

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

EAD MOTORS EASTERN  
AIR DEVICES, INC.

and

IUE-CWA LOCAL 81243,  
AFL-CIO

Cases 1-CA-40651  
1-CA-41036  
1-CA-41172

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for the General Counsel.  
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for the Respondent.  
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of Washington, D.C.,  
for the Charging Party.

DECISION

Statement of the Case

MARTIN J. LINSKY, Administrative Law Judge: IUE-CWA Local 81243, AFL-CIO, Union herein, filed charges against EAD Motors Eastern Air Devices, Inc., Respondent herein.

The charge and amended charge in Case 1-CA-40651 were filed on February 3, 2003 and August 20, 2003, respectively. The charge in Case 1-CA-41036 was filed on June 18, 2003 and the charge in Case 1-CA-41172 was filed on August 19, 2003.

On November 28, 2003, the National Labor Relations Board, by the Acting Regional Director for Region 1, issued an amended consolidated complaint, herein complaint, which alleges that Respondent violated Sections 8(a)(1), (2), and (5) of the National Labor Relations Act, herein the Act.

The twelve (12) page complaint alleges a number of violations of the Act, which are more fully set forth below.

The most significant of the allegations are 1) that Respondent unlawfully declared impasse in September 2002 during contract renewal negotiations and thereafter unlawfully and unilaterally implemented many changes to its employees' terms and conditions of employment, 2) that Respondent in June 2003 unlawfully withdrew recognition from the Union, and 3) that Respondent in August 2003 created, assisted, and dominated the "Have Your Say Committee," a labor organization established to fill the void left by Respondent's unlawful withdrawal of recognition from the Union.

Respondent filed an answer to the complaint in which it denied that it violated the Act in any way.

5 A hearing was held before me in Boston, Massachusetts, and Dover, New Hampshire on twelve (12) days between January 26, 2004 and March 10, 2004.

10 This case is also the subject of a Section 10(j) injunction proceeding before the Honorable Steven J. McAuliffe of the United States District Court for the District of New Hampshire.

15 Upon the entire record in this case, to include post-hearing briefs submitted by Counsel for the General Counsel, Respondent, and the Charging Party, and upon my observation of the witnesses and their demeanor, I hereby make the following

## Findings of Fact

### I. Jurisdiction

20 At all material times Respondent, a corporation with an office and place of business in Dover, New Hampshire, has been engaged in the manufacture, sale, and distribution of electric motors.

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

### II. The Labor Organization Involved

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

### III. The Alleged Unfair Labor Practices

#### A. Background

35 A collective bargaining relationship between Respondent and the Union had existed for close to sixty (60) years.

40 The Union was Local 243 of the International Union of Electrical Workers (IUE), which merged a few years ago with the Communication Workers of America (CWA) to become IUE-CWA Local 81243. The 81 prefix identifies it as an IUE Local. This Local was one of the oldest locals in the IUE.

45 The parties had successfully agreed to a number of collective bargaining agreements over the years. The most recent collective bargaining agreement ran from September 16, 1999 through September 15, 2002, which by mutual consent of the parties during negotiations was extended to 7 pm on September 17, 2002.

#### B. Impasse

50 The parties began negotiations for a successor collective bargaining agreement on September 5, 2002 and held seven (7) negotiating sessions, i.e., September 5, 10, 13, 14, 15, 16, and 17, 2002. They negotiated for approximately 73 hours over those seven (7) sessions

according to Ed Oakley, a Union representative and chief union negotiator. Ed Oakley was the chief union negotiator and he was assisted by a committee of four union officers who were also full time employees of Respondent. Oakley is a full time employee of the Union.

5           The chief negotiator for Respondent was private attorney Peter Kraft and he was assisted by several other people from Respondent's management ranks.

10           The parties began negotiations with both sides understanding that Respondent's business was in trouble financially. Evidence at the hearing before me showed sales dropped between 2000 and 2002 from \$22 million to \$14 million. Foreign competition was a major problem. Respondent makes customized motors. The owner of Respondent is Logan Delaney who did not testify. Delaney also owns another company that manufactures and sells motors in Arkansas.

15           Fortunately, Respondent's business seems to be doing better financially according to the testimony of Respondent's Director of Human Resources, Brenda Leamy, who so testified late in the hearing before me.

20           In any event Respondent's then President Dominic More opened the negotiations on September 5, 2002 with remarks about the financial problems facing Respondent and that some major changes were required.

25           One of the major changes required by Respondent was that the employees would be covered by Respondent's 401K Plan and no longer would Respondent make contributions on behalf of unit employees to the Union pension fund. Most significantly, however, Respondent wanted to do a massive restructuring of job classifications. Respondent's rationale for wanting this massive restructuring were triggered by Respondent wanting greater flexibility in its work force, i.e., employees being able to perform several different jobs and this would help Respondent in producing product by giving it more flexibility in where to assign employees to work. This massive restructuring proposal of changing and combining the 41 jobs listed in the collective bargaining agreement into what turned out to be nine (9) was referred to in this litigation as the Matrix.

30           Bargaining over job classifications and duties are mandatory subjects of bargaining and the parties can bargain to impasse over these issues and if lawful impasse is reached the employer can implement its last best offer.

35           In this case, Respondent ended negotiations on September 17, 2002, when this single most important proposal contained in its final contract offer to the Union—a proposal to scrap all existing job descriptions and pay rates and replace them with an entirely new job classifications system and new pay rates—was still largely unformulated. As outlined by Respondent during negotiations, the new job classifications system would combine the job functions of the 41 existing unit positions into a number of new job classifications. Each of these new job classifications would have its own list of job responsibilities, a "Skill Matrix" listing skills required to qualify for positions within that job classification, and a "Progression Matrix" specifying the skills and degree of proficiency required to progress to higher-paying positions within that classification.

40           The parties deliberated long and hard on a number of issues to include Respondent's job classification restructuring proposal, i.e., the Matrix, but could not reach agreement on many subjects.

5 On September 17, 2002 the last day of negotiations the Union proposed adopting a Transition Agreement on the Matrix if Respondent would back off its proposals on a number of subjects to include calculation of union dues, required employee cooperation in alleged unlawful harassment investigations, change in vacation policy, maintenance by Respondent of inactive disciplinary records of employees, modification of the contract rights of union officers to perform union business, use of temporary employees, etc.

10 Respondent rejected the Union’s compromise package deal. As a result there was no agreement on the Transition Agreement.

The proposed Transition Agreement provided as follows:

“Transition Agreement On Job Classification

- 15 • During the first year of the contract, the Company and the Union shall meet quarterly to discuss the strengths and weaknesses of the new job classification/job title structure, and shall work together to incorporate prudent and necessary changes to said structure. During the first quarter, similar meetings will be held monthly.
- 20 • The company shall hold informational meetings with employees to explain how the new job classification structure will work.
- 25 • Once an expert or proficient skill level is attained, the employee shall retain such determination. Once a job title has been achieved, the employee shall retain the rate of the job title so long as the employee stays with the progression grouping that the title belongs to.
- 30 • To the extent a job title is not currently included in a progression matrix, the employee shall retain their current job title until the Skill Matrix for their position is completed.

For the Company:

For the Union:

\_\_\_\_\_

\_\_\_\_\_”

35 Had Respondent accepted the Union’s package proposal, i.e., that on the Matrix the parties would comply with the Transition Agreement if Respondent backed off on a number of its other proposals then the parties could have had an agreement. However, Respondent rejected the Union package proposal.

40 It is likely that the parties may never have reached agreement on some subjects but they had not reached impasse on the Matrix because there was no complete Matrix proposal on the table when negotiations ended on September 17, 2002.

45 The parties could agree to work out the details on the Matrix in the future but Respondent could not declare a lawful impasse when Respondent had never submitted a complete Matrix proposal to the Union prior to declaring impasse.

50 Prior to, during, and immediately after the September 2002 negotiations for a renewal collective bargaining agreement the current contract had nine (9) labor grades, i.e., pay grades numbered 2 to 9 with 9 the highest paid and 2 the lowest paid, and a listing 41 jobs. The collective bargaining agreement provided as follows:

“Following is a list of all jobs and their appropriate Classifications and respective Labor Grades.

Class 2 - Production Workers – Labor Grade 2

5	Impregnate/Assemble Machine Operator “C” Winder/Assembler	Janitor/Maintenance Assistant Assembler Packer
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Class 3 – Other Occupations, Various Skills – Labor Grade 3

10	Shipping/Stock Clerk Line Repair Operator Paint Sprayer	Hand Inserter Welder “B” Receiving/Acceptance Inspector
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Class 4 – Other Occupations, Various Skills – Labor Grade 4

15	<u>Class 4 – Other Occupations, Various Skills – Labor Grade 4</u>	
20	Machine Set-Up and Operate Special Line Repair Operator Short Run Stator Assembler Junior Maintenance Mechanic	Lead Stock Clerk Process Inspector FPL Set-Up/Operator “C”

Class 5 – Other Occupations, Various Skills – Labor Grade 5

25	Tool Crib and Gage Attendant and Repairperson Raw Material Handler Welder “A” Floorperson Assembly	Metal Finisher Assembler A Lead Paint Sprayer Sr. Receiving/Acceptance Inspector
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Class 6 – Other Occupations, Various Skills – Labor Grade 6

30	<u>Class 6 – Other Occupations, Various Skills – Labor Grade 6</u>	
35	Set-Up Person “B” Set-Up, Impregnate, Core Building Assembly and Machining Winding Department Equipment Set-up	Senior Stock/Shipping Clerk

Class 7 – Other Occupations, Various Skills – Labor Grade 7

40	Set-Up Person “A” Tool and Die Maker “B” Maintenance Mechanic
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Class 8 – Other Occupations, Various Skills – Labor Grade 8

45	Master Set-Up
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Class 9 – Other Occupations, Various Skills – Labor Grade 9

50	Tool and Die Maker “A” Automatic Screw and Bar Machine Set-Up	Electrician (Maintenance) Senior Maintenance Mechanic Senior Set-Up”
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The Matrix as implemented had nine (9) different matrixes. However, at the end of negotiations on September 17, 2002 the Respondent had only advised the Union of five (5) job classifications, i.e., assembler, assembly leadperson, machine operator, machine leadperson, and manufacturing cell. Both the Union and Respondent were aware that this was not the complete list of job classifications or matrixes.

After Respondent declared impasse it unilaterally established four (4) new job classifications, i.e., quality skill matrix, material skill matrix, maintenance skill matrix, and miscellaneous skill matrix. These four matrixes or job classifications were never discussed during negotiations. Within each Matrix was a list of the functions a person in that classification was required to perform. Within each Matrix a person would be rated as trainee, proficient, or expert with higher pay as an employee went from trainee to proficient to expert. Expert signifying that you could train others.

The materials on the Matrix given to the Union during negotiations were contained in GC Exh. 14. As noted above the material was incomplete and four new Matrixes were added to the five discussed during negotiations.

Respondent issued GC Exh. 16 entitled "Users Manual." It was dated November 2002 and the record is not clear as to whether the Union received it in November 2002 or in January 2003. But be that as it may the Union's Chief Negotiator Ed Oakley made a comparison between the Matrix material furnished to the Union during negotiations and the contents of the Users Manual which addressed the Matrix and credibly testified that he found no less than 29 differences between what the Union was told about the Matrix during negotiations and what was finally implemented. GC Exh. 28.

Before lawful impasse can be reached it is obvious that the parties should know what they are negotiating about. You can't intelligently reject a proposal without knowing what it is that you are rejecting. The burden of demonstrating the existence of impasse rests on the party claiming impasse. *Roman Iron Works*, 282 NLRB 725, 731 (1978).

The duty to bargain does not require a party to engage in fruitless marathon discussions at the expense of frank statement and support of one's position. Where there are irreconcilable differences in the parties' positions after full good faith negotiations, the law recognizes the existence of an impasse. Some difficulty exists in establishing the inherently vague and fluid standard applicable to an impasse reached by hard and steadfast bargaining, as distinguished from one resulting from an unlawful refusal to bargain. It may be that in collective bargaining part of the difficulty arises from the fact that the law recognizes the possibility of the parties reaching an impasse.

The existence or nonexistence of an impasse is normally put in issue when, after negotiations have been carried on for a period of time, the positions of the parties become fairly fixed and talks reach the point of stalemate. When this occurs, the employer is free to make unilateral changes in working conditions (i.e., wages hours, etc.) consistent with its offers that the union has rejected. *NLRB v. Katz*, 769 US 736 (1962). In the instant case, the Union could not have rejected the Matrix because it was incomplete. By the very nature of the bargaining process, it is not always apparent when an impasse has been reached. In general, before an employer may lawfully make unilateral changes, however, an impasse must exist.

In *A.M.F. Bowling Co.*, 314 NLRB 969 (1994), the Board summarized its test for impasse by saying: "The Board has defined impasse as the point in time of negotiations when the parties are warranted in assuming that further bargaining would be futile . . ." "Both parties must believe

that they are at the end of their rope. *Id.* at 978. In *Taft Broadcasting Co.*, 163 NLRB 475 (1967), the Board stated that impasse occurs “after good faith negotiations have exhausted the prospects of concluding an agreement” and enumerated some of the considerations in making such a determination:

5

Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

10

The Board may also consider additional factors, for the existence of an impasse is very much a question of fact. These may include:

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1. Whether there has been a strike or the union has consulted the employees about one. However, a strike does not necessarily create an impasse and may even break a preexisting one.

20

2. Fluidity of position.

3. Continuation of bargaining.

25

4. Statements or understandings of the parties concerning impasse.

5. Union animus evidenced by prior or concurrent events.

30

6. The nature and importance of issues and the extent of difference or opposition.

7. Bargaining history.

8. Demonstrated willingness to consider the issue further.

35

9. Duration of hiatus between bargaining meetings.

10. Number and duration of bargaining sessions.

40

11. Other actions inconsistent with impasse.

Impasse on one, or several, issues does not suspend the obligation to bargain on remaining, unsettled issues. Nor does the existence of a general impasse insulate a party from the duty to bargain, since an impasse normally only suspends the duty to bargain and changed circumstances may end the suspension.

45

An impasse can end suddenly; almost any changed condition or circumstance that renews the possibility of fruitful discussion will terminate the impasse. Thus, a party's willingness to change its previous position can end the impasse. However, one party cannot condition further bargaining on the other's willingness to modify its position unless there is a valid impasse.

50

After Respondent ended negotiations on September 17, 2002 the Union presented the Respondent's final contract offer to the membership at a meeting the Union leadership held with the unit employees. The unit employees voted overwhelmingly 68 to 7 to reject the Respondent's last offer. The unit employees also accepted the recommendation of Chief  
 5 Negotiator Ed Oakley that the employees not go on strike but rather go to work and the Union would see what it could do.

Ed Oakley on September 25, 2002 sent a letter to Respondent wanting to bargain further over the "Company's far reaching proposals" and in January 2003 the Union again requested  
 10 further bargaining and specifically cited the incompleteness of Respondent's Matrix proposal.

The General Counsel and Charging Party argue that no lawful impasse could be reached where the Respondent's proposal is incomplete or as Counsel for the Charging Party called it during the hearing the proposal is still "a work in progress" or as the Board in *I.T.T. Rayonier, Inc.*, 305 NLRB 445 (1991) said regarding an offer on a yet to be formulated incentive  
 15 pay plan put forward by Respondent that Respondent needed to put "meat on the bone."

Accordingly, I find the Respondent violated Section 8(a)(1) and (5) of the Act when it prematurely declared impasse and began implementing its last best offer to the Union. Since  
 20 the Union did not have a complete proposal on the Matrix lawful impasse could not be declared by Respondent. *ITT Rayonier, Inc.*, *supra*, *Outboard Marine Corp.*, 307 NLRB 1333 (1992).

Dave Horne, a former union officer and current employee of Respondent, testified that Ed Oakley said on September 17, 2002 after the last negotiating session that the parties were at  
 25 "impasse." Oakley concedes he may have said this but meant that it looked like the Union couldn't get an agreement and not that the parties were at lawful impasse.

### C. Unilateral Implementation

Since a lawful impasse had not been reached Respondent violated Section 8(a)(1) and (5) of the Act when it thereafter unilaterally implemented changes to the terms and conditions of employment of its employees generally consistent with its last best offer to the Union at the negotiating table with the exception of the Matrix which was added to subsequent to the end of the negotiations.  
 30

On October 22, 2002 Respondent admitted it issued a booklet to unit employees entitled "wages, hours, and working conditions — new policies and changes." The booklet, GC Exh. 18, included the following changes in wages, hours, and working conditions from the 1999-2002 contract:  
 35

- 40 1. elimination of cost of living adjustment (COLA), p. 3.
- 45 2. reassignment of Unit work to non-bargaining unit personnel assigned to Development Cells, p. 2.
- 50 3. discontinuance of Respondent's contributions to the negotiated defined benefit pension plan, p. 4.
4. reduction of Respondent provided health plan benefits and the increasing of the cost of these benefits to employees, p. 5.

5. mandating of employee participation in Respondent's disciplinary investigations, p. 6.
- 5 6. limitation of arbitrators' authority to reverse certain discipline and termination cases, p. 6.
7. reduction and/or elimination of vacation benefits, pp. 7-12.
- 10 8. assertion of the right to alter work schedules on the second and third shifts with majority approval of employees, but without negotiating the change with the Union, p. 12.
- 15 9. requiring employees to schedule doctor appointments as late in the day as possible in order to receive pay for time lost, while obtaining treatment for work related injuries, p. 13.
10. changing of seniority provisions, pp. 14-17.
- 20 11. providing that past practices shall not be binding, p. 18.
12. establishment of a discharge penalty for an employee's failing to adequately document absences and tardiness, p. 18.
- 25 13. requiring that the Union submit grievances only on forms approved by Respondent, p. 19.
14. retaining of employee discipline records beyond one year, p. 19.
- 30 15. expansion of Respondent's ability to assign Unit work to non-unit personnel, p. 21.
16. restriction of employees' rights to make or receive emergency telephone calls, p. 22.
- 35 17. elimination of language authorizing the Union president (or designee) to receive telephone calls pertaining to Union business during working hours, p. 22.
18. expansion of Respondent's right to subcontract Unit work, p. 23.
- 40 19. changing of temporary employees' time credit toward fulfillment of probationary period, p. 24.
- 45 20. allowing of Respondent to use employees from temporary employment agencies in certain instances to perform Unit work, p. 24.
21. modification of language providing for the collection of Union dues or financial core obligations from non-members of the Union, p. 25.
- 50 22. provision that Respondent may switch to bi-weekly payroll, p. 25.

23. prohibition of sympathy strikes for certain companies owned or related to Respondent, p. 26.

5 24. requiring that the union obtain written permission from Respondent prior to soliciting funds in the plant during working hours, p. 27.

25. prohibition of employees from conducting Union business in the plant during working hours, p. 30.

10 26. limiting to two the number of Union representatives who may be absent on Union business, and defining what constitutes Union business, p. 30.

15 27. limiting to four the number of Union representatives who may attend negotiations, p. 30.

28. limiting to three the number of Union representatives who may attend Union conventions (for up to five consecutive working days), p. 30.

20 29. increase in the amount of notice required for Union leave, p. 30.

30. changes in Unit employees' job classifications, job titles, job duties, job qualifications, and rates of pay, p. 32.

25 The thirty (30) changes listed above were admitted to by Respondent. If a lawful impasse had been declared by Respondent the implementation of these changes to the terms and conditions of employment would be lawful. However, no lawful impasse was reached. Therefore, Respondent violated Section 8(a)(1) and (5) of the Act when it unilaterally implemented the above changes. See, *NLRB v. Katz*, 369 US 736 (1962).

30 In addition Respondent violated the Act in implementing the Matrix over the three month period after Respondent unlawfully declared impasse. I credit the testimony of Union President and employee Michael Jackson that "discussions" or "meetings" on the Matrix between Respondent and the Union after negotiations ended on September 17, 2002 were Respondent telling the Union what Respondent had decided to do on the Matrix and nothing more.

#### D. Information Requests

40 It is well settled law that if the Respondent refuses to turn over to the Union which represents a unit of its employee information which the Union requests that is relevant and necessary to the Union in carrying out its collective bargaining responsibilities then the Respondent has violated Section 8(a)(1) and (5) of the Act by not bargaining in good faith. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967), *NLRB v. Truitt Manufacturing Co.*, 351 U.S. 149 (1956). Information regarding employees represented by the Union, e.g., wages and

45 benefits, is presumptively relevant and necessary to the Union in carrying out its collective bargaining obligations.

It is alleged that Respondent violated the Act by not complying with certain information requests made by the Union.

50 The Union about October 24, 2002 requested and Respondent failed and refused to furnish the Union with its final contract proposal in writing. The Union received Respondent's

proposals during negotiations but they were in a less than a totally organized order. The Union orally repeated this request in a meeting with Respondent's Chief Negotiator Peter Kraft on January 28, 2003. Respondent had this information, should have turned it over, and in failing and refusing to do so violated Section 8(a)(1) and (5) of the Act.

5

Respondent replaced the Union pension from with the 401K plan that was available to its non-union employees after unlawfully declaring impasse. The Union in September 2002 requested a copy of the Summary Plan Documents describing the 401K Plan. Respondent did not turn over these documents and therefore violated Section 8(a)(1) and (5) of the Act since this information was clearly relevant and necessary for the Union carrying out its collective bargaining responsibilities.

10

On or about February 28, 2003 the Union, in writing, requested from Respondent information concerning health insurance coverage and changes in insurance rates. Again, this information is clearly relevant and necessary to the Union in carrying out its collective bargaining responsibilities and the failure of Respondent to produce it violated Section 8(a)(1) and (5) of the Act.

15

20

It is alleged that Respondent's Chief Negotiator Peter Kraft violated the Act when on January 29, 2003, it notified the Union in writing that future information requests should be made to him, in writing, and should state the reasons why the request is being made. I do not find this to be a violation of the Act since as a practical matter it is easier to know what the Union is requesting if it is in writing and invariably the Union can easily provide the reason or reasons for its requests. Putting in writing what you want and why you need it doesn't appear to be overly burdensome.

25

#### E. September 2002 Lay-offs and Downgrades

30

During negotiations the parties knew that a lay-off was coming up. The parties knew Respondent was having financial problems and there had been several lay-offs in the recent past. More specifically 25 employees were laid off in October 2001 and another 15 employees in January 2002. Hopefully the hearing testimony of Brenda Leamy, Respondent's Director of Human Resources, that Respondent's fortunes are getting better continues to be true and further lay offs are not necessary.

35

40

In any event this lay-off on September 23, 2002 of 17 unit employees was done in the same manner as previous lay-offs were done. Further, Respondent granted the Union's request at the end of negotiations that the seniority clause under the expired contract apply to the lay-offs rather than Respondent's proposed change to seniority, which the Union opposed. Respondent did what the Union requested, i.e., used the old seniority system of department wide rather than plant wide seniority.

45

The lay-off triggered a down grade of some 12 other unit employees on September 25, 2002, essentially because they no longer were doing set up work for the employees laid off. Respondent convinced me that the lay off and resulting down grades were done consistent with past practice. Later on December 18, 2002, the Union protested the downgrade and the parties agreed to meet over it.

50

I find that the lay-offs and downgrades by Respondent on September 23 and 25, 2002, respectively, did not violate the Act.

## F. Miscellaneous Allegations

5 It is alleged that Respondent unlawfully reduced the tool room attendant position from full-time to part-time in September 2002 and in or about February 2003 eliminated the position all together.

10 Cindy French worked as a tool room attendant. She was away from work and employees started drawing their own tools. When French returned to work she was reassigned to the stockroom and remained a full time employee. I find no violation of the Act.

15 It is alleged that Respondent on October 23, 2002 unlawfully eliminated the practice of allowing union offices and stewards to take time off from scheduled work to attend union business meetings. Respondent was busy at the end of the month and asked the employees affected to change the date of the Union business meeting. They did not do so and Respondent didn't give them time off because they were needed at work. I find no violation of the Act because of what happened on October 23, 2002 but Respondent did unlawfully and unilaterally make changes regarding Union business by employees when it issued the booklet referred to in Section III C, above.

20 It is alleged that Respondent about October 24, 2002 recalled two employees, Linda Doane and Nancy Kane, from layoff and downgraded their jobs to PM Stepper Cell, Labor Grade 2 when they had been Labor Grade 4. This was consistent with past practice and I find no violation of the Act.

25 It is alleged that Respondent unlawfully failed to recall employee Jennie Smith on December 9, 2002 to the proper position of Maintenance Assistant and instead posted an opening for that position. Respondent in early 2003 recalled Jennie Smith back to work and claims the job Smith was laid off from was a janitor position and no requirement to recall her to the Maintenance Assistant position, which was a new position under the Matrix. I find no violation of the Act.

30 It is alleged that Respondent unlawfully posted openings for the position of Quality Assistant A in Receiving. This was a new Matrix position. Respondent was without authority to post this or any other Matrix position because it prematurely claimed impasse in the negotiations. Matters should be returned to the status quo ante if so requested by the Union.

35 It is alleged that Respondent unlawfully assigned the unit work of producing gears and winding stepper motors to non-unit employee Cindy Chapman in January 2003. This is a violation of Section 8(a)(1) and (5) of the Act because Respondent should negotiate with the Union about non-unit employee Chapman doing unit work and it did not.

40 It is alleged that Respondent violated the Act when about February 10, 2003 it placed employee Marie Hay into a trainee position and paid her a lower wage rate than she was entitled to receive. This is a violation of the Act because the trainee status in which Respondent placed Marie Hay was a new Matrix position and Respondent was without authority to implement the Matrix because of its premature invocation of impasse.

45 It is alleged that Respondent in February 2003 unlawfully subcontracted circuit board production work to an outside contractor. Under the expired collective bargaining agreement Respondent could subcontract work but not if it did so with intent to eliminate bargaining unit positions. I credit Respondent's then President Dominic More that the work was subcontracted out for legitimate business reasons, i.e., the outside contractor could do the work much cheaper

than Respondent could and Respondent subcontracted the work for this reason so it could keep the customer and did not subcontract out the work to eliminate jobs at Respondent. The employees affected by the subcontracting out were reassigned and continued as employees. Accordingly, I find no violation of the Act.

5

It is alleged that Respondent unlawfully transferred employee Melissa Thornton to a position and paid her at a lower rate than she was entitled to receive. This was a Matrix position and Thornton wasn't qualified for the higher rate of pay. Since the Matrix was unlawfully implemented matters should be restored to the status quo ante if the Union so requests.

10

It is alleged that Respondent in March 2003 unlawfully subcontracted the unit work of screw machine and hand lathe operation to an outside contractor. I find this was done for legitimate economic reasons and not to eliminate unit work and was not a violation of the Act.

15

It is alleged that Respondent in May 2003 posted a job in the PM Stepper Cell at Labor Grade 3, rather than Labor Grade 4, and paid a new employee at a lower wage rate than the position was supposed to received. I find no violation of the Act because Respondent didn't lower any employee's wage rate but added a new job in the PM Stepper Cell to be paid at Labor Grade 3.

20

It is alleged that Respondent in June 2003 assigned the unit work on the Hobbing machine to Cindy Chapman, a non-unit employee. The Union had requested that a unit employee named Claire do this job. However, Claire didn't have the skill to do the job and didn't want to do it. I find no violation of the Act.

25

It is alleged that Respondent posted and paid new employees on the FPL (focused product line) at Labor Grade 3 rather than Labor Grade 4. Respondent did so in order to qualify new employees to get the job on the FPL (focused product line) since it is easier to qualify for a Labor Grade 3 position, get the job, and progress to Labor Grade 4 than to qualify to start at Labor Grade 4 I find no violation of the Act.

30

It is alleged that Respondent in February 2003 placed employee and Union President Michael Jackson in the position of Material Handler and paid him at a lower wage rate, i.e., the wage rate of a trainee rather than at the higher wage rate of proficient or expert.

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Respondent paid Jackson at the lower rate to begin with because of his lack of knowledge of warehouse operations. At the time of the hearing before me he was being paid at a higher rate of pay.

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This was done pursuant to the Matrix, which was unlawfully implemented by Respondent, and matters should be restored to the status quo ante if the Union wants.

#### G. Withdrawal of Recognition

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On June 16, 2003, Respondent by letter withdrew its recognition of the Union as the exclusive collective bargaining representative of the Unit.

50

At the time of contract renewal negotiations in September 2002 the unit had approximately 83 unit employees. After the September 2002 lay off the complement of unit employees was reduced to approximately 67. At the time Respondent withdrew recognition there were 66 unit employees. Respondent withdrew recognition based on a petition signed by

36 unit employees saying they no longer wanted to be represented by the Union. This is a majority of the employees but a razor thin majority.

5 I find that the unfair labor practices committed by Respondent tainted the decertification petition and Respondent could not rely on the petition in withdrawing recognition from the Union. See, *Heritage Container, Inc.*, 334 NLRB 455 (2001); *Mastronardi Mason Materials Co.*, 336 NLRB 1296 (2001), and *Penn Tank Lines, Inc.*, 336 NLRB 1066 (2001).

10 Further I find that even in the absence of the earlier unremedied unfair labor practices that Respondent's assistance in drafting the petition and the language of the petition render the petition one that Respondent could not in good faith rely upon in withdrawing recognition. An employer can render ministerial aid in assisting employees with a decertification petition and still rely on the petition but Respondent went beyond ministerial aid.

15 I find that employee support of the Union was undercut by Respondent's unfair labor practices. Before negotiations for a new contract began on September 5, 2002 the Union conducted a strike vote to see if the employees were willing to go on strike. The vote was an overwhelming 49 to 0 in favor of going on strike. After negotiations ended the employees voted 20 68 to 7 to accept the Union recommendation and reject Respondent's final contract offer.

25 Prior to negotiations beginning in early September only four employees sought to become financial core members of the Union, Arthur White, William Field, David Breunig, and Robin Dupuis, and all but Dupuis told Union President Mike Jackson that they were doing so because of increased dues occasioned by the merger of the IUE and the CWA. Full members pay more dues than financial core members.

30 Further in the spring of 2002, some months before negotiations began in September 2002, Respondent permitted a petition to be posted on the bulletin board soliciting employee interest in doing away with the Union security clause requiring employees to be full members or financial core members of the Union, i.e., a so-called deauthorization petition. It attracted little or no interest among the employees.

35 Lastly after September 17, 2002 when Respondent unlawfully declared impasse Respondent no longer collected union dues through dues check-off and the uncontradicted testimony of Oakley and Jackson is that the employees paid their dues.

40 Accordingly, there was strong support for the Union prior to Respondent's unfair labor practices, which remained unremedied and which began in late September 2002 and continued for many months.

45 Respondent unlawfully declared impasse and unlawfully and unilaterally implemented numerous changes to the terms and conditions of employment of its employees and failed to produce to the Union relevant and necessary information the Union requested. This could not help but undercut support for the Union.

50 In late May 2003 employees Cathy Vachon and Kim Libby asked Brenda Leamy, Respondent's Director of Human Resources, for help in getting rid of the Union. Leamy consulted with attorney Peter Kraft who said to tell the women to call the NLRB Regional Office in Boston and Leamy did just that. So far so good. That was rendering ministerial aid and perfectly lawful.

Vachon and Patty Fraser, another employee, sometime later asked Leamy for help in wording a petition seeking to decertify the union. They told Leamy why they wanted to get rid of the Union. Leamy contacted Kraft who based on what Leamy told him about why Vachon and Fraser wanted to get rid of the Union drafted a petition for the signature of employees seeking to decertify the Union. The wording of the petition was as follows:

“Petition

The undersigned employees of EADmotors are unhappy with our Union representation. We feel this way for several reasons:

1. They Union representatives do not seem to always tell us the truth about what is happening. They are patronizing us with partial facts, making themselves sound better than they are, and making the Company sound worse than it is. We’re tired of not getting the real story. The Union’s trash talk can’t be doing us any good with the owners either.
2. Some of the Local officials have been representing themselves and what they want without thinking about the rest of us. They are not supposed to be motivated by self interest, but instead by all the employees’ interests as a group.
3. The Union is causing too many fights, forcing the Company to spend a lot of money on lawyers. Our business is hurting. We don’t want the owners to get so frustrated with the Union that the owner decides to leave Dover, New Hampshire and move everything to Arkansas.
4. The employees are more comfortable and have a greater trust of the leaders who now run the Dover plant (Dom More, Brenda Leamy) compared to the old leadership (Lee Perlman, Lavana Snyder). After the leaders changed, the Union hasn’t really been needed so much anymore.

For these reasons (and other reasons as well), each employee signing below no longer wants the Union to represent him or her.”

When Leamy showed Fraser and Vachon the petition the women said delete the fourth reason. Leamy did so and the petition actually circulated among the employees read as follows:

**“PETITION**

This undersigned employees of EADmotors are unhappy with our Union representation. We feel this way for several reasons:

1. The Union representatives do not seem to always tell us the truth about what is happening. They are patronizing us with partial facts, making themselves sound better than they are, and making the Company sound worse than it is. We’re tired of not getting the real story. The Union’s trash talk can’t be doing us any good with the owners either.
2. Some of the Local officials have been representing themselves and what they want without thinking about the rest of us. They are not supposed to be motivated by self interest, but instead by all the employees’ interests as a group.
3. The Union is causing too many fights, forcing the Company to spend a lot of money on lawyers. Our business is hurting. We don’t want the owner to get so frustrated with the Union that the owner decides to leave Dover, New Hampshire and move everything to Arkansas.

For these reasons (and other reasons as well), each employee signing below no longer wants the Union to represent him or her.”

5 Respondent's owner, Logan Delaney, who did not testify before me, owns another business in the state of Arkansas, which also produces motors.

On June 4, 2003, Fraser and Vachon went to Leamy's office with the petition, signed by a majority of the unit employees, i.e., 35 employees.

10 There were two copies of the petition one signed and circulated by Cathy Vachon and one signed and circulated by Patty Fraser. A total 35 employees signed the two petitions.

15 Vachon credibly testified that she signed the petition she circulated and saw 11 other employees whom she named sign it as well and testified that employee Robert Welch got 6 employees to sign the petition and employee Dale Zopf got 3 employees to sign it. In all the petition circulated contained the signatures of 21 employees.

20 Fraser credibly testified she signed the petition she circulated and saw 10 employees whom she named sign it. The petition Fraser circulated also contained the signatures of an additional three employees for a total of 14 signatures. A fifteenth employee, Donald Gosselin signed the petition on June 13, 2004, for a total of 36 employees signing both copies of the petition.

25 Respondent introduced into evidence W-4s for the employees whose signatures appear on the two petitions as well other documents from employee personnel files containing signatures of employees, i.e., I-9 immigration forms and health care beneficiary forms. A comparison by me between the signatures on the petition and the documents submitted from employee personnel files coupled with the testimony of Vachon and Fraser lead me to conclude that the signatures on the two copies of the petition were put on the petition by the employees.

30 I find that a majority of employees did sign the petition.

35 Leamy informed attorney Peter Kraft that she had received the petition and on Tuesday, June 10, 2003 Kraft held a meeting with employees. Kraft read the petition verbatim and told employees they had until Friday, June 13, 2003 to take his or her name off the petition if he or she so decided. No one took his or her name off the petition and one additional employee Donald Gosselin actually signed the petition. On Monday, June 16, 2003, Kraft sent a letter to the Union advising the Union that Respondent was withdrawing recognition.

40 Kraft conceded that with respect to bullet point 1 or the first stated reason for decertification that it was he and not Vachon or Fraser who selected the words “patronizing” and “trash talk.”

45 The part of the petition, of course, that leaps out at anyone experienced in labor law and would chill the spine of any employee who saw a similar reason listed for getting rid of the Union where he or she worked is bullet point 3 or the third stated reason, i.e.,

50 “The Union is causing too many fights, forcing the Company to spend a lot of money on lawyers. Our business is hurting. We don't want the owner to get so frustrated with the Union that the owner decides to leave Dover, New Hampshire and move everything to Arkansas.” (Emphasis added).

As noted above the owner, Logan Delaney, owns another business, which also manufactures electric motors and is located in the state of Arkansas.

5 At the meeting on June 10, 2003, neither Kraft nor anyone else on behalf of management told the employees that Respondent would not move to Arkansas if the employees did not decertify the Union. When Kraft read verbatim the reasons listed in the petition, without editorial comment, the employees could only conclude that Respondent might relocate from New Hampshire to Arkansas if the employees continued to support the Union. Kraft put Respondent's stamp of approval on the reasons stated in the petition.

10 Needless to say a threat to relocate a plant to defeat a Union is a hall mark violation of the Act.

15 I find that the petition was tainted by Respondent's earlier and unremedied unfair labor practices and could not be relied upon to justify withdrawal of recognition from the Union. Further, even if there were no prior and unremedied unfair labor practices that the petition could not be relied upon to justify withdrawal of recognition because it contained a threat of plant relocation which Respondent put its stamp of approval on by typing the petition and more significantly by not disavowing the threat of relocation at the meeting with employees on June  
20 10, 2003.

I find Respondent violated Section 8(a)(1) and (5) of the Act when it withdrew recognition from the Union on June 16, 2003.

#### 25 H. The "Have Your Say" Committee

According to Brenda Leamy, the genesis of the Have Your Say Committee came on July 30 or 31, 2003, at a monthly Chat With the President Meeting. An employee asked why all hourly employees didn't all have the same benefits (unit and non-unit) now that there was no union at Respondent. According to Leamy, Dave Horne suggested a committee to try and establish consistent policies. However, minutes of the meeting show that the Committee, and even its name, was suggested by Respondent President Dominic More.

35 On August 7, 2003, Respondent posted a notice of the employee bulletin board entitled: "Have Your Say — Volunteers Needed" It stated that:

40 "In order to be consistent in our employee policies, it is very obvious that changes have to be made. EAD is looking for people to become part of a committee to discuss these policies or issues and recommend one consistent policy for hourly employees. We would like YOU to tell us what you think needs to be changed and what is important to you."

45 The notice continued by stating that employees should let the human resources department know if they wanted to participate, that six members would be chosen, and that meetings would be held for about one hour per month. Ten employees volunteered and Respondent chose them all. On August 13, 2003, Respondent posted a notice advising employees of the names of the 10 employees whom it had chosen to be on the Committee to deal with "recommendations on inconsistencies in policies for hourly employees at EAD." Employees were encouraged to see the members of the Committee about concerns or  
50 recommendations, or to write recommendations on a form made available.

The Committee meetings were held on working time, and employees were paid while attending them. The first meeting was held on August 20, 2003, during working time, in a conference room. The ten members of the Committee were divided between unit and non-unit employees. Brenda Leamy led the meetings and asked what issues were priorities to discuss. She testified that she told the Committee what was expected of them and that their suggestions and recommendations would be considered. All objects pertaining to work were open for discussion. None of these subjects were off limits. Brenda Leamy asked Committee members to find out what other employees wanted and "to feel the pulse of the people in the plant," and get a representative sample of what employees thought.

On August 20, 2003 Respondent posted a notice concerning the issues discussed at the Committee meeting held that day. G.C. Exh. 66. They included: Vacation Policy, Sick/Personal/PA Days, Benefits, Flextime, Breaks and Lunch, and Make Up Policy. The notice stated that the group decided to discuss Vacations and Sick/Personal/PA Days first. Respondent also posted "teams" that would discuss four of the subjects. Each team listed as a "monitor" either Leamy or Janice Zecher, a payroll office employee, and admitted supervisor. Leamy characterized herself and Zecher as team leaders; while they helped answer questions, they could act like any other member of the Committee.

On September 4, 2003, Respondent posted a notice to employees listing recommended changes in the Vacation Policy pursuant to their discussions at the last Committee meeting. GC Exh. 67. Based on the Committee discussions, Respondent changed the vacation policy so it would be easier to use, and in January 2004, established new PTO (paid time off) and attendance bonus policies. GC Exhs. 67 and 68. These policies were clearly beneficial to unit employees. Leamy testified that she particularly helped with suggestions on the attendance bonus policy.

Leamy admitted at the Hearing that she and President More decided what the structure of the Committee would be, and that it would make recommendations, not policy. She acknowledged that the Union had previously discussed similar vacation policy changes with Respondent. Leamy admitted that the Committee filled the void that was left since June, after Respondent ceased to recognize the Union.

The evidence presented at the hearing shows that Respondent established the Committee at the suggestion of its President Dominic More. The Committee is run and maintained by Respondent, and was set up to deal with Respondent concerning wages, hours, and working conditions. It has discussed with Respondent changes in vacation policy, breaks, time clocks, flextime, and other issues, and make recommendations on vacation time and make-up time that became Respondent policies. As Brenda Leamy admitted at the trial, the Committee fills a void left by the absence of the Union after the withdrawal of recognition. The Committee is a labor organization dominated and assisted by Respondent. *Electromation, Inc.*, 309 NLRB 990 (1992), enf'd 35 F.3d 1140 (7th Cir. 1994). By its actions in connections with the Committee, Respondent has violated Section 8(a)(1) and (2) of the Act.

#### Remedy

The remedy in the case should include a cease and desist order, the posting of a notice, the restoration to the status quo ante, if requested by the Union, and this may result in the payment of backpay or health insurance refunds and the Respondent should be ordered to once again recognize the Union and, upon demand, bargain with the Union in good faith. Restoring matters to the status quo ante means, of course, Respondent reversing the unilaterally

implemented changes to terms and conditions of employment it implemented following its premature declaration of impasse.

Conclusions of Law

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1. Respondent, EAD Motors, is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

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2. The Union, IUE-CWA, Local 81243, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

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3. Respondent violated Section 8(a)(1) and (5) of the Act when it unlawfully declared impasse and unilaterally implemented changes to the terms and conditions of employment of its employees.

20

4. Respondent violated Section 8(a)(1) and (5) of the Act when it failed and refused to turn over to the Union information requested by the Union concerning a written copy of Respondent's final contract offer, a summary plan description of Respondent's 401K plan, and a copy of Respondent's health insurance plan, which information was relevant and necessary to the Union in carrying out its collective bargaining responsibilities.

5. Respondent violated Section 8(a)(1) and (5) of the Act when it unlawfully withdrew recognition from the Union.

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6. Respondent violated Section 8(a)(1) and (2) of the Act when it unlawfully assisted, dominated, and interfered with the "Have Your Say" committee, a labor organization within the meaning of Section 8(a)(5) of the Act.

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

On these findings of fact and conclusions of law and on the entire record I issue the following recommended<sup>1</sup>

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ORDER

Respondent, EAD Motors Eastern Air Devices, Inc., its offices, agents, successors, and assigns, shall:

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1. Cease and desist from

(a) Unlawfully declaring impasse in contract renewal negotiations and unilaterally implementing changes in the terms and conditions of employment of its employees.

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<sup>1</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.

(b) Unlawfully failing and refusing to furnish to the Union upon its request its final contract offer in writing, a summary plan description of its 401 K plan, and a copy of its health insurance plan.

5 (c) Unlawfully withdrawing recognition from the Union.

(d) Unlawfully assisting, dominating and interfering with the "Have Your Say" committee, a labor organization.

10 (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them in the National Labor Relations Act.

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

15 (a) Within 14 days from the date of this Order recognize and upon request bargain in good faith with the Union as the exclusive collective bargaining representative of its employees in the following unit:

20 All factory production, tool room, maintenance and working line supervisor, employees employed by Respondent at its Dover, New Hampshire facility, but excluding executives, office and clerical employees, sub-supervisors, superintendents, supervisors, general supervisors, engineers, employees of the engineering department, employees of the production control department, guards, watchmen, department supervisors, and all other supervisors as defined in the Act.

25 (b) Within 14 days from the date of this Order restore if requested by the Union the terms and conditions of employment of its unit employees to the way they were on September 17, 2002 just prior to Respondent's unlawful declaration of impasse.

30 (c) Turn over to the Union the information it requested, more specifically, Respondent's final contract offer in writing, a summary plan description of its 401K plan, and a copy of Respondent's health insurance plan.

35 (d) Within 14 days disband the "Have Your Say" committee.

(e) Preserve and, within 14 days of a request, make available to the Board, or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay that may be due under the terms of this Order.

40 (f) Within 14 days after service by the Region, post at its facility in Dover, New Hampshire, and all other places where notices customarily are posted, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 1 after being signed by the Respondent's authorized representative, shall be posted by  
45 the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted.

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50 <sup>2</sup> If this Order is enforced by a Judgment of the 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."

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 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 September 17, 2002.

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(g) Within 21 days after service by the Region file with the Regional Director a sworn certification of a reasonable official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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Dated, Washington, D.C., June 15, 2004.

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Martin J. Linsky  
Administrative Law Judge

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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 Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

WE WILL NOT unlawfully declare impasse in contract renewal negotiations with the Union and unilaterally implement changes to the terms and conditions of employment of our employees.

WE WILL NOT unlawfully fail and refuse to turn over to the Union information necessary and relevant to the Union in carrying out its collective bargaining responsibilities such as our final contract proposal in writing, summary plan description of our 401K plan, and copies of our health insurance plan.

WE WILL NOT unlawfully withdraw recognition from the Union.

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

WE WILL recognize the Union and upon request bargain with it as the collective bargaining representative of our employees in the following unit:

All factory production, tool room, maintenance and working line supervisor, employees employed by Respondent at its Dover, New Hampshire facility, but excluding executives, office and clerical employees, sub-supervisors, superintendents, supervisors, general supervisors, engineers, employees of the engineering department, employees of the production control department, guards, watchmen, department supervisors, and all other supervisors as defined in the Act.

WE WILL if requested by the Union restore to our employees the terms and conditions of employment as they existed on September 17, 2002 prior to our unlawful declaration of impasse.

WE WILL disband the "Have Your Say" committee.

WE WILL turn over to the Union our final contract proposal in writing, a summary plan description of our 401K plan, and a copy of our health insurance plan.

WE WILL make our employees whole for any loss of pay or benefits suffered by them as a result of our unlawful implementation of changes to the terms and conditions of employment unilaterally implemented by us after declaring impasse.

EAD MOTORS EASTERN AIR DEVICES, INC.

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

10 Causeway Street, Boston Federal Building, 6th Floor, Room 601, Boston, MA 02222-1072  
(617) 565-6700, Hours of Operation: 8:30 a.m. to 5 p.m.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (617) 565-6701.