Republic Die and Tool Company *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, New West Side Local 174. Case 7–CA–46194

November 19, 2004

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND MEISBURG

On February 6, 2004, Administrative Law Ira Sandron issued the attached decision. The General Counsel filed exceptions and a supporting brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions as modified, and to adopt the recommended Order.

AMENDED CONCLUSION OF LAW

Substitute the following for Conclusion of Law 3.

"3. By repudiating the January 16, 2000, to January 16, 2004 collective-bargaining agreement, the Respondent has failed and refused to bargain collectively, within the meaning of Section 8(d), and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

"4. By failing and refusing to provide the Union, upon its requests, with information relevant to its averred economic inability to comply with the wage and fringe benefits provisions of that agreement, Respondent has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Republic Die and Tool Company, Belleville, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The General Counsel excepts to the judge's failure to specifically note that Respondent has failed and refused to bargain with the Union within the meaning of Sec. 8(d) in finding that it violated Sec. 8(a)(5) and (1). We have amended the Conclusions of Law accordingly. See *Yorkaire Inc.,* 297 NLRB 401 fn. 1 (1989). See also *Victory Specialty Packaging, Inc.,* 331 NLRB No. 139 (2000) (not reported Board volumes). The General Counsel also excepts that the judge's recommended Order did not contain affirmative relief for the Respondent's refusal to provide financial information to the Union. We do not find merit in this exception under the circumstances of this case. Member Liebman would grant the affirmative relief.

Sarah Karpinen and *Scott R. Preston, Esqs*., for the General Counsel.

William L. Hooth, Esq. (Cox, Hodgman & Giarmarco, P.C.), of Troy, Michigan, for the Respondent.

Carlos F. Bermudez and *Daniel W. Sherrick, Esqs.,* of Detroit, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

IRA SANDRON, Administrative Law Judge. This matter arises out of a complaint and notice of hearing (complaint) issued on July 23, 2003,[1] against Republic Die and Tool Company (the Respondent), based on a charge and amended charge filed on May 2 and July 9, respectively, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, New West Side Local 174 (the Union).

Pursuant to notice, I conducted a trial in Detroit, Michigan, on October 9, at which all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence.

The General Counsel called Bruno Duchaine, the Union's president and servicing representative, and Roy Perkins, an employee of the Respondent and the Union's chief steward and bargaining committee head. The Respondent called Merle Thomas, its general manager and vice president. All parties filed helpful posthearing briefs, which I have duly considered.

Issues

1. Whether the Respondent on April 28, by unilaterally reducing wage rates and discontinuing fringe benefits mandated by its collective-bargaining agreement with the Union, repudiated that agreement in violation of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). The Respondent admits making these changes but claims financial hardship as a defense.[2]

2. Whether the Respondent, by failing and refusing to comply with the Union's requests of April 15, 22, and 23 and May 5, that the Union be allowed to audit the Respondent's financial records, to substantiate the Respondent's claim of poverty, violated Section 8(a)(5) and (1).

The Respondent's answer admits these requests were made but denies it failed to provide information.

3. Whether the Respondent, by failing and refusing to furnish the Union with information it requested on May 8 and 9, regarding improvements at the Respondent's facility and to new work the Respondent had received, violated Section 8(a)(5) and (1). Again, the Respondent's answer admits such requests were made but denies it failed to provide information.[3]

Facts

Based on the entire record, including the pleadings, testimony of witnesses and my observations of their demeanor, and

[1] All dates are in 2003 unless otherwise indicated.

[2] See Respondent's answer, GC Exh. 1(g).

[3] The Union made an additional request for information (R. Exh. 1), but the General Counsel has not alleged any unfair labor practices stemming from there.

documents, I make the following findings of fact. I note that the salient facts in this matter are not in dispute and that the testimony of Thomas was generally consistent with that of Duchaine and Perkins.

The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union is a labor organization within the meaning of Section 2(5) of the Act.

At its Belleville, Michigan facility, the Respondent is engaged in the manufacture and nonretail sale of tool dies for the automotive industry. The Respondent and the Union have had a collective-bargaining relationship going back many years. Their most recent agreement is effective from January 16, 2000, to January 16, 2004.[4] Appendix A of the agreement sets out 25 or so employee classifications included in the bargaining unit, which constitutes a bargaining unit appropriate for collective-bargaining purposes.

Prior to April 28, as required by the agreement, a number of employees were paid over $20 an hour; the Respondent fully paid premiums for medical insurance (health and dental), disability insurance, life insurance, and pension benefits, and provided holiday and vacation pay per the terms of the agreement. In addition, as per the agreement, the Respondent paid retirees' medical insurance premiums.[5]

Duchaine first became aware on April 15 that the Respondent planned changes in wages and benefits. This occurred at a regularly scheduled grievance meeting, during which Thomas stated that due to global competition and the company's financial problems, the Respondent had lost approximately $15 or $16 million since 1998 and would be cutting the benefits of both salaried and nonsalaried employees. Therefore, Thomas stated, effective the next pay period or so, the owner would eliminate its payment of various insurance premiums and would cut the wage rate for employees making over $20 an hour to $20 hour, with one employee making slightly over $20 to be cut to $17.

Duchaine responded that there was a proper way to do things and that the Union wanted an opportunity to audit the Respondent's books to verify the claim of financial hardship. He explained that it was standard for the Union's research department to assign an auditor. If that auditor verified the Respondent had financial problems, Duchaine would hold a vote of the membership on whether the Union should enter into negotiations for concessions. Thomas stated he did not believe the owner would allow the books to be opened up for an audit but that he would see about obtaining documentation from the Respondent's accountant.

Duchaine sent Thomas a letter dated April 15, reiterating the Union's request for an audit of the Respondent's books to substantiate the Respondent's claim of poverty.[6]

Thomas responded by letter dated April 17, stating that due to the global nature of the market, the Respondent would make reductions in pay rate and eliminate contractual fringe benefits effective April 28 to avoid shutdown.[7]

Duchaine responded by letter dated April 22, renewing the Union's request to have a union auditor verify the Respondent's financial crisis.[8]

Duchaine had hand delivered a letter dated April 23 to Thomas, stating that Duchaine had been advised by his superiors that a membership vote on concessions could not be held until a union auditor validated the Respondent's claims of financial hardship.[9]

The Respondent's accountant, John Sposito, by letter of April 23 to Duchaine, provided the following information:

> The cumulative net operating losses for Republic Die and Tool Company for the five fiscal years 1998 through 2002 were $16,704,820.00. This was determined from the reviewed financial statements and the information presented in the corporation's Federal Income Tax Returns for those years.[10]

The Union received nothing else in writing from the Respondent prior to April 28 to support the Respondent's claim of financial hardship.

By letters dated April 24, the Respondent advised employees of the cuts in wages and elimination of fringe benefits, effective April 28, and retirees of the cessation of their health insurance benefits, effective May 1.[11]

The reductions in wages and elimination of fringe benefits announced by Thomas at the April 15 meeting were implemented on April 28. Thus, the maximum wage rate became $20 an hour, with one employee cut from slightly over $20 to $17 an hour; the Respondent ceased paying any premiums for medical insurance, disability, life insurance, and pension benefits; and ceased paying vacation and holiday pay.[12] On May 1, the Respondent ceased paying retirees' medical insurance premiums.[13] After April 28, employees were given the option of paying on their own for insurance benefits, with the Respondent making deductions from their paychecks and forwarding the payments. Overtime pay was changed 2 to 3 weeks after April 28. Whereas previously, there were provisions for double time pay for overtime and overtime was computed on a daily basis, thereafter, all overtime was at time-and-a-half and came into play only after 40 hours in a week.

On April 28, after being informed that the Respondent had implemented the wage cuts and elimination of fringe benefits, Duchaine authorized Perkins to file a grievance. A grievance was in fact filed that day, seeking the following remedy:

[4] GC Exh. 2.

[5] See R. Exhs. 2 and 3.

[6] GC Exh. 3.

[7] GC Exh. 4, to which was attached GC Exh. 5.

[8] GC Exh. 6.

[9] GC Exh. 8. Duchaine had previously scheduled an April 23 vote on concessions

[10] GC Exh. 9.

[11] GC Exhs. 19 and 20, respectively.

[12] See R. Exhs. 2 and 3. Perkins testified without controversion that Jimmy Watts was the employee who made slightly over $20 an hour before April 28 and was reduced to $17. For some reason, Watts is not listed in these exhibits.

[13] Id.

> Company to restore all contractual wages and benefits to all affected employees. Co. to reimburse all lost wages and benefits to all affected employees. Co. to restore and reimburse lost benefits to all affected retired employees. Co. to abide by the CBA. Co. to case and desist from this flagrant violation of the CBA.[14]

Duchaine sent Thomas two letters dated May 5. One responded that Sposito's letter was insufficient and renewed the Union's request for an audit by its auditing department.[15] The other notified Thomas of the above grievance.[16]

During this period, Duchaine received information that the Respondent was accepting quotes to perform improvements, such as driveway expansion, at its facility, and had the intention of building an addition. Because he considered this relevant to the Respondent's claim of financial hardship, Duchaine sent Thomas a letter dated May 8, asking where the money would come from and whether the improvements would generate more work.[17] At a later meeting in May, Thomas told Duchaine that the Respondent had looked into expanding the driveway but had decided not to go forward with it. Attorney Hooth later told Duchaine and Perkins that there would be no large-scale additions or improvements. Duchaine made no further inquiries on the subject.

Also during this period, Duchaine heard that the Respondent was receiving new work. Again, because he considered this relevant to the Respondent's hardship claim, Duchaine, by letter dated May 9, requested the following information pertaining to the new work:[18]

> 1. Expected gross profits.
> 2. Whether the profits would generate enough money to reinstate employees' benefits and wages.
> 3. Whether the work would require recalling and/or hiring skilled trades workers.
> 4. Whether the work would require hiring additional nonskilled workers.

Although his recollection was imprecise, Duchaine testified that he received information over the telephone from Hooth regarding items 3 and 4, but not items 1 and 2. Thus, Hooth provided information about the quantity of parts involved and stated that the Respondent would not have the need to hire any new employees, skilled or unskilled. However, Duchaine received nothing concerning the financial ramifications of this new work. Thomas testified, somewhat vaguely, that there was no way to predict the resulting profits, but it is undisputed that the Respondent made no effort to provide the Union with any kind of estimates or to furnish the Union with detailed reasons why no such estimates could be made.

Hooth, with a letter dated June 2, sent Duchaine a report from the Respondent's accounting firm to the Respondent's board of directors, which compiled balance sheets as of August 31, 1998, 1999, 2000, 2001, and 2002, and included statements of income—operations for each year, as well as supplementary information contained in the schedules of cost of sales and selling and administrative expenses.[19] The report contained the caveat,

> A compilation is limited to presenting in the form of financial statements and supplementary schedules information that is the representation of management. We have not audited or reviewed the accompanying financial statements and supplementary schedules and, accordingly, do not express an opinion or any other form of assurance on them.
>
> Management has elected to omit substantially all of the disclosures and the statements of cash flows required by generally accepted accounting principles. If the omitted disclosures and statements of cash flows were included in the financial statements, they might influence the user's conclusions about the Company's financial position, results of operations and cash flows.

Thomas conceded that this was the only written information provided to the Union regarding the Respondent's financial condition.[20]

By telefaxes of June 13, Duchaine advised Hooth and Thomas that he had received Hooth's letter and the information from the Respondent's accountants but that additional information was requested to justify the Company's plea of poverty.[21] He transmitted with the faxes a letter from the UAW research department, along with its standard detailed data request to companies that plead poverty to justify unilateral changes.[22]

The request lists 18 types of documents the Union considers relevant. Regarding financial statements, item 4 states that audited financial statements for the past 3 years should include,

> [C]omplete balance sheets, income statements, and statements of cash flows together with footnotes and detailed supporting scheduled [sic]. Supporting schedules should include cost of goods sold, including breakdowns of materials, costs, manufacturing overhead/burden, labor costs and supervisory and other nonlabor wages and benefits; and selling, general and administrative expenses, including details on management salaries and benefits. The above statements should be certified by an independent, outside CPA.

[14] GC Exh. 12. A meeting was held on the grievance a week or two later, at which Duchaine stated that he was going to forward it to arbitration. In light of the Board's encouragement of arbitration to resolve disputes that entail alleged violations both of contract and of the Act, in appropriate situations, e.g., *Caritas Good Samaritan Medical Center*, 340 NLRB No. 6 (2003), on November 19, I requested supplemental briefs on whether the allegations in the complaint concerning unilateral changes should be deferred to the arbitration process. The Respondent responded that at the arbitration hearing held on December 18, it contended that the arbitrator should defer to my decision in this matter. The General Counsel also responded, agreeing that deferral to arbitration is not appropriate.

[15] GC Exh. 10.

[16] GC Exh. 11.

[17] GC Exh. 13.

[18] GC Exh. 14.

[19] GC Exh. 15.

[20] Tr. 122.

[21] GC Exhs. 17 and 18.

[22] GC Exh. 16.

Legal Analysis and Conclusions

Unilateral Changes in Wages and Fringe Benefits and Repudiation of Contract

As the Board stated in *Fort Pierce Jai-Alai*, 310 NLRB 862 (1993), "It is well established that Section 8(a)(5) and (1) and Section 8(d) of the Act prohibit an employer that is a party to an existing collective-bargaining agreement from modifying the terms and conditions of employment established by the agreement without obtaining the consent of the union." Moreover, it is equally well settled that an employer's claim of financial inability to make payments required by the contract, even if proven, is not a valid defense. Id.; *Mac Plastics*, 314 NLRB 163 (1994); *Tammy Sportswear Corp.*, 302 NLRB 860 (1991).

An employer's unilateral change in employee wage rates during the term of a contract is deemed more than a mere breach of contract; rather, it "amounts, as a practical matter, to the striking of a death blow to the contract as a whole, and is thus, in reality, a basic repudiation of the bargaining relationship." *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063, 1064 (1973), enfd. mem. 505 F.2d 1302 (5th Cir. 1974), cert. denied 423 U.S. 826 (1975); see also *Wightman Center for Nursing & Rehabilitation,* 301 NLRB 573, 575 (1991). Similarly, the Board has found that an employer's failure and refusal to make payments for severance pay, vacation pay, and health insurance premiums constitutes repudiation of a contract. *Victory Specialty Packing, Inc.*, 331 NLRB No. 139 (2000) (not reported in Board volumes). These cases appropriately recognize the normally fundamental importance to employees of wage and fringe benefit provisions; an employer's failure and refusal to comply therewith effectively guts the agreement of its meaningfulness to employees.

There is no question in this case that, without the consent of the Union or affording it an opportunity to bargain, the Respondent on April 28 unilaterally reduced wage rates for certain unit employees and eliminated fringe benefits for all employees; and additionally, on May 1, eliminated the payment of health insurance premiums for retirees.

Based on the applicable law, as set forth above, I find that this conduct effectively constituted a repudiation of the collective-bargaining agreement and a violation of Section 8(a)5) and (1) of the Act. Inasmuch as repudiation of an agreement is more egregious than making unilateral changes, I find the latter violation encompassed by my finding of repudiation. See *Victory Specialty Packaging, Inc.*, supra.

The Respondent's Failure and Refusal to Provide Information

An employer's obligation to bargain in good faith includes the obligation to disclose to the employees' collective-bargaining representative information relevant and necessary to its role as bargaining agent, including enforcing provisions of a collective-bargaining agreement and processing grievances. *NLRB v. Acme Industrial. Co.*, 385 U.S. 432 (1967); *General Motors v. NLRB*, 700 F.2d 1083 (6th Cir. 1983); *American Signature, Inc.*, 334 NLRB 880, 885 (2001). The standard for determining what information is "relevant and necessary" is broadly construed, to encompass information that will probably be relevant and of use to the union in carrying out its statutory duties and responsibilities. *Acme Industrial,* supra at 437–438; *Globe Business Furniture, Inc.*, 889 F.2d 1087 (6th Cir. 1989). Information related to wages and other terms and conditions of employment, such a pensions and medical benefits, is presumptively relevant and must be furnished upon request. *International Protective Services, Inc.*, 339 NLRB 541, 546 (2003); *Deadline Express*, 313 NLRB 1244 (1994).

In the context of an employer's asserted inability to pay employees remuneration, a union is entitled to be provided information establishing proof that such assertion is accurate. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152–153 (1956). The Union here requested information by means of conducting an audit of the Respondent's financial records, at all times stating that if the audit validated the Respondent's claim of financial hardship, the Union would conduct a vote among unit employees of whether to engage in concession bargaining.

The Union's May 8 and 9 requests for information, regarding improvements to the facility and new work, respectively, were made because the Union considered such information relevant to the Respondent's claim of financial hardship. I agree.

Accordingly, I conclude that the Union's requests for an audit of the Respondent's records and for information pertaining to facility improvements and new work were relevant and necessary to the Union's performance of its duties as collective-bargaining representative. Therefore, the Respondent was obliged to provide the requested information.

The Respondent denies that it failed to provide the Union with the information it requested. I will first address the Respondent's provision of information in response to the Union's requests of April 15, 22, and 23, and May 5 to have a representative of the Union audit the Respondent's books to substantiate the claim of financial hardship justifying cuts in wages and elimination of fringe benefits.

The Respondent never allowed the Union direct access to its books at any time. The Respondent twice provided the Union with written information. The first was in the form of the letter of April 23 from its accountant, simply stating in one paragraph the bare conclusion that the Respondent's cumulative net operating losses for the 5 fiscal years 1998 through 2002 were approximately $16.7 million dollars, determined from financial statements and the information presented in the Respondent's Federal income tax returns.

The second, provided in early June, was a report from the Respondent's accountants to the Respondent's board of directors, which compiled balance sheets as of August 31 for the years 1998 through 2002, and included statements of income – operations for each year, as well as supplementary information contained in the schedules of cost of sales and selling and administrative expenses. The reliability of the report as evidence of the Respondent's financial situation was seriously undermined by its emphatic and almost apologetic caveat, stressing that the report was based solely on representations of management, that management had "elected to omit substantially all of the disclosures and the statements of cash flows required by generally accepted accounting principles," and that such omitted disclosures and statements of cash flow could make a difference in the report's conclusions.

I conclude that a reasonable person would not have been satisfied that the April 23 letter and the report constituted reliable evidence substantiating the Respondent's claim of financial hardship. Indeed, the caveat to the report seems to raise the suspicion that management withheld information from its accountants but, in any event, had chosen not to comply with established accounting principles.

Therefore, I further conclude that the Respondent unlawfully failed to comply with the Union's requests of April 15, 22, and 23, and May 15, to furnish information through opening its books to a union auditor, and otherwise failed to provide relevant and necessary information, in connection with its claimed financial inability to pay contractual wages and fringe benefits.[23]

As to the May 8 request for information relating to physical improvements at the Respondent's facility, Thomas told Duchaine at a meeting later in May that the Respondent had looked into expanding the driveway but had decided not to go forward with it. Attorney Hooth later told Duchaine and Perkins that there would be no large-scale additions or improvements and, significantly, Duchaine was apparently satisfied with those responses, because he made no further inquiries on the subject. There is no requirement that information be provided in written form, and I therefore conclude that the General Counsel has not sustained allegation 19 of the complaint.

Regarding the May 9 request for information pertaining to new work obtained by the Respondent, Duchaine set out four questions. The first two related to the profits anticipated from the work, and the second two to the impact on hiring needs. Duchaine conceded that he received information as to the latter questions, but he received nothing concerning the first two. Although Thomas testified it was hard to predict profits, the Respondent never provided the Union with estimated profits, a range of anticipated profits, or a detailed explanation of why it could not make any estimates. I find it difficult to believe that the Respondent would have taken on new work without having some idea of how profitable the job would be.

I conclude, therefore, that the Respondent failed to provide the Union with requested information relating to the financial ramifications of the new work. Accordingly, I sustain allegation 20 of the complaint.

CONCLUSIONS OF LAW

1. The 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. By repudiating the January 16, 2000 to January 16, 2004 collective-bargaining agreement, and by failing and refusing to provide the Union, upon its requests, with information relevant to its averred economic inability to comply with the wage and fringe benefits provisions of that agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

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

Having unlawfully failed to pay wages and fringe benefits to employees and retired employees, under the terms of the January 16, 2000 to January 16, 2004 collective–bargaining agreement, the Respondent must restore the wages and fringe benefits provided in the agreement, and make employees and retired employees whole by reimbursing them for any expenses that have resulted from such unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 444 F.2d 502 (6th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[24]

ORDER

The Respondent, Republic Die and Tool Company, Belleville, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Repudiating the January 16, 2000 to January 16, 2004 collective-bargaining agreement with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, New West Side Local 174 (the Union), by failing to pay contractually required wages and fringe benefits.

(b) Failing and refusing to provide to the Union, upon its request, information that is relevant and necessary to the Union's role as bargaining agent.

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

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

(a) Make the contractually required wages and fringe benefits with interest as prescribed in the remedy section of this decision.

(b) Make all unit employees and retired employees whole, with interest as set forth in the remedy section of this decision, for any losses suffered as a result of the failure and refusal to pay contractually required wages and fringe benefits.

(c) 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

[23] In light of this conclusion, I need not address whether the Respondent lawfully could have placed conditions on the audit or satisfied its legal obligation to furnish the information in an alternative manner.

[24] 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.

in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post as its facility in Belleville, Michigan, copies of the attached notice marked "Appendix."[25] 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 immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 15, 2003. The Respondent shall also, within 14 days after service by the Region, mail a copy of the notice to all retired employees for whom it was paying health insurance benefits prior to May 1, 2003. The notice shall be mailed to the last known address of each of such retired employees after being signed by the Respondent's authorized representative.

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

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

Dated, Washington, D.C. February 6, 2004

[25] 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 International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, New West Side Local 174 (the Union), by repudiating the January 16, 2000 to January 16, 2004 collective-bargaining agreement, through failing to pay you contractually required wages and fringe benefits.

WE WILL NOT fail and refuse to provide the Union, upon its request, information that is necessary and relevant to the Union's role as your bargaining representative.

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 make the contractually required wages and fringe benefits on behalf of employees and retired employees covered by the collective-bargaining agreement.

WE WILL make all unit employees and retired employees whole, with interest, for any losses suffered as a result of our failure and refusal to pay contractually required wages and fringe benefits.

REPUBLIC DIE AND TOOL COMPANY