the Respondent's vice president of labor relations, regarding the application of the merger agreement to this move.¹⁰ According to Hann, Dowdall told him that the 0.5-percent figure was a percentage of all work done by CWA-represented employees, not individual bargaining units. Hann testified that Dowdall did not see any reason not to proceed with the move. Daley testified that there were two significant open issues after the August 18 meeting, EEO concerns because the employees whose work was being moved were disproportionately female and minority class members, and regulatory concerns. These issues were discussed with the Respondent's EEO counsel and with Paul Crotty, the Respondent's group president, external affairs, who is in charge of regulatory matters, and Pat Mulhearn, the Respondent's vice president, corporate communications, who was responsible for the public relations aspects of the move. The managers who met on August 18 had further discussions among themselves, via conference calls, during the period August 18 through 24, as issues and concerns were resolved. After the final briefing with Crotty and Mulhearn on August 24, Jacobs, Daley, and Hessenthaler met briefly with Wolf and made the decision to go forward with the two moves. Daley and Hessenthaler were assigned to meet with the executive board of Local 1100 and the affected employees in Brooklyn and Manhattan, respectively, to inform them of the decision.¹¹ Daley and Hes-

senthaler prepared "talking points" to use in their meetings with the employees. These "talking points" are in evidence.

C. Respondent Announces its Decision

The Respondent first notified the Union of its decision by a telephone call from Daley to Murcott at approximately 4 p.m. on August 24. Hessenthaler was also on the line. According to the undisputed testimony of Murcott, Daley told her he was going to give her some information and asked if she could keep it confidential until the Respondent was ready to divulge it. When Murcott agreed, Daley told her that the Respondent was going to close the Manhattan payroll office and move the work to Upper Darby, Pennsylvania, and that the Respondent was going to close the Brooklyn office and move the work to Braintree, Massachusetts. Daley also informed Murcott that some work was being moved from Braintree to the Massapequa office represented by her Union. In response to this news, Murcott, who was admittedly angry, said that they had just negotiated a contract with job upgrades that had gone to the membership without one word from the Respondent about any movement of work. Daley asked her to set up a meeting with the executive board for the following morning, which she agreed to do.

The following day, at 8 a.m., Daley and Hessenthaler met with Murcott and most, if not all, members of the Union's executive board at the Union's office. Murcott and Gloria Gadzinski, Local 1100's secretary, testified for the General Counsel about this meeting. Gadzinski's minutes of the meeting are also in evidence. Daley testified for the Respondent. Hessenthaler merely testified that she agreed with Daley's testimony regarding this meeting. There is not much dispute regarding what happened at the meeting.

Murcott testified that Daley did most of the talking and repeated his announcement about the two moves. Gadzinski, in her testimony and in the minutes of the meeting, indicates that Daley and Hessenthaler referred to the 6 and 6 and the high number of employees eligible to retire under this offer as a key factor in the decision. Murcott and the members of the Board expressed anger at the announcement and its timing so soon after negotiations had concluded. They expressed disbelief that the Respondent did not know about this move during the negotiations. Murcott expressed her feeling that the Union and the members had been deceived by the Respondent. Murcott also told Daley and Hessenthaler that she believed the movement of work from New York to Upper Darby violated the merger agreement. Daley told the Union that he and Hessenthaler had scheduled a meeting with the affected employees for 11 a.m. that morning to announce the decision. Murcott requested a caucus to try to reach the Union's vice president, Mancino. However, Murcott was unable to reach Mancino. Murcott and Gadzinski testified that, after the caucus, Murcott asked Daley and Hessenthaler to hold off announcing the decision until she had time to reach Mancino. Daley refused, telling the Union that the employees had a right to know about this while they

¹⁰ Under the terms of a premerger agreement with the Union, the Respondent could not move more than 0.5 percent of bargaining unit work from north (NYNEX) to south (Bell Atlantic) and vice versa.

¹¹ The minutes of the August 18 meeting indicate that Daley was also assigned to meet with the IBEW regarding the aspects of the move

affecting the Braintree office. Hann testified that he and Daley met with the IBEW in Braintree to announce the decision. According to Hann, the Respondent then engaged in collective bargaining with the IBEW over the move there.

were considering the 6 and 6 offer.¹² Daley's testimony was in agreement with that of Murcott and Gadzinski in all but two respects. Although Daley recalled Murcott asking him to delay the announcement to the employees, he did not recall her providing any reason for this request. He admitted refusing to postpone the announcement because of the 6 and 6 deadline. Daley also testified that he asked Murcott and the Union's executive board if they were going to attend his meeting with the employees. He could not recall any response, but testified that it was clear to him they were not. According to Daley, it is not uncommon for union representatives to attend such meetings with employees and to hold their own meeting with the employees on company premises after the Respondent is finished meeting with the employees. Murcott and Gadzinski denied being asked by Daley to attend the Respondent's meeting with the employees. Murcott acknowledged that it was not uncommon for the Union to meet with employees immediately after the Respondent held meetings with them.

There is no dispute that after meeting with the executive board Daley went to Brooklyn and Hessenthaler to Manhattan to make the announcement to the affected employees, as planned at the August 18 meeting, of Respondent's decision makers. Daley and Hessenthaler testified about their respective meetings. Cora Batties, a personnel staff director who had retired and was working as a consultant for the Respondent at the time, also testified about the Brooklyn meeting. The Respondent also placed in evidence the written "talking points" they prepared for use at this meeting. Daley and Hessenthaler acknowledged that they did not read from the talking points, using them instead as a guide. The General Counsel offered the testimony of Venice Booker and Louise Thomas regarding the meeting in Brooklyn and Evelin Mendoza and Peggy Corley regarding the meeting in Manhattan. All are long-term employees who were eligible for the 6 and 6 offer. Booker and Mendoza were also union representatives in their respective offices.

Booker and Thomas testified that Daley told the employees in Brooklyn that the building would be closing and their work was being moved to Braintree, Massachusetts. Daley also told the employees that any employees who did not take the 6 and 6 would be placed in other jobs. Both witnesses recalled that there was a lot of grumbling after the announcement and that employees asked many questions, including why the Respondent didn't tell the employees before the new contract was negotiated. Booker recalled that someone asked when the work would be moved and Daley responded that he didn't know yet, that he would have to get back to them. According to Booker, Daley also told the employees that he expected that the Union would be getting in touch with them. Both employees testified that their impression of the announcement was that the decision was final. Thomas explained that she reached this conclusion because Daley told them that he had already met with the Union. Daley and Batties disputed the testimony that the meeting was "chaotic". According to Daley, he gave the employees a lot of information about the decision, including the reason for the move. He also testified that he told the employees that he had

just met with the Union's executive board and that the Union was going to fight the move. Daley and Batties testified that employees actually applauded at the end of the meeting.

Mendoza and Corley testified that Hessenthaler told the employees in Manhattan that the office would be closed and the work moved to Upper Darby. They both recalled that one employee asked if the employees would be moving with the work and that Hessenthaler responded no, only the work was moving. They also recalled that Hessenthaler advised the employees to take the 6 and 6 offer because, if they didn't, they would have to find a another job. Hessenthaler disputed this testimony. According to her, she did not recommend that any employee take the 6 and 6 although she acknowledged that there were many questions about the 6 and 6 offer and job placement for employees who chose not to or were ineligible to retire. Hessenthaler testified that she responded to these questions by telling the employees that she did not know the answers but that she would schedule another meeting with experts who did. Such a meeting was held, according to Hessenthaler, on September 1.

The four employee witnesses all testified that they had not made any decision regarding the 6 and 6 offer before this meeting, but all decided to accept it after the announcement. They acknowledged that, under income protection and job security provisions of the collective-bargaining agreement, they could have continued working by filling jobs in other offices, with no change in their pay or benefits. However, the "green circle" around their rates was only guaranteed through the end of the current contract. Booker testified that, after the announcement, she was concerned about what would happen to the green circle after the contract expired. Murcott testified that the Union has surveyed the employees in the unit and determined that 28 of 60 eligible employees in Manhattan and 19 of 75 eligible employees in Brooklyn would not have accepted the 6 and 6 offer if the offices remained open. The Respondent placed in evidence a summary of its records showing that, of the total number of employees in these two offices accepting the 6 and 6 offer, 32 percent in Manhattan and 46 percent in Brooklyn did so before the decision was announced.

D. The Union's Response to the Respondent's Announcement

As noted above, Murcott had been unable to reach Mancino during the Union's meeting with Daley and Hessenthaler. According to Murcott, she finally reached Mancino in the afternoon and informed him of the Respondent's decision that had been announced to the Union that day. Mancino told Murcott that he would contact the Respondent's vice president of labor relations, Jim Dowdall, about it. Murcott heard nothing further from Mancino thereafter. Nor did she attempt to contact him. According to Murcott, Mancino had open-heart surgery shortly thereafter and he was out of work for several months. Murcott did talk to Dowdall herself, about a week later during the International Union's convention. Dowdall was also at the convention and Murcott asked him why the Respondent was moving work when the unit employees were doing such a good job. According to Murcott, Dowdall told her that he didn't know much about what was going on, but that he either was having,

¹² The deadline for employees to accept the 6 and 6 offer, according to the terms of the written offer, was September 6.

or would be having, discussions with someone about it. Murcott testified that she was not “encouraged” by his response. She admittedly did not follow up with anyone else after these conversations with Mancino and Dowdall.

Mancino testified that he received a call from Murcott toward the end of August about the Respondent’s planned moves. According to Mancino, he then contacted Dowdall and “vented his frustrations,” reiterating the objections that Murcott had expressed about the Respondent’s failure to notify the Union about the proposed move during contract negotiations. Mancino testified that Dowdall told him that he would look into it and get back to Mancino. Dowdall did not indicate to Mancino that he knew about the Respondent’s decision. Shortly after these calls, the Union had its convention in Chicago. Because of his heart condition, he was unable to travel to the convention. Shortly after the convention, he went into the hospital for surgery and was out of work until November 8. Mancino did not hear back from Dowdall before he left work. He did not delegate to anyone else the task of following up on his phone call with Dowdall because he believed it would be demeaning to Dowdall to have a lesser official in the Union contact him. Mancino admitted that, even after his return to work, he had no further contact with Dowdall about this issue.

The undisputed evidence in the record establishes that the Union took no other action in response to the Respondent’s announcement until it filed two grievances at the end of October alleging that the movement of work violated the premerger agreement and the collective-bargaining agreement. It is specifically admitted by the Union’s witnesses that the Union made no request to bargain over the decision between August 25 and December 15.

E. The Common Committee

On August 25, after the meeting with Daley and Hesselthaler, the Union received by fax a letter from Hann, the Respondent’s labor relations director, dated August 24 formally advising the Union of the Respondent’s decision. The letter indicates that the movement of work from the two offices would begin in March 1999, and be completed by December 1999. According to the letter, the early announcement of the move was necessitated by the September 8 deadline for employees to accept the 6 and 6 offer.¹³ Hann closed his letter as follows:

At the next Common Committee meeting we will review the details of these consolidations. In the meantime, the Company plans to meet with you to discuss the impact of these consolidations and the schedule of announcements to the work force.

Please call me if you have any questions.

Murcott did not call Hann regarding this letter.

The “Common Committee” referred to in Hann’s letter is the successor to several joint labor-management committees, including a “technology change committee,” that existed prior to

¹³ The offer sent to employees was dated August 8, and had a deadline of September 6, to accept. The later date in Hann’s letter is the result of the 2-day delay in mailing the offers to the employees because of the strike.

the 1994–1998 collective-bargaining agreement.¹⁴ In 1994, the parties merged all of the joint committees into one “Common Committee.” Article 33 of the 1994 and 1998 collective-bargaining agreements, which are identical, embodies the parties’ agreement on the Common Committee. The committee consists of an equal number of union and management representatives and is cochaired by the Respondent’s managing director of labor relations and the Union’s vice president, District One, or their designees. The committee has a staff of two, one selected by each of the parties, and its operations are funded by the Respondent. Under article 33:

The Company will notify the Union at least six months in advance of planned major technological changes (including changes in equipment, organization, or methods of operation), which may affect employees represented by the Union, unless it has done so prior to the date of this agreement. Meetings about the planned changes will be held as soon thereafter as can be mutually arranged. At such meetings, the Company will advise the Union of its plans with respect to the introduction of such changes and will familiarize the Union with the progress being made. Although the company is required to notify the Union at least six months in advance of the introduction of any planned major technological change, it will make a good faith effort to advise the Union as soon as it decides to introduce such changes in order to give the Union the opportunity to discuss the impact of these changes upon the various bargaining units and the Company’s customers.

The Common Committee will serve as a clearinghouse for the exchange of information between the Company and the Union regarding those and other significant planned actions or changes and their effects on represented employees, and as a forum to seek mutually acceptable ways to minimize any significant negative impact on represented employees, while enhancing the Company’s ability to grow, improve customer service, and improve its competitiveness.

The Committee’s staff will, at the direction of the Committee, evaluate planned Company actions or changes referred to in the preceding paragraph, and provide input to the Committee regarding alternatives to mitigate employee impact.

After consideration of any staff input, the Committee may make recommendations to the Company regarding alternatives to the planned major technological changes, and the Company members of the Committee will work to facilitate these recommendations as appropriate. Nothing in this Common Committee process, however, will prevent the Company, after the end of the six-month period, from implementing proposed major technological changes that do not otherwise violate the collective-bargaining agreement.

Murcott testified that the Union’s representatives on the Common Committee were the members of its executive board.

¹⁴ The evidence in the record indicates that the technological change committee was initially created under a letter of understanding dated August 10, 1980.

She acknowledged that the purpose of the committee was to give the Respondent and the Union a 6-month period to discuss any changes in the Respondent's methods of operation that would affect the unit. According to Murcott, the Common Committee in practice functions as nothing more than a forum for the Respondent to notify the Union of changes it plans to make without any real discussion taking place. There is no evidence that the Common Committee discussed the work relocation plan at issue here until June 1999. Daley testified without contradiction that he and Hessenthaler attended a meeting of the Common Committee at that time at which the move was supposed to be discussed. However, after taking a caucus, the Union's representative told the Committee that it had no desire to discuss it in that forum, that the Union was taking the issue to a different forum.

F. Meetings After the Respondent's Announcement

On or about October 28, the Union and the Respondent met at union headquarters for a step 1 and 2 meeting on the Union's grievances. Daley represented the Respondent and Murcott represented the Union. Murcott could not recall who else was there.¹⁵ According to Murcott, this is the first time the parties discussed "people issues" related to the move, such as training and placement of employees in other jobs. The Union also asked to extend the ARDs selected by those employees who had taken the 6 and 6. No resolution to these issues was reached at that meeting. Murcott did not describe in any detail the discussion regarding the grievances themselves but she acknowledged that Daley gave an explanation of the reasons for the Respondent's decision. The grievances were denied at this step and the Union pursued them to step 3.

The parties held three more meetings on November 16 and 23 and December 8 at which the "people issues" were discussed. Murcott was the only witness to testify regarding these meetings. Her testimony was not very detailed regarding what happened at each of these meetings. She admitted however that bargaining about the Respondent's decision was not discussed. From her testimony, it appears that the "people issues" were in actuality effects of bargaining issues. By the last meeting in December, according to Murcott, the parties had agreed to allow employees to extend their ARDs until April 1999. This was later extended further so that no employee who had taken the 6 and 6 offer would have to leave the payroll before December 1999.

The most significant meeting between the parties after the decision was announced was the third-step grievance meeting on December 15. Murcott, Gadzinski, and Donna Dolan, the Union's International staff representative were present for the Union while Daley, Hessenthaler, and Hann represented the Respondent. Several witnesses testified regarding this meeting. Also in evidence are Dolan's and Gadzinski's notes taken at the meeting. There is essentially no dispute regarding what transpired at the meeting. The notes are consistent with the testimony of the witnesses, but are much more detailed.

As established by the testimony and the notes, the meeting opened with the Union stating its position with respect to each

grievance. Specifically, the Union contended that the movement of work from Manhattan to Upper Darby violated the pre-merger agreement's limitations on the amount of work that could be moved from the former NYNEX units to the former Bell Atlantic units and that the movement of work from Brooklyn to Braintree violated the Recognition clause of the collective-bargaining agreement. Hann, speaking for the Company, disagreed with the Union's interpretation of the contract. Gadzinski's notes reflect that he said: "If we have a good business reason [to transfer unit work to the IBEW] *we would discuss with you—we must do this.*" (Emphasis added.) Gadzinski's notes show that Murcott claimed that the Respondent made no attempt to sit and bargain with the Union over the movement of work. Hann responded by referring to the August 25 meeting at which Daley and Hessenthaler informed the Union of the decision. Hann also referred to the 6 and 6 deadline as forcing the Respondent to announce the decision when it did, so that employees would have this information when they were making their decisions whether to accept the 6 and 6 offer. When the Union objected to the timing of the announcement and the failure to raise this issue during contract negotiations, Hann and Daley responded that the decision was not made until after a meeting with Crotty and Mulhearn, after negotiations were concluded. They told the Union that the Respondent wanted to await the outcome of negotiations before deciding on the movement of work. Murcott and other union representatives then challenged the Respondent's claims, arguing that the issues related to the 6 and 6 were resolved in July and were known to the Respondent's management. Hann and Daley responded that nothing was final until the strike was settled.

The testimony and notes reflect that the parties then discussed the number of jobs being relocated, with disagreement between the parties over this. There was further discussion regarding the timing of the decision and the reason for the move. After Murcott and Dolan questioned why the Respondent didn't discuss its "ideas" with the Union sooner, Hann asked if the Union had any alternatives. Murcott replied that the Union was "not prepared to do that today." Hann then asked if the Union wanted to bargain and Murcott said, "we need to bargain on the movement of the work." Hann again explained the timing of the decision and announcement and the Union complained that the Respondent should have notified them sooner. After Murcott suggested that the Respondent bring back "In Touch Center work," work that had been removed from the unit previously, Hann told the Union it was his job to see that the work can be done cheaper. Murcott replied, "[W]e can give you job cheaper—give us figures." Hann replied that he was there to do the grievance and then asked if the Union wanted to make an economic proposal. Murcott responded that she didn't believe Hann. Gadzinski's notes show that Daley and Hessenthaler told the Union that they didn't have a definitive plan in place yet for the move. Daley told the Union that he didn't think that the Respondent would begin moving any work before March or April 1999. Gadzinski's notes show that Hessenthaler then said that the Respondent "*would listen to you if you have a plan.*" (Emphasis added.) The notes reflect that, rather than respond to this invitation, the Union sidetracked the discussion by asking questions about the lease in Brooklyn, the number of

¹⁵ Murcott was the only witness to testify about this meeting.

jobs affected and other issues. At one point during this discussion, Daley told the Union that the move would take place in stages and would take 11 months to 1-1/2 years to complete. Before taking a caucus, Dolan told the Respondent that the Union wanted to request information regarding the movement of work.

The testimony and notes reflect that when the Union returned from the caucus Dolan told the Respondent that in order to make an economic proposal it needed information on the cost of operations in the New York offices compared to the facilities where the work was being moved. She and Murcott then described specifically the type of information they wanted, such as wage rates and EEO data for the other offices. Daley and Hessesenthaler each agreed to provide this information. Towards the end of the meeting, the Union again questioned the Respondent why it had selected the Brooklyn and New York offices to close. Daley explained that they selected the offices based on the expected vacancies created by the number of people who would take the 6 and 6, resulting in fewer employees who would be displaced as a result of the closing. The meeting ended with Hann asking the Union if it wanted to schedule another meeting to bargain over the decision. Murcott replied that the Union would get back to him after it received and reviewed the information. By letters dated December 30, 1998, signed by Hann, the Respondent denied the Union's two grievances.¹⁶

On December 22, Dolan wrote to Hann as a follow-up to the meeting. After reiterating the Union's objections to the move and reminding the Respondent of her request for information, Dolan wrote as follows:

You emphatically stated that the Company would be willing to reconsider the transfer of work if the Union presented a convincing proposal for keeping this work in New York.

Based on the following information, which CWA learned subsequent to the December 15th meeting, it is impossible for us to take your offer seriously.

On August 25 at 8:00 a.m., Tom Daley and Sherry Hessesenthaler arrived at Local 1100's office to inform the Executive Board of their intention to transfer their work. At that time Local 1100 asked Management to delay informing the employees in Brooklyn and Manhattan of the Company's intention to transfer their work out-of-state until they could discuss this matter with their CWA District leadership. Management flatly refused and went to the Brooklyn and Manhattan offices at 10:00 a.m. that morning to make the announcement.

If, however, the Company is willing to rescind the decision to transfer work out of state until such time as you have received and studied the Union's proposal, then we will know that your offer was a serious one.

The Union is not willing to commit the tremendous amount of effort required to develop a comprehensive

proposal unless we believe there is a possibility that the Company will reverse the decision.

Hann responded to Dolan by letter dated December 31. Attached to the letter was information in response to Dolan's request at the December 15 meeting. The information provided to the Union indicates that the Respondent projected savings from the consolidation of work to total \$6.2 million a year, a figure slightly less than that forecast in August when the decision was made. In response to the other issues raised by Dolan's letter, Hann wrote the following:

As you are aware, the Company's plans to consolidate the CBO/CBS and Payroll functions were primarily driven by cost reductions and the anticipated retirements that will result in these groups from the recently negotiated 6 and 6 retirement offer. Since the 6 and 6 retirement offer only impacts the New York work force, it makes business sense for the Company to consolidate these job functions in this manner. However, the Company in presenting its plan to the CWA has consistently indicated a willingness to discuss with the CWA the Company's plans and to consider any alternative proposal made by the CWA.

Regarding your surprise that the Company notified employees in the Brooklyn RAO and Manhattan Payroll office of the Company's plans to consolidate work functions and close those facilities, you should know that prior to announcing the Company's plans to employees, the Company advised the CWA Local 1100 Executive Board that the Company would be informing employees of the Company's plans. As I discussed with you, the decision to inform employees of the Company's plans was to enable employees to make an informed decision when they considered the 6 and 6 retirement offer. Even though CWA represented employees have job security protection under the terms of the collective-bargaining agreement, an employee's decision on whether to accept or reject the 6 and 6 retirement offer could be impacted by a change in job function and job location.

After an explanation of the information attached to his letter, Hann ended his letter with the following paragraph:

If the CWA has a proposal, which equals the benefits to the business of consolidating work functions, the Company will reconsider its plans to consolidate work. However, in the absence of such a proposal and in consideration of the time necessary to properly plan and implement this work consolidation, the Company at this time must continue its plan to consolidate work. The Company is available to meet to discuss further any aspects of this planned consolidation of Accounting work. Please call me if you have any questions or if you want to schedule additional meetings to discuss the plan itself or the effects of the plan on the work force or any CWA alternatives.

It is undisputed that the Union did not submit any proposals to the Respondent after receiving Hann's letter. It is also undisputed that there was no further contact between the parties before the Union filed the instant unfair labor practice charge on February 23, 1999. Although Dolan testified that she was not

¹⁶ Dolan testified that the Union filed for arbitration but that the arbitration is being held in abeyance pending the outcome of these proceedings. The Respondent has not requested deferral to arbitration in this case.

satisfied with the information supplied by the Respondent on December 31, she admitted that she did not contact Hann to advise him that the information was inadequate or incomplete.¹⁷ In fact, the Union did not communicate with the Respondent regarding the information request until August 12, 1999, when Dolan made another request for information.

G. Implementation of the Move

The General Counsel placed in evidence a variety of documents obtained from the Respondent pursuant to subpoena in an attempt to show when the Respondent began implementing the movement of work. The earliest document is a computer-generated document entitled "Contract Purchase Order Information" with an entry date of November 5, for a vendor identified as Atlantic Design Alliance involving the Upper Darby Accounting Center. The work to be done is described as: "Renovations and space planning to expand Payroll on the 2nd floor. Requires moving Sourcing group on the 2nd floor to the 1st floor and rearrange 1st floor to accept Sourcing." Other documents indicate that bids for various portions of the work were solicited on November 24, and that a contractor received an "Authorization to Proceed" with the expansion of the Upper Darby payroll office on December 23. This authorization indicates that the work was to start on December 14, and be completed by March 31, 1999. Kelly, the Respondent's real estate portfolio manager, testified that it cost the Respondent approximately \$100,000 to renovate the space in Upper Darby to accommodate the payroll office consolidation.

A "Payroll Services Associate Job Requisition" form for the Upper Darby office shows that the Respondent first sought to hire additional employees for that office on December 10. Hessenthaler testified that these new hires were to be used initially to replace employees in Upper Darby who were working on the software conversion and then would take over the work being moved from the Manhattan office. The document shows that the first employees hired pursuant to the job requisition started in January 1999. According to Hessenthaler, it ordinarily takes 30–60 days to fill a position after it is requisitioned and another 6–8 weeks to train a new employee. Hessenthaler testified that the Upper Darby office did not begin performing the work previously done in Manhattan until April 5, 1999.

Kelly testified that he first learned of the move to Braintree in December. According to Kelly, a planner from his department had been working with individuals in the Braintree office who wanted additional space there for expansion. The space they wanted to occupy had been reserved for another department. Kelly got involved in order to resolve these competing claims for the same space. Documents placed in evidence by the General Counsel show that on October 27, there was a meeting in Braintree at which managers from the Braintree office discussed with a representative from the Respondent's real estate office their plans to expand that office to accommodate the work consolidation. According to the minutes, the Braintree managers advised the real estate representative that they planned to have the building ready for occupancy by

March or April 1999, and that the entire transition would take 10–14 months. The minutes reflect that no final decision on the expansion plans was made at that meeting. A document entitled "Client Agreement Form, A Real Estate Project Planning Document" dated October 30, shows agreement being reached to go forward with the expansion of the Braintree office to accommodate the movement of work from Brooklyn. The desired start date for the move is March 1999, with completion by December 1999. Daley signed the document indicating his concurrence on October 30. On January 6, 1999, there was another meeting involving representatives from the Respondent's real estate portfolio management group and the accounting department at which the physical consolidation of the accounting functions from Brooklyn into the Braintree office was discussed. The minutes of this meeting indicate that, despite the October 30 client agreement, nothing had been done to implement the proposed move. The minutes of the January 6 meeting indicate that space plans were yet to be developed and no drawings were done or bids solicited. Another document in evidence reveals that on January 13, 1999, the construction manager was authorized to proceed with the work. The construction schedule shows that the work was to start on April 1, 1999, and be completed by July 1, 1999. These documents are consistent with the testimony of Daley that the movement of work from Brooklyn to Braintree did not commence until April 1999, and that preparations of the office in Braintree to receive the work occurred around February–March 1999. Kelly testified that the real estate cost for the movement of work from Brooklyn to Braintree was \$325,000.

H. The Respondent's History of Consolidations and Work Transfers

Daley, who has been employed by the Respondent and its predecessors in New York for 34 years, testified about the history of consolidation of accounting functions. According to Daley, the Respondent employed more than 4000 people in 15 offices when he started with New York Telephone in 1965. As of the date of the hearing, there were 630 employees doing the same work for an expanded company. Daley testified that he dealt with the Union with respect to some of the consolidations of offices. The Respondent introduced a chart showing consolidations of offices and work functions affecting the unit involved here going back to 1973. Daley testified specifically regarding two of these moves.

In 1990, the Respondent decided to close an office located at 5030 Broadway in Manhattan.¹⁸ The work being performed there was moved to Brooklyn and Massapequa, within the same bargaining unit. Daley testified that the Respondent notified the Union of this decision under the predecessor to the Common Committee clause in the collective-bargaining agreement and met with Local 1100 to discuss it. As a result of these discussions, the Respondent agreed to delay the move for the convenience of the employees who would have to report to a new work location and to provide transportation for employees who had to travel further to get to work. Daley testified that the Re-

¹⁷ There is no allegation in the complaint that the Respondent failed or refused to furnish any information requested by the Union.

¹⁸ The location of this office is reported incorrectly throughout the transcript as "1530 Broadway."

spondent notified the employees of the move after it completed its discussions with the Union.

In 1995, the Respondent closed an office in Syracuse, New York, represented by a different local of the Union, and moved the work performed there to Massapequa and Brooklyn offices represented by Local 1100. In addition, some functions performed in Massapequa were relocated to an office in Menands, New York, represented by the other local union. Daley testified that the Respondent notified both Local 1100 and the Union representing the employees in the upstate New York offices and negotiated with the two unions regarding the decision. A letter dated May 4, 1994, to Murcott indicates that these changes were part of the Respondent's process reengineering plan and that notice of these changes was being given to the Union pursuant to the "technological change" language in the contract.¹⁹ Attached to this notice was detailed information regarding the planned moves and the numbers of employees affected. The date of this notification is approximately 1 month after the agreement was reached on the 1994-1998 collective-bargaining agreement. According to Daley, after giving the Union notice, the parties met and formed a committee to look for alternatives that would produce equivalent savings for the Respondent without moving the work. The committee developed a financial plan to keep the work in the Brooklyn office. That plan was presented to the Union's members who rejected it. Daley testified that, had the members accepted the plan, the work would have remained in Brooklyn.

I. Analysis and Conclusions

There appears to be no dispute that the Respondent's decision at issue here was subject to mandatory bargaining under the Board's decision in *Dubuque Packing Co.*, 303 NLRB 386 (1991), enfd. 1 F.3d 24 (D.C. Cir. 1993). In fact, the Respondent made no contrary argument in its posthearing brief. Assuming arguendo that the Respondent nevertheless contests this issue, I find that the evidence in the record satisfies the Board's *Dubuque* test. The parties stipulated at the hearing to facts establishing that the Respondent's decision involved a relocation of unit work unaccompanied by any basic change in the nature of the Respondent's operations, thereby satisfying the General Counsel's prima facie burden. Respondent offered no evidence at the hearing to rebut this prima facie case under either alternative recognized by the Board. Thus, the Respondent did not attempt to prove that the work now being performed in Brain-tree and Upper Darby varies significantly from the work performed at Brooklyn and Manhattan, or that the work previously performed by Unit employees was to be discontinued, or that the Respondent's decision involved a change in the scope and direction of the enterprise. As to the alternative defense recognized by the Board in *Dubuque*, the Respondent failed to show by a preponderance of the evidence either that labor costs were not a factor in its decision or that the savings anticipated by the move were so substantial that the Union could not offer concessions that could have changed the Respondent's mind. The

testimony of Jacobs, Daley, and Hessenthaler proves conclusively that labor costs were indeed a significant factor in the Respondent's decision. All of the savings identified in the memos and meetings at which the decision was discussed by the Respondent's managers came from a reduction in the number of employees performing the work and the lower wage and benefit structure in the offices where the work was relocated. Although Hann may have told the Union at the December 15 grievance meeting that the Union could not come up with savings that would equal what the Respondent expected to achieve by relocating the work, as Murcott claimed, the Respondent did not seek to prove that this was true. Moreover, the fact that the Respondent invited the Union to make a proposal on December 15 amounts to a concession that it was possible to meet the savings through bargaining. See *Dorsey Trailers, Inc.*, 327 NLRB 835, 858 (1999).

Having concluded that the Respondent's decision was a mandatory subject of bargaining, it must next be determined whether the Respondent satisfied its statutory duty to afford the Union notice and an opportunity to bargain regarding the decision. In determining this issue, the Respondent's waiver defense must also be considered. It has long been settled law that an employer that desires to make material changes in the terms and conditions of employment of its union-represented employees has a duty under the Act to give timely notice to the union and afford the union a meaningful opportunity to bargain before implementing the changes. *Defiance Hospital*, 330 NLRB 492 (2000), and cases cited therein. It is also well settled that, upon receipt of such notice from an employer, a union must act with due diligence to request bargaining, otherwise it may be found to have waived its right to bargain over the matter. *Medicenter, Mid-South Hospital*, 221 NLRB 670, 678-679 (1975), and cases cited therein. Accord: *Haddon Craftsmen, Inc.*, 300 NLRB 789 (1990); *Clarkwood Corp.*, 233 NLRB 1172 (1977). The Board has held, however, that where notice is given too short a time before implementation, or under circumstances where it is clear that the employer has no intention of bargaining about the subject, then a violation will be found even if the Union has failed to request bargaining. In such cases, the Board has found that the notice is nothing more than informing the Union of a "fait accompli." *Ciba-Geigy Pharmaceuticals Division*, 264 NLRB 1013, 1017 (1982), enfd. 722 F.2d 1324 (7th Cir. 1983). Accord: *Mercy Hospital*, 311 NLRB 869, 873 (1993). In determining whether an employer has presented the Union with a "fait accompli," the Board looks for objective evidence. *Mercy Hospital*, supra; *Haddon Craftsmen, Inc.*, supra. See also *W-I Forest Products Corp.*, 304 NLRB 957 (1991). A union representative's subjective impressions of the employer's state of mind and the employer's use of positive language in its notice announcing the changes have been determined by the Board to be insufficient evidence of a "fait accompli." Id.

The General Counsel and the Charging Party argue that the Respondent's notice to the Union on August 24 was nothing more than a "fait accompli," thereby excusing the Union's failure to act to preserve its rights. The General Counsel and the Charging Party rely on the positive tone in which the plans were announced, the Respondent's almost simultaneous an-

¹⁹ There is no dispute that the referenced "technological change" provision in the collective-bargaining agreement was the precursor to the "Common Committee" in the current contract.

nouncement to the employees, and the Respondent's denial of the Union's request that it postpone the scheduled announcement to the employees as proof of a "fait accompli." Alternatively, they argue that even if the notice was not a fait accompli, the Respondent did not afford the Union sufficient time to bargain over the movement of work. According to the General Counsel and the Charging Party, bargaining would have to have occurred before the September 6 or 8 deadline for employees to accept the 6 and 6 retirement offer because, after that date, the Union would have no leverage with which to bargain. The Respondent argues that its notification to the Union was timely because implementation of the plan was not scheduled to commence for at least 6 months. The Respondent contends that the Union's inaction, even when invited at the December 15 grievance meeting to submit a proposal and commence bargaining, is clear evidence of a waiver of its statutory rights. The Respondent argues further that the Union had already waived its statutory bargaining rights by agreeing to the contractual "Common Committee" procedures for addressing changes such as those at issue here.

Although there are some minor disagreements among the witnesses regarding what was said at various meetings, the critical facts are not in dispute. It is undisputed that the Respondent notified the Union of its plans to close the Brooklyn RAO and the Manhattan payroll office and to relocate unit work on August 24. The Respondent's witnesses concede that the subject of relocating at least some of this work had been discussed as early as February. There is no dispute that the Union was never informed during contract negotiations, from February through August 11, that a relocation of unit work was under consideration. It is also undisputed that the Respondent announced its decision to the affected employees almost immediately after informing the Local 1100 executive board and that the Respondent denied a request from the Union to postpone this announcement.²⁰ The Union's witnesses concede that they did not request bargaining over the Respondent's decision after receiving notice of the Respondent's plans. The record establishes conclusively that the Union essentially did nothing until it filed grievances more than 2 months later claiming that the relocation of work violated collective-bargaining agreements with the Respondent. The earliest the Union even broached the possibility of bargaining over the decision was December 15, at the third-step grievance meeting. Even then, although the Union initially indicated that it desired to bargain about the decision and even requested information related to the subject, which was promptly furnished by the Respondent, it quickly abandoned any effort at bargaining after the meeting. Finally, the uncontradicted evidence establishes that the Respondent did not begin relocating any unit work before April 1999.²¹ In fact, the earliest evidence of any action being taken to implement the

move was in November, when planning and design work for expansion of the Upper Darby office began. Actual construction work did not begin in either of the offices to which the work was being moved before early 1999.

On these facts and the record as a whole, I find that the General Counsel has not proved that the Respondent's decision was a fait accompli. As noted above, the positive language used by Daley in announcing the Respondent's decision and the subjective impression of Murcott, Gadzinski, and the unit employees who testified regarding the finality of the Respondent's decision is insufficient to establish that the August 24 and 25 notification was a "fait accompli." *Haddon Craftsmen, Inc.*, supra. Although the Board has generally found that announcement of changes to employees before notification to the Union is sufficient to establish that an employer's decision is a fait accompli, that did not occur here. Cf. *AT&T Corp.*, 325 NLRB 150 (1997); *Roll & Hold Warehouse & Distribution Corp.*, 325 NLRB 41 (1997). Moreover, the facts in those cases contain other evidence, such as contemporaneous statements by management officials and testimony at the hearing, establishing that the employer's decision was irrevocable even before notice was given to the Union. See also *Dorsey Trailers*, supra. In the instant case, Daley and Hessenthaler made no statements at the time of the announcement that would lead a reasonable person to conclude that the decision was irrevocable. On the contrary, they informed the Union that the move would not take place for at least 6 months. By letter the same date, Hann advised the Union that the issue was being referred to the "Common Committee." Murcott conceded that the purpose of this contractual procedure was to afford a forum for the Respondent and the Union to develop alternatives to changes such as those announced here. Murcott even acknowledged being aware that, under the contract, the Respondent could not implement any changes for 6 months. The record establishes that, in the past, the Union had engaged in bargaining over similar decisions with varying degrees of success. Under these circumstances, it cannot be found that the Respondent's decision was irrevocable before the announcement was made.

The Board's recent decision in *Defiance Hospital*, supra, where the Board found a "fait accompli" based on, inter alia, the fact that the employer informed the union and the employees simultaneously of a change in their wages, is distinguishable. In that case, there was testimony from the employer's administrator indicating that the decision to grant a wage increase was final even before he met with the union. Moreover, the employer's announcement of the change occurred in the context of the employer's general refusal to recognize and bargain with the union following its merger and affiliation with another union. Under such circumstances, it was clear that the employer had no intention of bargaining over the subject at issue. In the instant case, the evidence establishes that after making the announcement to the Union and the employees the Respondent indicated a willingness to bargain over the subject, even inviting the Union to make a proposal at the December 15 grievance meeting. I note that the Respondent bargained with the IBEW, the Union whose work was relocated from Braintree to Massapequa, regarding this same matter. Finally, I credit the testimony of the Respondent's witnesses that they were cogni-

²⁰ Although the Respondent informed the executive board of its decision on August 25, the Union had actual notice since 4 p.m. on August 24, when Daley and Hessenthaler told Murcott about the Respondent's plans.

²¹ Both offices were still open as of the close of the hearing. In addition, by agreement of the parties, no unit employees affected by the work relocation were required to leave the Respondent's payroll under their 6 and 6 elections before December 1999.

zant of their obligation to bargain over this decision and discussed it during the meetings at which the decision was made. These facts do not evidence an employer that has no intention of bargaining with its employees' representative regarding its decision.

The strongest evidence in support of the "fait accompli" argument is the fact that the Respondent admittedly denied the Union's request that it postpone the announcement to the employees. Although under ordinary circumstances, this might indicate that an employer's decision was irrevocable, the circumstances here negate such a finding. The Respondent explained to the Union that it was obligated to go forward with its plans to announce the decision because the employees were in the midst of considering whether to accept the Respondent's 6 and 6 retirement offer. The possibility that their jobs would be eliminated and they would have to transfer to other jobs could be a material factor in the employees' decision whether to accept the offer. Under these circumstances, the Respondent's denial of the Union's request was reasonable. I note that, even after denying this request, the Respondent indicated its willingness to discuss the decision with the Union. I also credit Daley's testimony that he informed the employees that their Union was "fighting the decision."²² Finally, the Union, while asking that the employer delay its announcement to the employees, never requested bargaining over the decision and did not even meet with the employees after the announcement was made. Because the Union never perfected its rights, I am not inclined to find that this denial by the Respondent proved it had no intention to bargain with the Union.

In determining whether the Respondent's announcement of its decision was a "fait accompli," I have also considered the fact that the Respondent did not inform the Union during contract negotiations that it was considering such a move. This was the Union's main objection when it first learned of the decision. I find, based on the testimony of Jacobs, Daley, and Hessenthaler, that the Respondent did not make any decision to close the offices and relocate bargaining unit work until after negotiations were complete. Although the movement of some work from Brooklyn may have been considered in February, and the possibility of a consolidation of payroll operations discussed in June, it is clear that these were just "concepts" until the August 18 meeting. I note that as late as July 31 Hessenthaler was projecting in her e-mail report to Jacobs that the New York payroll office would remain open. I also note that the decision finalized at the August 18 meeting and announced to the Union was not identical to the plan under consideration in February. It also makes sense that the Respondent would not want to make such a decision until the final agreement on the 6 and 6 issue was known. Although Daley and Hessenthaler may have been aware of the tentative agreement resolving the 6 and 6 issues as early as July, it is undisputed that a total agreement, including resolution of the 6 and 6, was not final until August 11. I find it credible that the Respondent's management would await a final

²² Although Venice Booker testified that she did not recall Daley making such a statement, she did recall that he told the employees that their union would be getting in touch with the employees.

collective-bargaining agreement before making any final decision on a matter of this nature.

The Board has held that it is not unlawful for an employer to present a proposed change in employees' terms and conditions of employment as a fully developed plan. Board law requires only that, after reaching a decision concerning a mandatory subject, that the employer delay implementation of the decision until it has consulted with the employees' bargaining representative. The Act does not require the employer to delay the decision-making process itself. *Haddon Craftsmen, Inc.*, 300 NLRB supra at 790 fn. 8; *Lange Co.*, 222 NLRB 558, 563 (1976). Here, the Respondent satisfied its obligations under the Act by informing the Union as soon as a final decision was made and by delaying implementation of that decision for 6 months, more than ample time to bargain about it had the Union shown any interest in doing so. Moreover, the Respondent waited more than 2 months, in the face of total silence from the Union, before it even began planning for the physical changes required to implement its decision. Clearly, the Respondent's decision here was not a "fait accompli."

The General Counsel and the Charging Party make a strong argument that, even if the notice did not amount to a fait accompli, the Respondent did not give the Union a meaningful opportunity to bargain over this decision, focusing on the September 8 deadline under the Respondent's 6 and 6 offer.²³ Such an argument would have been more persuasive, however, if the Union had acted with due diligence to request bargaining, thereby testing the Respondent's good faith. The Union had notice of the decision 2 weeks before the deadline. This was ample opportunity to request bargaining and start the process, even if agreement could not be reached before the deadline. The parties, as part of bargaining over the decision might well have discussed extending the deadline, or allowing employees' election to take the 6 and 6 be subject to the outcome of bargaining, or with the right to rescind if the parties agreed to keep the two offices open. We will never know if the employer would have agreed to such proposals because the Union waited until it was too late. I do note in this regard that the Respondent did agree, in the course of bargaining over "people issues" after the deadline had passed, to allow employees to extend their selected ARDs through December 1999. This tends to show that meaningful bargaining was not futile even with the 6 and 6 deadline.

Finally, the Union's December 22 letter to the Respondent, in which it indicated an interest in bargaining over the decision under certain conditions, must be addressed. This letter was a follow up to the December 15 grievance meeting at which the Union, for the first time, expressed any interest in bargaining and requested information as a preliminary step to formulating a proposal. In her letter, the Union's representative, Dolan, conditions the making of a proposal on the Respondent "rescind[ing] the decision to transfer the work out of state until

²³ Although the terms of the written offer mailed to the employees indicated that the deadline to accept was September 6, it is clear from the summary of the Respondent's records prepared for the hearing that the Respondent accepted election forms submitted through September 8.

such time as you have received and studied the Union's proposal." Dolan asserts in her letter that only by doing so would the Union know that the Respondent was serious about bargaining. I find that this letter was nothing more than posturing on the part of the Union. In particular, Dolan makes a false claim that her position in the letter was based on information obtained after the December 15 meeting. The only information she cites is nothing new and was known to the Union since the August 25 announcement of the Respondent's decision. The Respondent's reply, that it was unwilling to "rescind" its decision to satisfy the Union's bargaining demand made 4 months after it was announced, is not a sign of bad faith. Had the Union wanted to test the "seriousness" of the Respondent's bargaining intentions, it could easily have done so in August.²⁴

Based on the above and the record as a whole, I find that the Respondent did not violate Section 8(a)(1) and (5) of the Act by failing to notify and bargain with the Union regarding its August 24 decision to close the Brooklyn and Manhattan offices and to permanently transfer bargaining unit work from those offices to non unit facilities. I find further that the Union waived any right it had under the statute to bargain about these

²⁴ I note that because very little had been done to implement the decision by December 15 there was no need for the Respondent to "rescind" its decision to facilitate bargaining. The Union had at least 3 months before any work was to be removed and any employees displaced if it truly wanted to bargain about this decision.

decisions by its inaction. In light of this finding, it is unnecessary for me to address the Respondent's argument that the "Common Committee" provision of the collective-bargaining agreement amounts to a contractual waiver of the Union's bargaining rights as to this decision.

CONCLUSIONS OF LAW

1. The Respondent, Bell Atlantic Corporation, did not refuse to bargain collectively, within the meaning of Section 8(d) of the Act, with the Communications Workers of America, AFL-CIO, and its Local 1100 regarding the August 24, 1998 decision to relocate bargaining unit work.

2. The Respondent did not violate Sections 8(a)(1) and (5) and 8(d) of the Act in any manner encompassed by the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁵

ORDER

The complaint is dismissed.

²⁵ 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.