Westinghouse Electric Corporation *and* Salaried Employees Association of the Baltimore Division, Federation of Westinghouse Independent Salaried Unions. Cases 5–CA–22392 and 5–CA–23106

November 24, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The issues in this case are whether the judge correctly found that the Respondent did not violate Section 8(a)(5) and (1) of the Act: (1) by failing to permit senior employees who were ''dispositioned'' by layoffs to exercise contractual bumping rights against junior employees in jobs requiring ''special access clearance''; and (2) by failing to bargain about a decision to lay off unit employees and to transfer their work.[1]

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions only to the extent consistent with this Decision and Order.

1. We agree with the judge, for the reasons fully described in his decision, that the Respondent acted pursuant to its longstanding and plausible interpretation of relevant contractual provisions in excepting employees with ''special access clearance'' from seniority-based bumping procedures during layoffs in December 1991 and 1992. The General Counsel's theory of violation depends on a contrary plausible interpretation of those provisions. The Board has repeatedly held that ''[w]here . . . the dispute is solely one of contract interpretation, and there is no evidence of animus, bad faith, or an intent to undermine the Union, we will not seek to determine which of two equally plausible contract interpretations is correct.'' *Atwood & Morrill Co.*, 289 NLRB 794, 795 (1988). In accord with this precedent, we adopt the judge's recommendation to dismiss the complaint's allegation of an 8(a)(5) contract breach.[3]

2. We reach a different conclusion with respect to the judge's dismissal of the complaint's allegation that the Respondent violated Section 8(a)(5) by its unilateral decision to lay off four employees and to transfer their work. We find that the Respondent unlawfully failed to bargain about a mandatory subject of bargaining.

The Union has been the representative of several bargaining units of the Respondent's employees at its Baltimore, Maryland facility. The Command and Control Division unit included employees working in the West Building Calibration Laboratory. The Baltimore Aerospace Division unit included employees working in the East Building Calibration Laboratory.

On October 30, 1991, the Respondent gave the Union a list of employees whose positions would be eliminated in a December layoff. According to the uncontradicted testimony of Union President Gary Eber, he telephoned Charles Berger, the Respondent's manager of human resources programs and salaried employees relations, to ask about the inclusion on the layoff list of four unit employees working in the West Building lab. Berger disclosed the Respondent's intent to close that laboratory and to transfer work performed there to current employees working in the more modern and efficient East Building lab. Eber argued that the collective-bargaining agreement required a ''decrease in work load'' before any layoff could occur. Berger's response was ''that it's management's right, they have the right to do it, and so they're doing it.''

Eber subsequently discussed the matter with Michael Jackson, the Respondent's manager of personnel and union relations. Jackson ultimately told Eber that ''[i]t's a management decision and that's it.'' In December 1991, the Respondent implemented its previously announced lab closing, layoff, and work transfer plan. In early 1992, the Respondent denied the Union's grievance of this action and declined to proceed to arbitration.

The Respondent defends its unilateral action by contending that it had no obligation to bargain or, alternatively, that the Union waived its right to bargain by failing to request bargaining after timely advance notification of the intended action. The judge addressed only the former defense. Based on the test set forth in *Dubuque Packing*, 303 NLRB 386 (1991), he found that the General Counsel had presented a prima facie case that the work transfer and layoff decision was a mandatory subject of bargaining because it did not involve a basic change in the nature of the Respondent's operation. He further found, however, that the Re-

[1] On March 12, 1993, Administrative Law Judge James L. Rose issued the attached decision. The General Counsel and the Union filed exceptions and a supporting brief. The Respondent filed cross-exceptions and a brief supporting cross-exceptions and answering the General Counsel's exceptions. The General Counsel filed a reply brief. The Baltimore Salaried Employees Association and the Federation of Westinghouse Independent Salaried Unions submitted an amicus brief and exceptions.

[2] The General Counsel and the Union have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We do not rely on the judge's comments about the relative suitability of Board litigation and private arbitration for resolution of the issue presented.

spondent met its burden of proving that it had no duty to bargain because labor costs were not a factor in its decision. In this regard, the judge relied on the identity of wage scales for employees in both labs and the fact that the East Building lab was more modern and efficient than the West Building lab. The judge acknowledged that the layoff of employees for whom there was no longer work entailed labor cost savings, but he reasoned that ''this is not the kind of labor costs the Board contemplated in *Dubuque*.''

Contrary to the judge, we find that the Respondent had a statutory obligation to bargain about the decision in dispute. We view the analysis of an employer's unlawful unilateral decision to consolidate jobs and to lay off employees in *Holmes & Narver*, 309 NLRB 148 (1992), as dispositive here. In both *Holmes & Narver* and the present case, the employer has essentially decided to continue doing the same work with fewer employees. There was no change in the scope and direction of the corporate enterprise; and a shift of work from a group of employees in one building on an employer's corporate premises to a group of employees in another employer-owned building at the same site is not the kind of relocation which we dealt with in *Dubuque*. The present case involves essentially one plant, albeit operations were located in several different buildings, and the reassignment of work from one group of calibration employees to another was asking to ''assignment of work among potentially eligible groups within the plant,'' which is among those matters ''recognized as subjects of compulsory bargaining. *Fibreboard Corp. v. NLRB*, 379 U.S. 203, 224 (1964) (Stewart, J. concurring; footnote omitted).[4] Accordingly, as the Board held in *Holmes & Narver*, it is unnecessary to engage in the *Dubuque* multistep analysis to justify the conclusion that a decision in this category is a mandatory subject of bargaining.[5] The Respondent could not implement such a decision prior to giving the Union adequate notice and opportunity to bargain about it.[6]

We find no merit in the Respondent's alternative contention that the Union waived its right to bargain by failing to request bargaining in the nearly 2-month period between disclosure of the Respondent's plans and the implementation of those plans. According to Union President Eber's uncontradicted testimony, the Respondent's labor officials clearly indicated their view that the decisions involved here were matters solely within management's discretion and not subject to collective bargaining. In these circumstances, it would have been futile for the Union to make a formal request for bargaining about a decision which was effectively presented as a fait accompli. We therefore find that the Respondent violated Section 8(a)(5) by failing to bargain with the Union about the decision to transfer work from the West Building Calibration lab to the East Building lab and to lay off four employees who had been performing the work in the West Building lab.

CONCLUSIONS OF LAW

l. The Respondent, Westinghouse Electric Corporation, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Salaried Employees Association of the Baltimore Division, Federation of Westinghouse Independent Salaried Unions (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

[4] It bears reiterating that the statutory obligation to bargain never requires that an employer agree to whatever the bargaining representative seeks or that it forgo efforts to achieve greater efficiencies. Doubtless it is desirable, from an employer's point of view, to speed up production and perform the same work with fewer employees. Clearly, the Respondent could save money by having all the calibration laboratory work performed by fewer employees working in a single laboratory. The Act simply requires that such fundamentally employee-focused decisions be negotitated with the bargaining representative.

[5] We nevertheless specifically disavow the judge's mistaken statement that financial savings gained from the layoffs here are not the kind of labor costs contemplated by *Dubuque*. We also disavow any implication that an evaluation of labor costs as a factor in a managerial decision to transfer work is limited to a comparison of the wages of the employees involved.

[6] For the reasons set forth in Member Raudabaugh's concurring opinion in *Holmes & Narver*, he would apply the *Dubuque* test to analyze the Respondent's obligation to bargain about the entrepreneurial decision at issue here. Indeed, this case is even more clearly subject to the *Dubuque* test than was *Holmes & Narver*. *Holmes & Narver* involved an employer's decision to do the same work with fewer employees. The instant case involves the closing of a laboratory and the transfer of the work elsewhere. In sum, the decision in this case, even more clearly than the one in *Holmes & Narver*, is within category 3 of *First National Maintenance v. NLRB*, 452 U.S. 666 (1981). Accordingly, Member Raudabaugh finds that the instant case is particularly appropriate for the application of *Dubuque*, a test for category 3 cases. Applying the *Dubuque* test, Member Raudabaugh agrees with the judge that the General Counsel has established a prima facie case that the decision was a mandatory bargaining subject. Contrary to the judge, however, Member Raudabaugh finds that the Respondent failed to meet its affirmative burden of proving either that labor costs were not a factor in the decision or that the Union could not have offered cost concessions which could have altered the decision. In this regard, Member Raudabaugh agrees with his colleagues that the financial savings effected by laying off employees constitutes a savings of labor costs within the meaning of the *Dubuque* test. Further, the Respondent did not show that the Union could not have made concessions sufficient to change the decision.

Finally, Member Raudabaugh notes the D.C. Circuit's formulation of the above-mentioned aspect of the *Dubuque* test. *Commercial Workers Local 150-A v. NLRB*, review denied mem. 998 F.2d 7 (1993). In *Dubuque*, the Board said that the employer is not required to bargain if the employer shows that the union *could not* make sufficient concessions. The court added that the employer is not required to bargain if the employer could show that the union *would not* make those concessions, i.e., was unwilling to make them. Accepting arguendo the D.C. Circuit's formulation, Member Raudabaugh finds that the Respondent here has not made either of the showings contemplated by the D.C. Circuit.

3. By failing to bargain with the Union about a decision to transfer Command and Control Division bargaining unit work and to lay off four employees in that unit, 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 violated Section 8(a)(5) and (1) of the Act by failing to bargain with the Union about a decision to transfer bargaining unit work and to lay off unit employees, we shall order it to cease and desist from engaging in such conduct and to bargain on request with the Union about this decision. We shall further order the Respondent to offer the four employees who were laid off pursuant to its unlawful unilateral action immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions. If necessary to fulfill its reinstatement obligation, the Respondent shall reopen the West Building Calibration Laboratory. The Respondent shall also make whole these employees for any loss of earnings and other benefits suffered as a result of its unlawful unilateral 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).

ORDER

The Respondent, Westinghouse Electric Corporation, Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Union, as the exclusive collective-bargaining representative of a unit of the Respondent's employees in the Command and Control Division, about a decision to transfer work from the West Building Calibration Laboratory to the East Building Calibration Laboratory and to lay off unit employees who had been performing this work in the West Building.

(b) 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) On request, bargain with the Union in good faith about the decision to transfer work from and to lay off bargaining unit employees working in the West Building lab.

(b) Offer the four employees who were laid off as part of the unilateral decision to transfer work from the West Building lab immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, reopening, if necessary, the West Building lab, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole, with interest, for any loss of earnings or benefits suffered as the result of Employer's unlawful action in the manner set forth in the remedy section of this Decision and Order.

(c) Preserve and, on 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 due under the terms of this Order.

(d) Post at its facilities in Baltimore, Maryland, copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director for Region 5, 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.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[7] 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain with Salaried Employees Association of the Baltimore Division, Federa-

tion of Westinghouse Independent Salaried Unions (the Union), as the exclusive collective-bargaining representative of a unit of our employees in the Command and Control Division, about a decision to transfer work from the West Building Calibration Laboratory to the East Building Calibration Laboratory and to lay off unit employees who had been performing this work in the West Building.

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, on request, bargain with the Union in good faith about the decision to transfer work from and to lay off bargaining unit employees working in the West Building lab.

WE WILL offer the four employees whom we laid off as part of our unilateral decision to transfer work from the West Building lab immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, reopening, if necessary, the West Building lab, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole, with interest, for any loss of earnings or benefits suffered as the result of their layoff.

WESTINGHOUSE ELECTRIC CORPORATION

Steven Sokolow and *Paula Sawyer, Esqs.*, for the General Counsel.

Barnett O. Brooks and *Robert A. Edwards, Esqs.*, of Baltimore, Maryland, for the Respondent.

DECISION

STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge. This matter was tried before me at Baltimore, Maryland, on November 30 through December 4, 1992, upon the General Counsel's complaints which alleged, generally, that the Respondent breached its bargaining obligations by repudiating provisions of its collective-bargaining agreement with the Charging Party in violation of Section 8(a)(5) of the National Labor Relations Act. The Respondent generally denied that it engaged in any unfair labor practices, and raised several affirmative defenses.

The General Counsel and Respondent appeared by counsel and were given the opportunity to call, examine, and cross-examine witnesses. Following the hearing, they submitted extensive briefs.

On the record as a whole,[1] including my observation of the witnesses, briefs, and arguments of counsel.

[1] The General Counsel's posthearing motion to add three documents to the record is granted.

FINDINGS OF FACT

I. JURISDICTION

Westinghouse Electric Corporation (the Respondent) is a Pennsylvania corporation with an office and manufacturing facility at Baltimore, Maryland, engaged in the manufacture and nonretail sale of defense and radar systems and related products primarily to the United States Government. In the course and conduct of its business, the Respondent annually purchases and receives directly from points outside the State of Maryland goods, products, and materials valued in excess of $50,000.

The Respondent admitted, and I find, that it is an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Salaried Employees Association of the Baltimore Division, Federation of Westinghouse Independent Salaried Unions (the Union) is admitted to be, and I find is, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

There is no serious dispute concerning the substantive facts of these cases. To summarize, the Respondent has facilities throughout the United States. Several labor organizations represent units of its employees, including the Federation of Westinghouse Salaried Unions (the Federation) which is the bargaining representative of employees in numerous bargaining units throughout the United States. The Union is an affiliate of the Federation and its president, Gary Eder, is a vice president of the Federation. The units involved in this matter are (1) the Command Control Division bargaining unit, (2) the Baltimore Aerospace Division bargaining unit, (3) the Management Services Building bargaining unit, (4) the Friendship Square bargaining unit, and (5) the Materials Acquisition Center bargaining unit.

The first collective-bargaining agreement between the Federation and the Respondent was effective November 1, 1950. The parties have subsequently negotiated a series of successive agreements, the most recent of which was effective August 28, 1991. In addition to the national agreement, local supplements are negotiated, one of which covers the employees in the bargaining units in these cases.

Section IX in the most recent national contract deals with seniority and includes in subsection 7 the principles to guide local supplements with regard to how employees may exercise their seniority when they are up for disposition (the parties' word for layoff). Material to this case is Local Supplement No. 6, which tracks the language of the national agreement.

Though the procedure can be complicated in practice, basically it involves the following: when the Respondent determines that a layoff is necessary, it designates the jobs which will be eliminated. The incumbent in such a job then can bump a less senior employee in his particular job progression, and if such is not available, then he can bump into another seniority unit under certain conditions, and finally he can bump into the common seniority unit ''provided the em-

ployee's occupational experience, education, and suitability indicate that he can acceptably do the job.''

Many of the jobs in the various bargaining units represented by the Union require some kind of security clearance—top secret, secret, or confidential. In addition, the Government sometimes requires that the employee have Special Access Clearance (SAC). Such a clearance is not given in advance of need. When the Respondent acquires a contract where SAC is required for certain employees, those employees are nominated and the clearance process is undertaken, however, the employees continue to work on their other jobs until clearance is finalized. This process usually takes several months. But such is apparently no problem when a project is being staffed because there is sufficient lead time.

Who has an SAC is not generally known. Nor, often, is it known if a particular nominee is not cleared. The matter of who has what clearance for what job is itself a classified matter, known only to those who need to know and are cleared for such information.

Further, an SAC (unlike the other security clearances) is job specific. Thus one who has an SAC for a particular job cannot transfer to another SAC required job without being recleared. However, in such a situation, the reclearance does not take as long. For instance, in the 1991 layoff, Edna Patterson bumped into an SAC job because she had held such a clearance previously was able to be recleared within 2 weeks.

Since a layoff in late 1985, the parties have disagreed about how this procedure should work where an employee up for disposition could otherwise bump into a job which is held by an employee with a Special Access Clearance (SAC). The Respondent has maintained that where having an SAC is required in order to do a particular job, one without such a clearance cannot bump into that job, and that having an SAC is a job qualification to be considered along with seniority. (Testimony of the Respondent's witnesses do not precisely support this. Since an SAC is specific to particular government contracts, even if one up for disposition had such a clearance, it would not necessarily allow him to work on another job requiring an SAC.)

The Union has always taken the position that seniority is absolute. Thus in those cases where bumping by seniority is not allowed because the junior employee has an SAC, the Respondent has breached an explicit term of the contract.

When this issue first arose, the Union filed a grievance on behalf of the senior employees laid off, which the Respondent denied. The Union asked that the matter be arbitrated, which was also denied. Binding arbitration is not a right under the current or preceding contracts, except as to specific issues. Seniority bypass is not such an issue and arbitration would be available on a case-by-case basis only if the parties agreed. The Respondent did not agree.

Thus the Union was authorized to strike, but rather than doing so, it filed a lawsuit under Section 301 in Federal district court, which was dismissed on grounds that the court lacked subject matter jurisdiction.[2] The United States Court of Appeals for the Third Circuit affirmed the dismissal, but on grounds that the Federation had failed to state a claim on which relief could be granted.[3] The court concluded that in fact the parties had reached a final and binding resolution of their dispute under the arbitration clause of the collective-bargaining agreement. The court noted that upon exhaustion of the grievance procedure, the Federation ''could have gone to court under Section XV-A 4 to compel arbitration. Instead, the Federation chose to authorize a strike.'' Therefore the Federation had elected its choice of remedy and the fact that it did not carry through with the strike was of no consequence.

During negotiations for the 1988 contract, Eder proposed making seniority bypass the subject of arbitration under the contract. The Respondent would not agree. Subsequently, there have been many discussions between the Union (usually Eder) and the Respondent but they have not been able to reconcile their differences.

The Union has taken the position that strict seniority is written into the contract and must prevail. The Respondent has argued that where a customer requires SAC, in the event of a layoff, it could not replace an SAC employee with one without a clearance. Therefore, if bumping was allowed, the Respondent would have to wait until the senior employee was cleared before giving him work to do. This would not be cost effective, since it takes from a few weeks to several months to process a clearance application. In addition, clearance investigations are expensive, though the cost is borne by the customer and become part of the total contract.

New collective-bargaining agreements were negotiated in 1988 and 1991 without the parties having changed their respective positions on this issue, and the language concerning dispositions was unchanged.

In December 1991, the Respondent laid off about 1200 employees, of which 150 were represented by the Union. Of this number, eight were affected by seniority/security issue—four were laid off, and the other four bumped into a lower position than desired. Again grievances were filed and denied. And again, the Respondent denied the Union's request to arbitrate the issue. This layoff gave rise to the charge in Case 5–CA–22392.

Included in this layoff were four employees who had worked in the West Building Calibration Laboratory. The Respondent had decided to move the work which was being done at the West Building Laboratory to the East Building Calibration Laboratory, whose employees are represented by the Union but in a different bargaining unit. Thus included in the initial complaint is the allegation that the Respondent made an unlawful midterm modification of the contract by ''transferring work from the Command and Control Division bargaining unit calibration lab and storeroom to the Baltimore Aerospace Division bargaining unit calibration lab.''

In October 1992, the Respondent announced additional layoffs to be effective as of December 31, 1992. Again the Respondent announced to the Union that having an SAC could be determinative in whether a particular employee up for disposition would be allowed to bump into another job. This announcement gave rise to the charge in Case 5–CA–23106. The supplemental exhibits are the Respondent's statement of which senior employees were not allowed to bump and the union grievance.

[2] *Federation of Westinghouse Independent Salaried Unions v. Westinghouse Electric Corp*., D.C. Civil Action No. 86-2577 (U.S.D.C. W. D. PA 1987).

[3] *Federation of Westinghouse Independent Salaried Unions v. Westinghouse Electric Corp*., No. 87-3453 (3d Cir. 1988).

B. *Analysis and Concluding Findings*

1. The seniority/security issue

The question here is whether, under all the facts, the Respondent's implementation of the disposition procedure amounts to a unilateral midterm modification of the contract in violation of Section 8(a)(5).

No doubt the repudiation of a contract term, such as seniority, is violative of a company's bargaining obligation. Thus, in *General Equipment Manufacturer*, 266 NLRB 1285 (1976), the Board rejected the company's claim that disregard of the seniority provisions of the contract in effecting layoffs was necessitated by considerations of plant efficiency. See also *Johns-Manville Sales Corp*., 282 NLRB 182 (1986), where the Board found it an unfair labor practice for the company to change its policy of laying off in order of seniority.

Here, however, the Respondent did not repudiate the seniority clause nor did it change its policy concerning layoffs. It simply applied the contract in a manner inconsistent with the Union's understanding. The Respondent did as it had done since 1985.

Much of the record and argument of both parties is devoted to whether SAC is a job qualification and whether one's right to bump into a lower job requires him to have the qualifications to do the job.

In neither the basic contract nor the local supplement is there any kind of qualifier such as ''suitability'' or ''qualification'' for bumping within one's seniority unit. Thus, within his seniority unit, an employee may replace ''the least senior employee in the same or next lower level in his position progression.'' Only when one must go to the common seniority unit would his ''suitability'' for a job be in issue.

The General Counsel argues that as a matter of contract interpretation, since the word ''qualified'' is used in the upward bidding procedure, and is absent in the disposition procedure, the parties necessarily meant that qualification would not be a factor in bumping. This argument is a stretch, I believe, particularly when one considers the ''suitability'' language in the disposition procedure. Further, since by contract an employee up for disposition ''may replace the least senior employee in the same or next lower level in his position progression within the seniority unit,'' he is presumptively qualified to do the job. An employee up for disposition is also presumptively qualified to do a job which his has ''satisfactorily'' held previously.

Thus the Respondent argues that implicit in the bumping procedure is the matter of qualification. And a proper security clearance is clearly a qualification.

The General Counsel argues that only for the security department is SAC made a job prerequisite. Therefore, the absence of such from the other job descriptions means that the parties did not intend such to be a job qualification. It appears, however, that only for the security department does the Respondent have the decision-making authority to require SAC. Such a clearance, or the lack of it, for all other jobs is controlled by the customer (the Government).

I reject the General Counsel's argument and conclude that a necessary requirement for bumping is one's qualification to do the job. I am unpersuaded that the parties wrote a bumping procedure which would allow for the placement of an unqualified person. Surely having the appropriate security clearance must be considered a job requirement, for one could scarcely bump into a job he could not do.

There is no question that selection of those employees to be laid off was within the discretion of the Respondent. The General Counsel argues only that those employees should have been allowed to bump into SAC jobs prior to getting their own clearance. The General Counsel does not suggest what these individuals were to do to earn their wages pending clearance, except to propose that nonclassified work could be found for them. But there is no evidence to support this assertion. Indeed that the Respondent had to lay off some 1200 employees in 1991 shows that there was less work available than employees. It would not seem consistent with the policies of the Act to require the Respondent to keep nonproductive employees on its payroll for several months and lay off some who could be productive.

I therefore conclude that the more reasonable interpretation of the disposition clause would allow the Respondent to bypass from bumping those employees who have an SAC.

Fundamentally, however, on the facts presented I do not believe that the Respondent made a unilateral change in the collective-bargaining agreement. At best it simply applied its interpretation of the contract in the way it had since 1985. The Respondent's act in 1991 was no departure from past practice. It was quite in line with the kind of practice the Union found objectionable and had tried to change since 1986. That the Respondent would apply the bumping procedure in 1991, as it did, could not have come as a surprise.

Since 1985 when the Respondent first applied the SAC factor, the Union has objected. It filed grievances, sought arbitration and filed an action in Federal district court. Union representatives met many times with management to discuss the issue. And in negotiations for the 1991 contract (before the 1991 layoffs were announced) the Union proposed mandatory arbitration of the issue.

This 7-year history demonstrates that the Union has been unsuccessful in getting its way on this issue. Such does not mean that the Respondent thereby committed an unfair labor practice.

When the Union signed the 1991 contract it knew full well the Respondent's interpretation of the seniority clause. By accepting the contract as written the Union may not have accepted the Respondent's position, but neither did the Respondent accept the Union's position.

To sustain the General Counsel's argument would require concluding that in the 1991 contract, the Respondent agreed to an interpretation of language which it had rejected in the two previous contracts. I do not believe such a conclusion is justified. Rather, I conclude that in its application of the disposition procedure, the Respondent did not modify the contract or an existing practice.

Further, to sustain the General Counsel's argument would require accepting the Union's interpretation of contract over the Respondent's. On these facts that is not justified. Perhaps the Union is right, but not patently so, given the nature of SAC clearances. At best there is a reasonable argument as to interpretation of the contract clause in question. In such a case it cannot be said that the Respondent made a unilateral, midterm modification of the contract. To find otherwise would require accepting the Union's position and rejecting the Respondent's. The Board is really not the proper forum to resolve subtleties of contract interpretation, here the par-

ties have a contract and the ability to create a mechanism to resolve such disputes.

Indeed, this is precisely the type of situation which the Board would defer to arbitration. *Collyer Insulated Wire*, 192 NLRB 837 (1971). That the parties have not agreed to a dispute resolution mechanism beyond a multistage grievance procedure[4] should not negate the policy that pure contract interpretation is better left to a forum which has expertise in such matters. The Board, of course, has jurisdiction to interpret contracts and find their breach an unfair labor practice. But where the parties have a long collective-bargaining history and a current agreement, disputes arising under the agreement are better left to resolution by the parties. The Board is ill-suited through its litigation procedure to police every nuance and disagreement which can arise between parties concerning what their contracts mean in particular situations.

However, the Board does sometimes find it necessary to interpret contract language. Thus in *Geo. C. Christopher & Son*, 290 NLRB 472 (1988), with Board approval the administrative law judge interpreted the word ''qualified'' in a seniority clause, agreeing in part with the General Counsel and in part with the company. He concluded that 7 of 26 senior employees were improperly laid off. However, the threshold issue was the company's position that it was not bound by the seniority clause of the contract because the contract had expired. This was found against the company on grounds that layoff by seniority had become an existing practice. It then became necessary to interpret but to determine whether anyone in fact had been laid off inconsistent with the existing practice.

Though the General Counsel makes the same argument here, in reality the General Counsel contends that a position which the Union was unable to gain through collective bargaining should be put in place by the Board. This I decline to recommend.

2. Closure of the West Building Laboratory

As part of the 1991 reduction of force, the Respondent determined that it had excess calibration laboratory capacity and that moving work from West Building Laboratory to the East Building was justified. The General Counsel alleges that such was a unilateral relocation of bargaining unit work violative of Section 8(a)(5).

After much litigation over many years, the Board settled on an analytical approach to be used in cases where a company relocates bargaining unit work. *Dubuque Meat Packing Co.*, 303 NLRB 386 (1991). A relocation decision is to be distinguished from a decision to terminate some aspect of the company's business, which was the situation in *First National Maintenance v. NLRB*, 452 U.S. 666 (1981), cited by the Respondent.

In *First National Maintenance* the Supreme Court concluded that a company's decision to cease an aspect of its business was not a mandatory subject of bargaining. The Court noted that (1) the work in question would not be done by other employees of the company or through subcontracting, (2) the decision was not one over which the labor organization which represented employees could have had an impact through collective bargaining, and (3) the decision represented a significant change in the company's business. These factors are not present in a case where a company, such as the Respondent here, decides that particular work can more economically be done at a different location and with different employees.

Thus in *Dubuque*, the Board held that where the General Counsel proves that work was relocated out of the bargaining unit ''unaccompanied by a basic change in the nature of the employer's operation,'' without the company offering the union a meaningful chance to bargain, then a prima facie case has been established. The burden then shifts to the company to prove that (1) labor costs were not a factor in the decision or (2) if labor costs were a factor, still the union could not have offered cost concessions which could have altered the decision.

I conclude that the General Counsel did establish prima facie case that the Respondent refused to bargain by announcing its decision to relocate the West Building Calibration Laboratory work to a different bargaining unit, notwithstanding that the Union represented both units. Nevertheless, I conclude that the record predominates in favor of finding that labor costs were not a factor in the decision.

Although the evidence on this aspect of the case is sketchy, there is little doubt that the relocation was part of a large overall layoff. The Union did not contest the Respondent's contention that the East Building equipment was more modern and efficient than that in the West Building.

Further, the wage scale for employees in both units was identical and therefore labor costs could not have been a factor. Though each bargaining unit has a separate contract, it appears (and is undisputed) that an employee's compensation is dependent on which ''code'' (salary range) his position carries. While there was no direct evidence of this, it is implicit in the testimony of witnesses for all parties. And this finding is supported by a document entitled ''Security Issue by Progression'' which shows that the rate for each code is the same in each bargaining unit. Thus, the labor costs would be the same whether the calibration work is done in the West Building or the East building, unless the Union would be willing to negotiate different code for the same work, or different rates for the same code depending on the bargaining unit. Neither is likely.

Certainly the Respondent sought to save on labor costs in laying off employees for whom there was no longer work, and such occurred when the lab work was consolidated. But this is not the kind of labor costs the Board contemplated in *Dubuque*. In *Dubuque* labor costs as a controlling factor means that the company could get the work done for less money and the union could negotiate a wage rate to be competitive. Here the work was to be done for the same costs, but with overall fewer employees.

I therefore conclude that relocating the work from the West Building Calibration Laboratory was a mandatory subject of bargaining which the Respondent did not honor; however, as the decision did not turn on labor costs, the Respondent did not thereby violate Section 8(a)(5) of the Act.

[Recommended Order for dismissal omitted from publication.]

[4] The Third Circuit seemed to suggest that an action by the Federation to compel arbitration would be successful.