JD–57–06
Dearborn, MI

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

FORD MOTOR COMPANY

and

Cases 7-CA-48767
7-CA-48826

LOCAL 1970, UNIT 4, INTERNATIONAL
UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA
(UAW), AFL-CIO

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of McLean, VA, for the Respondent-Employer.

DECISION

Statement of the Case

Bruce D. Rosenstein, Administrative Law Judge. This case was tried before me on June 5 and 6, 2006, in Detroit, Michigan, pursuant to a Second Amended Consolidated Complaint and Notice of Hearing in the subject cases (complaint) issued on March 29, 2006, by the Regional Director for Region 7 of the National Labor Relations Board (the Board). The underlying charges were filed on various dates in 2005[1] by Local 1970, Unit 4, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO (the Charging Party or Union) alleging that Ford Motor Company (the Respondent or Employer), has engaged in certain violations of Section 8(a)(1), (3) and (5) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

[1] All dates are in 2005 unless otherwise indicated.

Issues

The complaint alleges that the Respondent gave a lower interim performance review rating to an employee because of his union activities in violation of Section 8(a)(1) and (3) of the Act. Additionally, the complaint alleges that the Respondent refused to provide necessary and relevant information to the Union and unilaterally implemented a number of mandatory subjects of bargaining in violation of Section 8(a)(1) and (5) of the Act without notice or affording the Union an opportunity to bargain absent an overall impasse in good faith bargaining.

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

Findings of Fact

I. Jurisdiction

The Respondent is a corporation engaged in the manufacture and nonretail sale of automobiles at manufacturing facilities throughout the State of Michigan, where it had gross revenues in excess of $500,000 and purchased and received goods valued in excess of $50,000 directly from points outside the State of Michigan. 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 Union was certified on September 10, 2004, and represents a unit of approximately 180 body construction engineers who work on the design of Ford vehicles. The parties commenced negotiations for an initial collective bargaining agreement in January 2005. The Union wanted to reach an agreement which could then be folded into the existing national agreement for salaried represented employees with the Employer (Jt Exh. 1). In addition, the parties negotiated over specific local issues with the intent of reaching a local agreement. Respondent and the Union participated in approximately 26 formal sessions and reached a tentative agreement on May 24. The Union then scheduled a ratification vote for its membership on June 9. The Union membership, however, voted against ratification and rejected the agreement. The parties then resumed negotiations in an effort to reach an agreement.

B. The 8(a)(1) and (3) Allegations

The General Counsel alleges in paragraph 11 and 12 of the complaint that on or about July 5, the Respondent through its supervisors Todd Gray and Pete Thrane, gave a lower interim performance review rating to its employee, James Knott.

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[2] The Respondent's unopposed motion to correct the transcript attached to its brief, is granted.

1. The Facts

The salaried personnel performance review system is comprised of three phases. At the commencement of the calendar year, employees meet with there first line supervisor to set and discuss work objectives. Approximately, six months later, the employees are given an assessment of there performance in a written interim performance review evaluation. At the end of the year, around December, each employee receives a final performance review evaluation rating.

For the year 2004, Knott received a performance rating of Excellent Plus in both his July interim and final performance review rating.

In July 2005, Knott was given an interim performance rating of Excellent by his then first line supervisor Todd Gray (GC Exh. 3). It is this lower rating that the General Counsel alleges was based on Knott's union activities.

There is no question that Knott was actively engaged in union activities during 2005. He was elected by the Union membership to serve as the bargaining chair for the parties' initial collective bargaining negotiations. Knott attended the majority of the bargaining sessions during the period between February and May 2005, and served as the Union's principal spokesperson in local collective bargaining negotiations.

In July 2005, Gray and Knott's former supervisor Pete Thrane (January 1-May 31) met with Knott to discuss his interim performance review rating.

Knott testified that Thrane informed him that he was being given an Excellent rating because the perception around the office was that he was spending a lot of time on union affairs rather then his regular work. Knott stated to both supervisors that this was the first time that he ever received a rating of Excellent.

Gray and Thrane strongly deny that Knott's interim performance review rating was linked to his union activities. Gray testified that he told Knott during the meeting that he has more potential then he showed during the preceding six months. Knott responded that the rating of Excellent was higher then he thought it would be. Knott asked Gray whether his union involvement had anything to do with his performance rating. Gray replied, "I believe it could be a distraction to your job; I know you are spending a lot of time with union business."

Thrane testified that it appeared to him that Knott had lost his passion for the job and it showed in his performance between January and May 2005. For example, Thrane pointed out that Knott missed a significant meeting during the appraisal period and did not seem to be as focused compared to his past performance. Thrane also stated that during February 2005, he conducted a coaching session with Knott over his refusal to work overtime unless he was paid at a double time rate. Likewise, Thrane testified that Knott refused to provide input on his yearly performance objectives at the commencement of the rating period and that the supervisor in the welding department informed him that Knott was spending excessive time in his department on company time.

Gray also testified to examples during the appraisal period that Knott seemed distracted and did not respond to several e-mail communications in which he sought input on various studies or projects (R Exh. 5, 6, 7, and 8). Likewise, Gray testified that he received complaints

from several supervisors that Knott was spending a lot of time away from his job by being in there departments.

Accordingly, both Gray and Thrane decided to give Knott a rating of Excellent with the hope that he would raise the level of his performance in the next six months before the final review rating was issued. Indeed, after the interim review rating, Knott took on additional assignments, regained his focus, and started to perform at a higher level. This was recognized by Gray who gave Knott a rating of Excellent Plus in the final performance review rating.

2. Analysis

In *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer decision. On such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399-403 (1983). In *Manno Electric,* 321 NLRB 278, fn. 12 (1996), the Board restated the test as follows. The General Counsel has the burden to persuade that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in the protected activity.

I do not find that Knott's union activities played any role in the receipt of his interim performance review rating. I am suspect of Knott's testimony that Thrane said the perception around the office was that Knott was spending a lot of time on union affairs rather then his regular work. Knott was unable to provide specifics in his testimony as to what else was discussed in the performance review meeting and frequently answered questions by stating, I don't recall. He could only recall with certainty Thrane's statement about his spending time away from work while performing union affairs. It seems incongruous that Knott's supervisor would tell him that the reason he was given the rating of Excellent was because the perception around the office was that he was spending a lot of time on union affairs when Knott admitted that both supervisors told him that they knew he was performing his job. Likewise, it strains credulity that Thrane would make such a statement[3], in view of the fact that he supervised another member of the Union's bargaining team at the same time as Knott, and gave that individual an Excellent Plus rating. Gray also gave an Excellent Plus rating to a member of the Union's bargaining team who he supervised at the same time as Knott.

I find that the testimony of both supervisors that Knott lacked focus and passion in his job during the interim review rating period in addition to his refusal to respond to requests for input on a number of projects, convinces me that the interim performance review rating was based on legitimate reasons unrelated to his union activities.[4] Indeed, just six months later,

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[3] Both Gray and Thrane testified that Knott raised the issue of whether there was a nexus between the written performance review rating and his union activities. Thus, based on there demeanor and excellent command of what occurred in the meeting, I credit there version of what was said during the appraisal review meeting.

[4] If others disagree that Knott's union activities was a motivating factor in the Respondent's action, I would still find that the Employer would have taken the same action even in the

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Gray gave Knott a final rating of Excellent Plus at a time when he continued as the Union's Chairperson and lead local negotiator.

For all of the above reasons, I find that the General Counsel did not sustain the allegations in paragraph 11 and 12 of the complaint and recommend that they be dismissed.

C. The 8(a)(1) and (5) Allegations

The General Counsel alleges in paragraph 15 of the complaint that the Respondent, on or about April 26 failed and refused to provide the Union with necessary and relevant information regarding the number of unit employees that were in each type of health care plan at the Respondent.

1. The Facts

The parties participated in a collective bargaining session on April 26 (GC Exh. 12). On the same date, the Union filed a written demand for information but it did not contain any request for health care related data (R Exh. 17). By letter dated May 3, the Respondent replied to a number of information requests that were made by the Union during the past several bargaining sessions including the written request made on April 26 (R Exh. 18).

With respect to the information request alleged in the complaint, Knott testified that he thought bargaining team member Mark Cotter might have made the request at the April 26 bargaining session but he had no independent recollection if he had done so. The General Counsel did not call Cotter as a witness to confirm whether he made the request for information alleged in the complaint.

2. Analysis

The Board explained in *Asarco, Inc.,* 316 NLRB 636, 643 (1995), enfd. in relevant part 86 F. 3d 1401 (5th Cir. 1996) that:

In dealing with a certified or recognized collective-bargaining representative, one of the things which employers must do, on request, is to provide information that is needed by a bargaining representative for the proper performance of its duties. *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967). Following an appropriate request, and limited only by considerations of relevancy, the obligation arises from the operation of the Act itself. *Ellsworth Sheet Metal,* 224 NLRB 1506 (1976). In each case, the inquiry is whether or not both parties meet their duty to deal in good faith under the particular facts of the case. *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149 (1973). The legal standard concerning just what information must be produced is whether or not there is "a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative." *Bohemia, Inc.,* 272 NLRB 1128 (1984).

The evidence discloses that the Union made numerous information requests during the course of negotiations which the Respondent answered in a timely manner (R Exh. 14, 16. and

absence of Knott's union activities.

18). Moreover, in its February 22 response (R Exh. 16), the Respondent informed the Union that it has a full time benefits employee assigned to the National Employee Servicing Center that could be used to fill data requests relating to health care information.

Thus, it is apparent to me, that the Respondent made every effort to respond to information requests initiated by the Union.

With respect to the information request that the Union allegedly made orally on April 26, the General Counsel has not convincingly established that such a request was actually made. The only witness proffered to establish this allegation had no independent recollection of ever making such a request. Likewise, while Knott thought that Cotter orally made the information request, the General Counsel did not call Cotter as a witness to substantiate that he made an oral request for health care related information on April 26.[5]

Under these particular circumstances, it cannot be established that the Respondent violated the Act and I recommend that paragraph 15 of the complaint be dismissed.

3. The February 1, Change

The General Counsel alleges in paragraph 16 of the complaint that the Respondent changed objectives used in its salaried personnel performance review system for unit employees.

a. The Facts

Knott testified that the objectives used for the salaried personnel review system were unilaterally changed on or about February 1, without advance notice to the Union thus precluding any meaningful negotiations between the parties.

Cheryl Bruins Rozier testified that salaried personnel objectives are changed at a minimum on a yearly basis and the Union since there certification has never asked to negotiate about the changes. Rozier also noted that performance objectives can be changed if an employee moves from one section to another. The practice of the Respondent is to have the supervisor and the employee meet at the commencement of the appraisal period and discuss the overall objectives that should be met during the evaluation period. Rozier admitted that these objectives do impact on promotional opportunities and wage increases. Rozier further testified that as a member of the Respondent's bargaining team, she engaged in discussions over this subject with the Union during the period between February and May 2005.

b. Analysis

The Courts have held that a unilateral change in conditions of employment during negotiations violates Section 8(1) and (5), since it is a circumvention of the duty to bargain. *NLRB v. Katz,* 369 U.S. 736, 743 (1962). However, a unilateral change made pursuant to a longstanding practice is essentially a continuation of the status quo and is not a violation of Section 8(a)(5). *The Courier-Journal,* 342 NLRB 1093 (2004). The Board has also held that despite a past practice of instituting economic layoffs, an employer, because of a newly certified

[5] Respondent witness Clay Atwater, who was in attendance at the April 26 bargaining session, testified that he had no recollection of the Union orally requesting the subject information.

union, could no longer continue unilaterally to exercise discretion with respect to layoffs. *Adair Standish Corp.,* 292 NLRB 890 fn. 1 (1989), enfd. In relevant part 912 F.2d 854 (6th Cir. 1990).

Consistent with this principle, I find that the February 2005 changes in the Respondent's objectives used in its salaried personnel performance review system violated the Act. These changes were implemented shortly after the Union was certified in September 2004. Therefore, the Union could never have acquiesced to any past practice of changing objectives prior to its certification. Indeed, Rozier admitted that the objectives reached by the employee and his/her supervisor are mandatory subjects of bargaining as they significantly impact promotional opportunities and wage increases.

Therefore, I find that on or about February 1, when the Respondent unilaterally changed the objectives used in its salaried personnel performance review system without advance notice or bargaining with the Union, it violated Section 8(a)(1) and (5) of the Act. *Eugene Iovine, Inc.* 328 NLRB 294 (1999).

4. The April 1, Change

The General Counsel alleges in paragraph 17 of the complaint that the Respondent changed the job classifications of employees in the Unit.

a. The Facts

Knott testified that Human Resources official Lloyd Allen presented a document to the Union during the parties' April 5 bargaining session that changed the majority of job classifications in the bargaining unit. The Union was given an opportunity to look at the document but was required to return it prior to the end of the bargaining session. The Respondent admits that the job classifications were implemented on April 1 without bargaining with the Union.

Manager of US Union Relations Richard Freeman and other Respondent witnesses testified that the Employer changed the job classifications on April 1 in order to simplify the approximately 40 different job classifications for the body construction engineers, to comply with regulations under the Federal Labor Standards Act, and to decrease flexibilities and costs. Freeman testified that during one of the bargaining sessions in March 2005, he informed the Union about the simplification of job classifications for salaried employees that was going to be initiated shortly. According to Freeman, the Union at no time prior to April 1 requested to negotiate over this issue. Indeed, Freeman testified that during the eight remaining bargaining sessions held after April 1, up to and including May 24 when the parties reached a tentative collective bargaining agreement, the Union never requested to negotiate over this issue. It is noted however, that after the parties resumed negotiations after the rejection of the contract, they reached an agreement over classifications impacted by technology (R Exh. 33-2nd letter).

b. Analysis

Based on the above recitation of facts, I conclude that the Respondent notified the Union in advance of the April 1 implementation of changed job classifications for bargaining unit employees so as to enable the Union enough time to request negotiations. Accordingly and particularly noting that the General Counsel did not call any witnesses to rebut Freeman's testimony, I find that the Respondent did not violate the Act when it implemented on April 1 changed job classifications for certain employees in the bargaining unit. Therefore, I recommend that the allegations in paragraph 17 be dismissed.

In addition, I note that the change in reducing the approximately 40 job classifications that had become obsolete, had no affect on employee's wages, pay grade, benefits or job assignments. Accordingly, even if advance notice had not been given to the Union concerning the changes to the job classifications, I would find that the changes that were made were not greater than *de minimis.*

5. The July 1, Change

The General Counsel alleges in paragraph 18 of the complaint that the Respondent suspended the matching contributions to the Savings and Stock Investment Plan, a 401(k) retirement plan for the Unit without notice to or affording the Union an opportunity to bargain.

a. The Facts

There is no dispute that by bulk e-mail dated June 21 to all Respondent employees Jim Padilla, Respondent's President and Chief Operating Officer, announced that in order to remain profitable for the full-year a number of actions would be undertaken including the suspension of the Company's 401(k) matching grant for salaried employees, effective July 1 (R Exh. 20). Thereafter, by a Benefit Bulletin e-mail dated June 30, to all US Salaried Employees, Respondent announced that effective July 1, the matching contributions to the Savings and Stock Investment Plan will be suspended (GC Exh. 9 and R Exh. 21).

Freeman testified that on June 20, he had a telephone conversation with Joe Joseph, President of the Union, in which he informed him that he heard rumors that the matching grant for the salaried employees' 401(k) plan would be suspended as a cost savings measure. On June 21, Freeman telephoned Joseph and informed him that the rumors that he heard were correct and the matching contribution was definitely going to be suspended. According to Freeman, Joseph said that he heard about the Padilla cuts. Freeman faxed a copy of the June 21 e-mail to Joseph. Additionally, on June 28, Freeman called Union official Larry Shrader and informed him that an official bulletin would be issued shortly documenting the cuts in the Respondent's 401(k) plan for salaried employees. On June 29, Freeman left a voice mail for Shrader that the bulletin would officially be issued on June 30. Freeman testified that neither Joseph nor Shrader requested to bargain about this issue.[6]

b. Analysis

The General Counsel did not present any witnesses to rebut the testimony of Freeman that the Union was provided advance notice regarding the suspension of the matching contributions to the salaried employees 401(k) plan and never requested to negotiate.

Under these circumstances, I find that the Respondent did not unilaterally implement the suspension of its matching contributions to the 401(k) retirement plan for salaried employees, and recommend that paragraph 18 of the complaint be dismissed.

6. The July 5, Change

The General Counsel alleges in paragraph 19 of the complaint that the Respondent changed its AXZ Plan, a vehicle purchase discount program for its Unit employees, by requiring

[6] I note that both Joseph and Shrader participated in a number of negotiation sessions with the parties between February and May 2005 (GC Exh. 12).

Unit employees to pay a "doc. fee" on purchases of certain vehicles without notice or affording the Union an opportunity to negotiate.

a. The Facts

The Respondent maintained an AXZ plan to encourage employees to purchase Ford vehicles at a discount. This plan did not require incumbent employees to pay a "doc. fee" for the costs associated with the transfer of title[7]. By memorandum dated July 6, the Respondent announced it was implementing a new sales program known as the "Ford Family Plan" that would offer all customers the same wholesale discount that Respondent employees were afforded (R Exh. 10). The plan was implemented at national participating dealerships from July 6 to August 1, and was extended to September 1 because of its success. Because the "Family Plan" included the payment of a "doc. fee", it was necessary to require the same payment for incumbent employees during the time period that the plan was in effect. Indeed, all of Respondent employees were specifically informed that the new rules of paying the "doc. fee" would only apply while the "Family Plan" was in effect and once the special program was over, the current AXZ-Plan rules would apply (i.e., no documentation fees). By memorandum dated July 18, the Respondent notified employees that while the "Family Plan" promotion was in effect, they should utilize it to reduce vehicle prices and document fees through negotiations with the dealer (R Exh. 11).

Respondent witness Jeffrey Faistenhammer, Director of U.S. Union Affairs, testified that he regularly speaks with high level Union officials on a daily basis and participates in weekly Wednesday meetings to discuss pending issues between the parties. Indeed, during the first several weeks of July 2005, he spoke with Union representative Charles Hoskins about the vehicle purchase discount plan and the institution of the "Ford Family Plan". Faistenhammer noted that he specifically took Hoskins through the content of the program. Hoskins had some issues concerning pricing and the cost to the employees and those matters were forwarded to the individuals in charge of the program. In fact, a number of notices and bulletins were changed to reflect the comments that Hoskins made before they were disseminated to employees. Faistenhammer further testified that neither Hoskins nor any other Union official ever requested to negotiate over the changes in the vehicle purchase discount program for employees.

b. Analysis

I am not persuaded that the Respondent violated the Act when it implemented changes to the vehicle purchase discount program for a number of reasons.

First, the General Counsel did not rebut the testimony of Faistenhammer that the Union was given advance notice about the changes to the vehicle purchase discount program and never requested to negotiate.

Second, the "Family Plan" was only in effect for a short period of time and employees were informed that after the program ended they would no longer be required to pay the "doc. fee" when purchasing vehicles under the discount program. Thus, any change that occurred was not greater then *de minimis.* Moreover, the Union was unable to establish that any member of the bargaining unit incurred a "doc.fee" when purchasing a vehicle during the period that the "Family Plan" was in effect.

[7] In Michigan, the "doc.fee" charged is $170.

Third, even while the program was in effect for a period of less then two months, employees were informed that they could utilize the "Family Plan" to purchase new vehicles and were permitted to negotiate with the dealer to eliminate the "doc. fee".

For all of the above reasons, I recommend that paragraph 19 of the complaint be dismissed.

7. The August 22, Change

The General Counsel alleges in paragraph 20 of the complaint that the Respondent unilaterally changed its leased vehicle program for certain bargaining unit employees.

a. The Facts

On August 22, the Respondent unilaterally implemented changes to the leased vehicle program for employees in the classification of LL-6 and above (GC Exh. 8).[8] The program permits LL-6 employees the opportunity to drive new vehicles for a one year period at a discounted lease rate. The intent of the changes was to hold down costs while at the same time appropriately placing financial responsibility on those few employees who abuse the program. Therefore, effective August 22, the Respondent announced that for all physical damage caused by a collision involving a leased vehicle, regardless of fault, employees will be required to pay a $250 fee for each incident of vehicle repair and Corporate credit cards may not be used to pay for the repair fee or for any physical damage repairs (GC Exh. 8).

b. Analysis

The Respondent was unable to rebut Knott's testimony that the changes to the leased vehicle program were made unilaterally, on August 22, without affording the Union an opportunity to negotiate.

The Respondent argues that the change only impacts several employees and even if no notice was given to the Union in advance, any changes were not greater then *de minimis.* In this regard, the Respondent asserts that the leased vehicle program is voluntary and only those equivalent LL-6 employees in the bargaining unit who avail themselves of the program could be impacted if they were involved in a vehicle collision.

I reject this argument for the following reasons. First, I find that more then several employees are affected by this change since approximately 10-12 percent of the bargaining unit could be potentially impacted. Second, unlike the vehicle purchase discount program that was in effect for less then two months, the subject program and the changes are permanent rather than temporary. Third, the Union was never informed of these changes in advance and therefore was precluded from requesting negotiations on the change and its impact on bargaining unit employees.[9]

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[8] The classification of LL designates supervisory and managerial employees. There are approximately 20 LL-6 employees in the bargaining unit who hold non supervisory leadership level positions that are equivalent in status, and thus are eligible to participate in the leased vehicle program. Therefore, approximately 10-12 percent of the bargaining unit is conceivably impacted by the change (20 of 180 employees).

[9] I reject the Respondent's argument that the Union waived its right to bargain over the

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Under these circumstances, I find that the Respondent unilaterally implemented changes to the leased vehicle program without notice to or bargaining with the Union in violation of Section 8(a)(1) and (5) of the Act.

D. Affirmative Defenses

The Respondent raises a number of defenses to privilege there implementation of the changes discussed above.

1. The Collective Bargaining Agreement

The Respondent argues that when the parties, on May 24, reached an agreement on the collective-bargaining agreement the Union consented to be bound by the provisions of the national agreement for salaried represented employees (Jt. Exh. 1). Therefore, under the terms of the master agreement, the Respondent was permitted to make the subject changes without notice or negotiations with the Union (Jt Exh. 1-Appendix B, Section 2(a) and (b)).

I reject this argument based on the fact that the Union membership rejected the collective-bargaining agreement on June 9, and a number of Respondent witnesses admitted that they knew immediately after the ratification vote that the contract had been rejected.[10]

Therefore, in the absence of a binding agreement, the Respondent's affirmative defense is denied.

2. Implementation of the Changes were Privileged

The Respondent argues that it was privileged to implement the changes in the complaint unilaterally based on economic exigencies. In this regard, it was common knowledge that the Respondent was experiencing a dire financial hardship and was bleeding red ink.

I reject this defense since the Respondent's financial hardship was ongoing and was not based on an unforeseen occurrence having a major independent economic effect that required immediate action. *Angelica Healthcare Services Group, Inc.,* 284 NLRB 844, 853 (1987). I note that the parties were engaged in collective bargaining negotiations between January and May 2005, meeting approximately 26 times. Certainly, there was ample time to have notified the Union in advance of any changes that the Respondent intended to make and engage in meaningful negotiations.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent violated Section 8(a)(1) and (5) of the Act when it changed objectives used in its salaried personnel performance review system and changed its leased

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repair fee because it was not scheduled to be implemented until vehicles were leased in October 2005. Rather, I find that the implementation of the program was made without Union input and precluded negotiations in advance of the Respondent's decision to implement.

[10] Appendix B, Section 2(c) of Jt Exh.1 states in pertinent part, "It is further agreed that such policies and plans shall apply only to employees covered by this agreement."

vehicle program for certain employees in the bargaining unit.

4. Respondent did not violate Section 8(a)(1) and (3) of the Act when it gave employee James Knott a lower interim performance review rating.
5. Respondent did not violate Section 8(a)(1) and (5) of the Act when it failed and refused to provide information to the Union that it orally requested on April 26, 2005.
6. Respondent did not violate Section 8(a)(1) and (5) of the Act when it changed the job classifications of employees, suspended the matching contributions to the Savings and Stock Investment Plan and changed its AXZ Plan, a vehicle purchase discount program for bargaining unit employees.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The remedy in this case should include a return to the status quo with respect to the changed objectives used for the salaried personnel performance review system and the changes made to the leased vehicle program. Additionally, any employee who was required to pay a collision repair fee due to the changes made in the leased vehicle program should be made whole. Lastly, the Respondent is ordered to negotiate over the unilateral changes made to the objectives used for the salaried personnel performance review system and the changes in the leased vehicle program. The Respondent shall also make whole any employee for any loss of earnings and other benefits suffered as a result of its unlawful action. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest to be computed in the manner set forth in *New Horizons for the Retarded,* 283 NLRB 1173 (1987). The Respondent shall rescind and expunge from employees' files all discipline issued to them as a result of Respondent's unilateral implementation of the objectives used for the salaried personnel performance review system and make employees whole for any loss they may have suffered as a result of such discipline.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

The Respondent, Ford Motor Company, Dearborn, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from
   (a) Unilaterally changing terms and conditions of employment of our employees without having first bargained with the Union in good faith to impasse with respect to (1) changing objectives to the salaried personnel performance review system and (2) changes to the leased vehicle program.
   (b) Refusing to negotiate with the Union over mandatory subjects of collective bargaining.

[11] 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.

2. Take the following affirmative action necessary to effectuate the policies of the Act.
   (a) On request, bargain with the Union as the exclusive representative of the employees concerning terms and conditions of employment.
   (b) Rescind the leased vehicle program and the objectives unilaterally implemented on February 1, 2005, used in the salaried personnel performance review system and negotiate with the Union in good faith until we reach an impasse after bargaining in good faith.
   (c) Make any employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.
   (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
   (e) Within 14 days after service by the Region, post at its facility in Dearborn Michigan, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 1, 2005.
   (f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. August 11, 2006

Bruce D. Rosenstein
Administrative Law Judge

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

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 refuse to bargain with the Union as the exclusive bargaining representative of our employees in the following appropriate unit:

All U.S. based full-time and regular part-time engineers solely employed by Ford Motor Company in the Body Construction Engineering organization within Vehicle Operations Manufacturing Engineering, excluding managerial employees, confidential employees, guards, and supervisors as defined in the Act, and all other employees.

WE WILL NOT unilaterally change the terms and conditions of employment of our employees without having first bargained with the Union in good faith to impasse with respect to (a) changing objectives to the salaried personnel performance review system and (b) changes to the leased vehicle program.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the leased vehicle program and the objectives unilaterally implemented on February 1, 2005, used in the salaried personnel performance review system and negotiate with the Union in good faith until we reach an impasse after bargaining in good faith, and WE WILL make whole any unit employees for any loss of pay they may have suffered due to our unilateral change in the leased vehicle program, with interest.

WE WILL, on request, bargain with the Union as the exclusive representative of our employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment.

_____
Ford Motor Company

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.nlrb.gov.

477 Michigan Avenue, Federal Building, Room 300

Detroit, Michigan 48226-2569

Hours: 8:15 a.m. to 4:45 p.m.

313-226-3200.

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, 313-226-3244.