E.G. & G. Rocky Flats, Inc. *and* United Steelworkers of America, Local Union 8031, AFL–CIO–CLC. Case 27–CA–12267

July 22, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

On August 31, 1993, Administrative Law Judge William J. Pannier III issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in answer to the exceptions of the Respondent. The Respondent filed a reply brief to the General Counsel's answering brief.

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 briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, E.G. & G. Rocky Flats, Inc., Golden, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

William J. Daly and *Diana M. Munkel, Esqs.*, for the General Counsel.

Carl Eiberger, Esq. (Eiberger, Stacy, Smith & Martin), of Denver, Colorado, and *Mary Ellen Amaral, Esq.*, of Golden, Colorado, for the Respondent.

Dennis Valentine, Esq. (Brauer, Buescher, Valentine, Goldhammer & Kelman), of Denver, Colorado, for the Charging Party.

DECISION

WILLIAM J. PANNIER III, Administrative Law Judge. I heard this case in Denver, Colorado, on February 11 and 12 and on April 13 and 14, 1993. On September 4, 1992,[1] the Regional Director for Region 27 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing, based on unfair labor practice charge filed on July 24, alleging violation of Section 8(d) and Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based on the entire record, on the briefs that were filed, and on my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The parties stipulated that, at all times material, E.G. & G. Rocky Flats, Inc. (Respondent) has been a corporation with an office and place of business in Golden, Colorado, engaged pursuant to contract with the United States Department of Energy in the operation and management of Rocky Flats Nuclear Weapons Facility. They also stipulated that, in the course and conduct of those operations during the past 12-month period, Respondent provided and sold services valued in excess of $500,000 to the Department of Energy at Rocky Flats Nuclear Weapons Facility, and annually purchased and received goods and materials valued in excess of $5000 from points and places outside the State of Colorado. The parties further stipulated that those operations of Respondent have a substantial impact on the national defense of the United States. I conclude, consistent with the stipulation of the parties, that at all times material Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

At all times material, United Steelworkers of America, Local Union 8031, AFL–CIO–CLC (the Union) has been a labor organization within the meaning of Section 2(5) of the Act.

[1] We find that the judge did not abuse his discretion in denying the Respondent's motion to permit telephonic testimony by Gene Ideker, a retired official of the Respondent. The Respondent conceded to the judge that Ideker would ''come willingly'' to the trial to testify, but that the Respondent did not want to impose on him and preferred the use of telephonic testimony. In these circumstances, where no impediment existed to the availability of the witness except for the Respondent's reluctance to call the witness to testify, the judge reasonably denied the Respondent's motion to permit telephonic testimony.

We have nevertheless reviewed the Respondent's offer of proof with respect to the testimony of Ideker and find that it does not establish that the Union consented or otherwise agreed to the Respondent's unilateral modification of the method of familiarization set forth in the 1991 RPT progression program. The Respondent stated in its offer of proof that Ideker conducted three meetings with union officials in which he proposed to modify familiarization training, and that the union officials ''did not agree with that suggestion [and] did not disagree with that suggestion, and that was the way it was left.'' Accordingly, the testimony of Ideker would not affect the outcome of this case, and the Respondent was not prejudiced by the judge's ruling.

[2] The Respondent contends in its exceptions that its unilateral modification of the familiarization component of the 1991 RPT progression program was permissible pursuant to various provisions of the parties' collective-bargaining agreement. We have carefully examined the collective-bargaining agreement, along with the progression programs incorporated into that agreement, and find the Respondent's contention to be meritless.

We note that although the Respondent's operation of a nuclear weapons facility presents unique safety concerns which must be carefully considered, the Respondent here failed to establish that any particularized exigent threat to safety existed at the Rocky Flats facility which would have justified the Respondent's unilateral action.

[1] Unless stated otherwise, all dates occurred in 1992.

III. THE ALLEGED UNFAIR LABOR PRACTICE

''It is broadly stated that according to the 'Lex Romana' any one who contravenes or will not perform a written agreement is infamous and to be punished.'' (Footnote omitted.) Pollock and Maitland, *The History of English Law* (Legal Classics Library Ed.), vol. II, p. 192 (1982). Comfortably fitting within that tradition is Section 8(d) of the Act's definition of the duty to bargain collectively during the period before 60 days prior to the expiration date of collective-bargaining contract:

> *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract.

''If the mandatory subject of bargaining which the employer wishes to change is the subject of a provision in the collective bargaining agreement, the employer commits an unfair labor practice if it changes that condition without the permission of the Union.'' *Standard Fittings Co. v. NLRB*, 845 F.2d 1311, 1315 (5th Cir. 1988). For, ''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.'' (Footnote omitted.) *United Rigging & Hauling*, 310 NLRB 828 (1993).

The unfair labor practices alleged in this case present an issue of whether Respondent violated that statutory proscription by suspending the familiarization phase of a training program for certain employees. Prior to 1990 Rockwell International had been the operations contractor for the Department of Energy's Rocky Flats Nuclear Weapons Facility. It maintained a collective-bargaining relationship with the Union as the representative of production and maintenance employees working there. Those parties had negotiated a progression program agreement which provided for progression training of employees in specified classifications. One of those classifications was that of radiation protection technologist (RPT). Essentially, employees in that classification monitor personnel, buildings, equipment, and material to ensure that workers and the environment are protected from radiological hazards.

Pursuant to the progression program agreement, in 1989 Rockwell and the Union executed a radiation protection technologist progression program: ''a three year program that has objectives to train the employees through education and experience to become proficient in radiation protection and industrial hygiene activities.'' For purposes of this proceeding, that training involved classroom instruction, familiarization, and on-the-job training. Familiarization, the training phase that becomes an issue in this proceeding, involves familiarizing RPT trainees, those newly transferred to or hired for that classification, with the layout, hazards, and safety procedures of particular buildings, as well as the operations being conducted in them. While being familiarized, RPT trainees perform no actual production work, but are accompanied by experienced RPTs who provide necessary information about buildings within each area to the trainees.

Under the 1989 program, familiarization was building-specific. That is, as an RPT was assigned to work in a particular building, he/she was familiarized with that particular building. If transferred to another building, familiarization with regard to it would then be conducted.

On January 1, 1990, Respondent succeeded Rockwell as contractor at Rocky Flats. it recognized the Union as the representative of employees in an admittedly appropriate bargaining unit of ''All hourly paid production and maintenance employees and including crewleaders employed by Respondent at the Department of Energy Rocky Flats Plant, but excluding all salaried personnel, office clerical employees, guards, watchmen, professional personnel, and supervisors as defined in the Act.'' The parties executed a collective-bargaining contract, effective by its terms from April 8, 1990, to October 3, 1993. Article XIV, section 5 of that contract provides for progression programs:

> Progression programs are set forth in separate documents and shall be a part of this Agreement.
>
> Other progression programs, as may be mutually developed by [Respondent] and the Union during the term of this Agreement, shall also be part of this Agreement. Any changes or modifications to these programs which are in conflict with any terms of this [A]greement can only be made by mutual agreement of [Respondent] and Union Bargaining Committee.

The first paragraph and the first sentence of the second paragraph of that section were taken verbatim from the Union's last contract with Rockwell. As discussed in section IV infra, the second sentence of the second paragraph was added during the 1990 negotiations.

The parties each appointed members for a 12-member RPT subcommittee and, in addition, for a 6-member oversight committee, the RPT progression committee, so that a new RPT progression program could be negotiated. Over the course of the past few years, RPT training had been modified repeatedly and, in fact, Respondent's witnesses acknowledged that familiarization had not been conducted at all for RPTs during the spring of 1991. By August of that year agreement was reached on terms for a new RPT progression program. All subcommittee and progression committee members executed it during that month.

For purposes of this proceeding, that program consists of the same three above-enumerated phases as the progression program that is supplanted. More specifically, the 1991 RPT progression program provides that following classroom instruction, RPT trainees are to be assigned to one of three primarily plutonium areas, as a home base. From there, they are to be immediately rotated through the buildings in all three of those areas, as well as through ones located in a specified nonplutonium area, as prescribed in exhibit X of the progression program. Under the terms of the 1991 program, familiarization is to be completed in 14 weeks within an overall 16-week calendar period. The 2-week excess serves as, in effect, a safety valve to allow for such matters as sick leave and vacations.

That particular change—from familiarization with a particular area's buildings as the RPT is assigned to work there to familiarization with all four areas' buildings immediately after classroom instruction—was a particularly purposeful

one for the program's negotiators. As Clifford Del Forge, Respondent's emergency planner with its emergency preparedness department, and one of Respondent's designees to the subcommittee, testified,

> Now, the 16-week cycle was developed specifically with the idea in mind of providing these RPTs not only with building-specific familiarization, but with also the basic—some of the basic skills they would need to have in order to operate on the floor, because when they came out of familiarization, they were available for any shift on the plant site, and had they just gone through a building-specific familiarization to familiarize them with a floor plan or how a building was laid out, I mean, that process could have probably taken two to three weeks, but they wouldn't have been able to do anything.
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> They would have had to have gone on a shift, and they wouldn't have been available, so they would have had to train on shift, and it made more sense for them, at least in our eyes when we wrote this program, it made more sense to provide them with some up-front kinds of things, and that is why the Exhibit X of this document has a variety of sign-off sheets in here where they learned basic kinds of skills, so that when they go on a shift, once they become available, that they are at least able to function.

Despite execution of the RPT progression program in August 1991, it was not implemented as written, with classroom training immediately provided to new RPTs; until the following January. Respondent admits that the reason for that delay had been that its own training personnel had been unable to begin providing the program's required classroom training before January. Since the classroom instruction did not commence until then, familiarization as contemplated by the program was delayed until late February or early March for the first group of RPT trainees and, of course, for other groups that followed. By that time, there was a backup of untrained RPTs because Respondent had begun expanding its complement of employees in that classification.

One additional problem surfaced. As pointed out above, familiarization had not been taking place during the spring of 1991. When the 1991 RPT progression program had been negotiated, the subcommittee and progression committee, as well as officials who reviewed the sufficiency of the program, had overlooked the limited familiarization provided to employees who had begun working as RPTs during and before that period. In consequence, although those RPTs had been familiarized with buildings in which they had been working, as had been the procedure under the 1989 progression program, they had not received the full array of familiarization as called for by exhibit X to the 1991 program. During the late winter or early spring of 1992 the Union discovered this absence of now-called-for familiarization and insisted that it be provided to those experienced, but not fully familiarized, RPTs.

That insistence generated a series of meetings from April to June. Subcommittee members for both sides participated. So too, at least at some meetings, did the Union's president, Dennis Wise, and vice president, Steve Cordova, as well as Gene Ideker, then serving sometimes as acting general manager for Respondent and sometimes as its assistant general manager; Lorenzo Ubias, then Respondent's manager of radiological engineering; and, Michael T. Sullivan, Respondent's director of radiation protection. Despite Respondent's officials' pleas for relief—concerning the RPT shortage arising from the Union's insistence that experienced but not fully familiarized RPTs be put through the full familiarization program called for by the 1991 RPT progression program—the Union insisted that the program be fully followed. Ultimately, as Ubias described it, ''Mr. Ideker said, Well, here is what we are going to do; we are going to put them all in the program, and we are going to complete it by October of 1992.''

That decision did not truly solve Respondent's problem. For, when the subcommittee issued lists of familiarization schedules for specific employees, Respondent's scheduler complained about the difficulty of having sufficient RPTs to perform needed work, given that an experienced RPT had to be assigned to each RPT trainee being familiarized. Such complaints led to additional meetings during which at least some union-designated subcommittee members agreed that Respondent confronted problems as a result of the format of familiarization specified in the 1991 RPT progression program. Nevertheless, the Union was unwilling to modify that portion of the program. Significantly, as described further in section IV, infra, Ubias and Sullivan admitted that, despite a less than satisfactory number of experienced RPTs, Respondent had been able to conduct required operations throughout this period and during succeeding months.

On July 14 General Manager James Zane and various other officials of Respondent convened a meeting with Wise and several other union officials. At that meeting, Zane explained that Respondent needed 12 RPTs to support upcoming cleanup and package work but had a problem because so many RPTs were then involved in familiarizing and be familiarized. Zane explained that the Independent Radiological Oversight Committee (IROC), described below, was scheduled to soon be at the Rocky Flats facility. He suggested that the Union's subcommittee meet with it to discuss problems of familiarization and possible solutions to them, such as reverting to the pre-August 1991 building-specific approach. Wise inquired how many RPTs were then undergoing familiarization. Del Forge replied that there were 50. Wise then asked how many would have by then completed familiarization had Respondent been following the program. Del Forge answered that 25 would have been through it. The meeting concluded with Wise saying that it appeared the problem was not with the program, but with Respondent's failure to follow it. He opposed any change, especially to a building-specific format that, Wise opined, had hindered RPT utilization.

IROC is an independent three-member committee that, pursuant to a contract with Respondent, periodically reviews Respondent's plant radiation protection program. According to Director of Radiation Protection Sullivan, IROC's function is strictly advisory. On July 16 and 17 that committee conducted its periodic review. Sullivan testified that at Zane's specific request, IROC reviewed the familiarization portion of the progression program for RPTs. In the report which followed that review, IROC stated, with reference to familiarization,

> At the request of senior site management, attention was focused on the RPT Progression Program. . . . Specifically, management asked IROC to review the Familiarization Program, the duration of Skill Objective verification and the need for multiple signatures for RPT performance verification. Based upon participation in commercial Naval Nuclear and DOE radiation protection programs, IROC offers the following recommendations:
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> 1. Familiarization Program
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> This portion of the progression program involves 16 weeks of assignment in four different areas during which operational support activities cannot be assigned except on an overtime basis.
>
> *Recommendation*:
>
> a. Significantly reduce the Familiarization Program as it now exists and provide area familiarization upon assignment to the area in consideration of potential emergency response. This will allow RPTs to be assigned duties as they become qualified and ensure that area familiarization is current with job assignment.

Based on that report, Respondent prepared an RPT progression program position paper, stating with regard to familiarization:

> [Respondent] has recently been evaluating the Radiation Protection Technologist (RPT) Progression Program. [Respondent] does not believe that the current Progression Program is working in the best interests of [Respondent] or the bargaining unit. An independent assessment of the program by Rocky Flats' Independent Radiological Oversight Committee (IROC) has recently confirmed this conclusion.
>
> The familiarization segment of the Program was identified as a particularly weak program element. IROC recommends that this program element be eliminated and be replaced with an area orientation upon reassignment from their current homebase. While the desirability of the familiarization program is questionable, the skill objectives portion is clearly desirable with modification.
>
> As a result, [Respondent] proposes to suspend the current familiarization portion of the progression program and to return the RPTs currently in familiarization to their permanent assignment buildings until the Union and [Respondent] arrive at a mutually acceptable change to the program which meets both groups' needs. During this period [Respondent] will emphasize the accomplishments of the skill objectives portion of the program.
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> In order to achieve timely resolution to the problems identified in the progression program, [Respondent] proposes to:
>
> (1) Immediately convene a task group of RPT Progression Committee Members.
>
> (2) Have the team restructure the Progression Program to incorporate IROC Recommendations.
>
> (3) Formalize and implement the modified program as soon as possible.
>
> (4) Structure a feedback system to monitor progress in the progression Program in meeting its objectives.
>
> (5) Immediately initiate actions to bring skill objectives signoffs up to date and to assure continued implementation and progress in the qualification program.
>
> [Respondent] proposes to work with the Progression Committee and with RPT Management to have completed the above tasks by August 29, 1992. [Respondent] is hopeful that the Union shares managements [sic] concern relative to the familiarization segment of the RPT progression program and will assist management in resolving this issue.

At a July 20 meeting with the Union's vice president, Cordova, accompanied by other union officials, Respondent presented this position paper.

After affording the union representatives time to read that position paper during the meeting, Sullivan then reviewed its contents, he testified, ''in hopes that could work out an agreeable arrangement to enable basically us to come to . . . an agreement that this was an appropriate way to do business.'' Consistent with that position paper, Sullivan suggested suspending familiarization as required by the 1991 RPT progression program and conducting a dialogue ''to make permanent fixes to the program.'' Cordova asked what would happen if the Union declined to do so. Sullivan replied that in all probability Respondent would implement the proposals. Cordova requested time to explain to Wise and James D. Kelly, staff representative of the Union's international body, what Sullivan had said, promising to get back to Respondent the next day with an answer.

Although Cordova never again contacted Respondent regarding the subject, Kelly did. It is undisputed that he spoke with Sullivan who confirmed what Cordova had reported being said during his meeting with Respondent's officials. Kelly protested that Respondent could not unilaterally take such action. However, Sullivan responded that suspension was a management prerogative and that Respondent would probably have to suspend familiarization, although it desired to discuss the subject with the Union. Kelly asked that Respondent put any such decision ''in writing'' to the Union and Sullivan agreed to do so.

Sullivan testified that, having heard nothing from Cordova, he met with General Manager Zane on July 21 and Zane accepted Sullivan's recommendation that the position paper's proposed terms be implemented. In consequence, familiarization as specified in the 1991 RPT progression program was suspended, participating RPT trainees were returned to their home areas, and Respondent admittedly resumed building-specific familiarization as it had been conducted before agreement to the terms of the 1991 program. By letter to Wise, Deputy Director Michael T. Davidson repeated essentially the message, including the five proposals, quoted above from the RPT progression program position paper. Thereafter, Respondent attempted to discuss familiarization with the Union, but the latter's officials, at Wise's direction, have declined to discuss any changes in the program prescribed in the 1991 RPT progression program. At no point has the Union consented to any modification of the Program's terms.

As a result, Respondent has simply continued familiarization under the building-specific procedure that had been followed prior to execution of that 1991 program.

IV. DISCUSSION

In a noncontractual setting the statutory bargaining obligation requires no more than that, prior to making changes in mandatory bargaining subjects, a party bargain to impasse or, at least, make a proposal to bargain about specified changes which is met by the other party's refusal to discuss that proposal within a reasonable time. However, as discussed at the commencement of section III, supra, once a term or condition of employment has been embodied in a collective-bargaining contract, changes in it cannot be made simply on the basis of an unresponded-to proposal for such changes. ''[S]ince the parties reached agreement . . . Respondent would not have satisfied its statutory obligations merely by affording the Union notice and an opportunity to bargain, rather than obtaining the Union's consent, prior to implementing changes.'' *Nestle Co*., 251 NLRB 1023 fn. 3 (1980). Consent of all parties must occur before contractual terms concerning terms and conditions of employment can be modified during the term of a collective-bargaining contract.

A contractual setting is the situation presented in the instant case. Article XIV, section 5 of the parties' contract specifically incorporates into the 1990–1993 collective-bargaining contract ''progression programs [ ] as may be mutually developed by [the parties] during the term of this Agreement.'' Accordingly, when the parties agreed to the terms for an RPT progression program, and executed a document embodying those terms in August 1991, those terms became no less a ''part of [their] Agreement'' than other terms that had been agreed on as a result of negotiations conducted in the spring of 1990. Thereafter, each party was free to propose and discuss modifications of the RPT progression program. ''Section 8(d) does not prohibit a party to a collective-bargaining agreement from proposing a midterm modification to that agreement, but rather provides that a party to a collective-bargaining agreement may not be compelled either to discuss such proposed changes or to agree to them.'' (Citation omitted.) *Bi-County Wholesale Beverage Distributors*, 291 NLRB 466, 469 (1988). Thus, for the reasons discussed at the beginning of section III, supra, a party is not free to implement such proposed changes without obtaining permission of the other party. Since Respondent admittedly reverted from the by-July contractually prescribed familiarization procedure to one followed before August 1991, and inasmuch as Respondent did so over the Union's continuing objections and without the Union's consent, it violated the statutory obligation to refrain from taking such action.

Seeking to avoid the conclusion that its conduct had violated the Act, Respondent has suggested an array of possible defenses, some rooted in its contract with the Union while others appeal to purportedly more general principles. At the outset, it should be pointed out that much of the testimony underlying those defenses seemed, as it was being advanced, simply contrived to conceal the true reason for Respondent's July decision and actions. That is, in the final analysis, by July Respondent's officials had become disenchanted with the by-then contractual familiarization process, because it was not living up to the expectations that the program's negotiators had hoped that it would, as described by Del Forge in his testimony quoted in section III, supra. Accordingly, Respondent decided to change to an administratively more convenient method of familiarization, and did so notwithstanding the Union's protests. Then, during the hearing, it scurried about in an effort to show at least some statutorily countenanced justification for what it had done in July.

First, Respondent appears to attack the contractual status of the 1991 RPT progression program, itself, by pointing out that it had been signed only by the subcommittee and progression committee members, not by members of the bargaining committee. However, it is not disputed that, before final agreement had been executed, the negotiators' product had been submitted to the parties for review and approval by higher authority in each.

At one point during the spring of 1991, the program's negotiators had believed that agreement on its terms had been reached and the Union's subcommittee designees had signed off on it, only to be overruled by higher authority within the Union and to be forced to retract their signatures. Respondent seems to attach some significance to that particular incident, as well as later instances where the subcommittee was not allowed to make final decisions concerning the RPTs' progression program. Apparently, Respondent contends that the subcommittee is in the best position to evaluate the actual success of specific progression programs and that the Union was interfering with expeditious operations of such programs by not allowing the subcommittee to exercise unfettered authority to make changes to it. Yet, expediency is not a predominant consideration under any system of jurisprudence and certainly not under the Act.

As a general proposition, subcommittees are not bodies which operate with absolute authority. Their decisions and actions are inherently subject to review and approval by the principals who appoint their members. No particularized evidence has been presented to show that Respondent and the Union contemplated greater authority being possessed by the subcommittee, nor by the progression committee, for RPTs. To the contrary, all who testified concerning the subject stated that the subcommittee has authority only to administer the program. Consequently, that higher authority in the Union reviewed and sometimes withheld approval of subcommittee actions does not somehow demonstrate that the Union acted obstinately nor, more significantly, in disregard of any statutory obligation.

In fact, those witnesses of Respondent asked about the subject freely admitted that the parties had reached agreement on an RPT progression program in August 1991. Not one of them claimed that agreement on that program had been somehow tainted by the fact that bargaining committee members had not actually executed the document embodying the terms of the 1991 RPT progression program. Accordingly, the evidence establishes that binding agreement had been reached on that program's terms.

Since that agreement concerns a progression program developed during the term of the 1990–1993 collective-bargaining contract, its terms became ''part of'' that contract pursuant to the above-quoted first sentence of the second paragraph of article XIV, section 5. In reality, Respondent never actually challenged the program's contractual incorporation effected by virtue of that sentence. Instead, it targets the following sentence—''Any changes or modification to these programs which are in conflict with the terms of this

[A]greement can only be made by mutual agreement of [Respondent] and the Union Bargaining Committee''—and, in essence, argues that such a limitation on the situs of authority for changes and modifications creates an unworkable situation. Of course, such an argument hardly serves as a defense to nonobservance of a provision to which Respondent agreed. If Respondent made a bad deal, it simply will have to wait until a succeeding contract is negotiated to correct it, at least absent the Union's consent to a midterm change.

In an apparent effort to fortify that argument, Respondent presented evidence regarding the limited negotiation which had occurred in connection with the addition in the 1990–1993 contract of article XIV, section 5's second sentence of the second paragraph. It is undisputed that it had been added at the Union's behest and that it reproduces a sentence appearing in past contractual apprenticeship program language. Yet, that evidence hardly supports a conclusion that the sentence means something other than it plainly states. Nor does it establish some type of qualification of the preceding sentence's incorporation language. Neither of those conclusions can be established either by the language of the second sentence nor by the negotiations leading to that sentence's addition to the 1990–1993 contract.

Manager of Labor Relations Robin L. Piers testified that the second paragraph's second sentence had been added without specification of ''what was being done or what was meant by adding that section.'' The notes of the negotiating session in which it had been proposed show no more than that the Union had sought its inclusion ''so that if there are disputes in the document, the contract rules.'' Thus, nothing in the circumstances of its negotiation shows that the second sentence had been intended as some form of qualification of the preceding sentence's plain statement of incorporation into the contract of progression programs agreed to during the contract's term.

In sum, the first sentence of article XIV, section 5's second paragraph expressly incorporates into the contract the terms of progression programs agreed on during the 1990–1993 contract's term. That plain expression is neither qualified nor altered by the following sentence's requirement of assent at the bargaining committee level for progression program changes or modifications that conflict with the contract's terms. More importantly, that second sentence does not rise to the level of a waiver of Respondent's statutory obligation to refrain from unconsented to changes in contractual terms. Whatever the level at which consent could be given for changes under that sentence's provision, Respondent admits that at no level—not at the subcommittee level, not at the progression committee level, not at the bargaining committee level—did the Union ever consent to suspension of the 1991 RPT progression program's familiarization provisions and to reversion to familiarization as previously provided. To be sure, Wise directed his subcommittee subordinates not to talk to Respondent about familiarization. However, as discussed above, that prohibition represented no more than a principal's normal exercise of inherent power to restrict the authority of its agents, at least absent a showing of contractual impropriety or lack of good faith. Neither has been shown in connection with Wise's direction to the Union's subordinates.

Respondent further argues, in connection both with apprenticeship programs, from which the language of the second sentence of article XIV, section 5's second paragraph had been appropriated, and with progression programs, that past practice had been to allow essentially scheduling changes to be made in those programs without prior action by the bargaining committee. However, Respondent's July total suspension of the contractually specified familiarization aspect of RPT training represents much more than a simple scheduling change. In July Respondent entirely erased a complete component of a training program. Moreover, by the time of that action Respondent had been the contractor at Rocky Flats for only 1-1/2 years. For the most part, past changes described by Respondent's witnesses had been ones made when Rockwell had been the contractor there and, further, had been made before negotiation and execution of the 1990–1993 contract. Regardless of the source of contractual language, Respondent is not at liberty to simply portage practice under different contracts with a different employer over to its own relationship with the Union and, without additional evidence showing the parties' intent to do so, persuasively assert that the use of the same language, of itself, naturally implies that the same practices are also transported. In any event, of itself, a party's past failure to protest unconsented to midterm modifications does not establish a waiver of its right to insist on observance of contractual provisions in the future.

Shifting within the borders of the 1990–1993 collective-bargaining contract and of the 1991 RPT progression program that it incorporates, Respondent next argues that it possessed a contractual management right to suspend familiarization as specified in the 1991 program. This portion of Respondent's testimony was the least convincingly advanced of that given by its witnesses. It appeared contrived to simply construct some sort of defense for its July midterm modification. Indeed, Piers seemed to be simply flinging out bits and pieces of various contract provisions in an almost desparate effort to provide a contractual basis for Respondent's July midterm modification. Yet, he admitted that he had been the official assigned to prepare Respondent's response to the charge. Significantly, he further admitted that at no point in that response had he advanced any contractual basis for Respondent's suspension of familiarization. Nevertheless, if the contract allowed Respondent to suspend familiarization, it cannot be deprived of a contractual right by its officials failure to appreciate that right existed at the time of taking action. Consequently, it is necessary to examine the contractual provisions advanced by Respondent as a waiver of the need to secure the union consent before modifying familiarization.

Piers pointed to phrases from four areas of the 1990–1993 contract which, he claimed, allowed Respondent to suspend familiarization, as prescribed by the 1991 progression program, without the Union's consent. First, he referred to article I, section 2, paragraph C, on page 2 of the contract. To be sure, that paragraph does specify a series of ''other rights and responsibilities belonging solely to'' Respondent, among which are ''the right to determine the nature and extent of the work and operations to be performed; . . . assign work; . . . decide the number and location of plant units; number, size and makeup of Departments and Groups; . . . the schedules.'' However, the operative word in that quoted portion of paragraph C is ''other.'' Paragraph B, which precedes it, pertains to ''the right to contract with outside independent con-

tractors'' and, then, paragraph C enumerates ''other rights and responsibilities belonging to'' Respondent. In short, as might be expected given their presence in the same contractual section, the two paragraphs must be read together.

They also must be read in the context of that section's paragraph A, which precedes both of them. It accords Respondent ''all rights, functions and authorities for the management of the Plant and the direction of the working force, *except as those rights are abridged by the terms of this Agreement*.'' (Emphasis added.) None of the provisions of the next two paragraphs, particularly paragraph C of article I, section 2, make specific mention of progression programs. Given that fact and the further fact that paragraph A contains a specific limitation on management rights, precluding their exercise to the extent they are ''abridged by the terms of this Agreement''—which, of course, by July included familiarization as provided in the 1991 RPT progression program, by virtue of article XIV, section 5, second paragraph—Respondent cannot rely on the generalized rights recited in paragraph C of article I, section 2 as contractual entitlement for its suspension of familiarization as prescribed in the 1991 RPT progression program.

Piers next specified, as an asserted contractual waiver, the language of article II, section 1, paragraph A on page 8 of the 1990–1993 contract. He testified that he regarded it as relevant to familiarization's suspension, ''Particularly to when it speaks to operating in the best interests of the efficient and safe operation of the plant.'' Yet, that paragraph, appearing under the subtitle ''Intent of Parties,'' states only in general terms, ''The Union and [Respondent] agree to work sincerely and wholeheartedly to the end that the provisions of the Agreement will be applied and interpreted fairly, conscientiously, and in the best interest of efficient and safe operation.''

Nothing in that generalized statement of the parties' intent can be fairly construed as conferring some sort of implied right for Respondent to modify, as it sees fit, all other specific contractual provisions ''in the best interests of the efficient and safe operation of the plant.'' Certainly, nothing in that paragraph specifically authorizes changes in progression programs. Indeed, in the end, Piers was reduced to explaining that suspending familiarization in July had been only ''in the spirit of working toward the efficient and safe operation of the plant.'' A waiver of particularized contract terms can hardly be bottomed on some sort of ''spirit'' of contractual management rights; such a waiver must be clearly and unambiguously set forth. So far as the record discloses, there was no intention by the parties to so interpret article II, section 1, paragraph A that Respondent would enjoy an unfettered license to change specific contractual provisions without the Union's consent.

The third contractual provision specified by Piers, as a supposed contractual waiver of the need for union consent to midterm modifications, appears in paragraph A of article II, section 4, on page 11 of the contract, which, testified Piers, ''speaks to work assignments applied with common sense and flexibility, in order to give proper consideration to the practical problem of production involved.'' According to Piers, ''we felt there was a legitimate business need to consider and address making some changes in the RPT progression program.'' However, the latter does not follow from the former. The contractual language referred to by Piers is part not of a management-rights provision, but of a provision for ''Work Assignment—Jurisdiction.'' It has nothing to do with changes in progression programs. Rather, as stated in the first sentence of the paragraph referred to by Piers, it pertains to Respondent's ''right to assign work . . . giv[ing] careful consideration to the assignment of work to the appropriate classification.'' It is in that context that the provision continues by allowing for application of ''common sense and flexibility in order to give proper consideration to the practical problem of production involved'' and to an agreement by the parties ''to apply a rule of reason, consistent with the above, in connection with *work assignment disputes* under this Agreement.'' (Emphasis added.)

The complete inapplicability of article II, section 4 to Respondent's total suspension of familiarization as prescribed by the 1991 RPT progression program is shown by paragraph B of article II, section 4: ''In accordance with the above, the parties agree that employees may be required to perform some work incidental and related in time and place to their regularly assigned duties for a reasonable period of the time (which does not exceed one hour) in an 8-hour period.'' Obviously, Respondent's ongoing suspension of the 1991 program's familiarization requirements has long exceeded the allowance of that provision.

Respondent's final asserted contractual management right to suspend familiarization under the program appears in the Radiation Protection Technologist Assignment Areas letter of understanding, on page 109 of the 1990–1993 contract, to the extent relevant, it recites:

> It is understood that *temporary assignment* between locations may be made by [Respondent] on the basis of need and *at the conclusion of such assignment the employee will be returned to his former location*. It is further understood that a balance of experienced and inexperienced people must be maintained within each location. Therefore, moves *after posting* may be delayed or *temporary assignments* made *for training purposes*. [Emphasis added.]

Piers testified that the last sentence provides ''some area of latitude relative to the timing of those moves,'' as well as to whether moves are to be made at all. Although that appears to be what is permitted in certain limited situations, complete suspension of contractually specified familiarization goes well beyond what the language of that letter of understanding contemplates.

As the underscored portions demonstrate, the letter of understanding allows only ''temporary assignments.'' Concededly, after suspending the 1991 RPT progression program's familiarization procedure, Respondent never resumed honoring that procedure and never ''returned [the RPT-trainees] to [their] former location[s]'' where they were being familiarized in July, at the time that Respondent reassigned them to their home areas. Moreover, Respondent adduced no evidence of any posting for RPT vacancies having occurred prior to suspension of contractually prescribed familiarization to late July. Yet, the overall subject of the letter of understanding, read in its entirety, is that of filling RPT vacancies: ''Radiation Protection Technologist vacancies will be filled by posting the location and shift of the available position.'' In fact, Respondent's July concern had not been with vacan-

cies in the position of RPT. Rather, those positions were populated, but not with sufficient experienced RPTs to make assignment of RPTs convenient for Respondent's personnel. In sum, while the letter of understanding appears to provide some assignment relief to Respondent when there are vacancies for RPTs, it is not so broadly worded as to permit total revision of a contractually prescribed component of RPT training.

Moving from the 1990–1993 contract's terms to those of the 1991 RPT progression program, itself, Respondent's witnesses claimed that two provisions of the latter's section I allow total suspension of its familiarization provisions, The first is paragraph B on page 5: ''EVERY ATTEMPT SHALL BE MADE BY ALL PARTIES TO UTILIZE TRAINEES IN AREAS SPECIFICALLY RELATED TO THE SCOPE OF WORK IDENTIFIED IN THIS DOCUMENT.'' Piers claimed that this provision permitted Respondent to determine how and where trainees would be utilized. Yet, nothing in paragraph B appears to allow that utilization to be pursued to the point where other provisions of the program are abrogated. Indeed, Director of Radiation Protection Sullivan acknowledged that paragraph B did not specifically say that it conferred a prerogative on management and conceded that it ''indicates to me that you attempt to utilize them in the way that is laid out in the document.''

Emergency Planner Del Forge testified that paragraph B's language had been inserted at his insistence to prevent RPTs from being assigned to work that was not encompassed by the normal duties of their job classification. For example, during a prior year, RPTs awaiting training had been assigned janitorial work. That had been the type of assignment that Del Forge had been trying to prevent by insisting on inclusion of what has become paragraph B's language. Obviously, that has no application whatsoever to the act of suspending the 16-week familiarization program prescribed in the 1991 program for RPT trainees.

Equally inapplicable is paragraph K of section I, on page 7 of the 1991 RPT progression program: ''AS NEW AREAS OF ASSIGNMENT OR TRAINING REQUIREMENTS ARE IDENTIFIED, CHANGES IN THE TRAINING SCHEDULE MAY BE NECESSARY.'' Respondent has identified neither new areas nor new training requirements that arose after August of 1991. Moreover, as Sullivan admitted, paragraph K does not include language that accords a prerogative to Respondent. In fact, Del Forge frankly admitted that he did not know what authority Respondent would have to make changes under that paragraph. In short, the record is devoid of evidence of an understanding by the parties that would have allowed Respondent to suspend the 1991 program's familiarization procedure based on either paragraphs B or K.

In the final analysis, the testimony of Sullivan and of Deputy Director of Labor Relations Michael T. Davidson show that Respondent simply had been unconcerned with specific contract provisions when modification of familiarization had been decided on and implemented in July. Although conceding that *complete elimination* of that program would probably not be a management prerogative. Sullivan nonetheless asserted that *suspension* of it would be an inherent prerogative of the flexibility needed by management to run a business. Of course, the suspension has become so prolonged as to effectively constitute elimination of familiarization prescribed by the 1991 RPT progression program. And, in fact, Sullivan continued to assert that even had the Union negotiated regarding changes to that familiarization procedure, but had no agreement for change been concluded, then he believed it would be his prerogative to make the changes anyway. Similarly, Davidson flatly asserted that familiarization was not a term and condition of Respondent's contract with the Union and, accordingly, modification to its terms could be effected by Respondent as it willed. In short, contractual entitlement had simply not been a factor in Respondent's July decision to ignore the Union and suspend familiarization as required by the 1991 program's terms.

Occasionally, some of Respondent's witnesses referred to its July and post-July efforts to discuss modifying familiarization as a contract reopening, or as an effort to reopen it. Lest there be any question, it should be understood that neither the 1991 RPT progression program nor the 1990–1993 contract into which it has become incorporated, by virtue of the contract's article XIV, section 5, provides for midterm reopening to negotiate about modification of such matters as RPT familiarization. Consequently, this is not a case presenting a reopener clause. ''Reopener clauses are contractual agreements to renegotiate certain items at a later date.'' *Lear Siegler Inc. v. NLRB*, 890 F.2d 1573, 1574 fn. 1 (10th Cir. 1989). ''The fact that the Unions agreed to discuss the Respondent's proposed modifications and offered counterproposals does not signify that the Unions agreed to reopen the contract.'' *Mack Trucks*, 294 NLRB 864, 865 (1989). Accord: *Bi-County Wholesale Beverage Distributors*, supra, and cases cited therein. Accordingly, the principles developed for negotiating pursuant to reopening provisions are not applicable to the facts presented in the instant case.

Having failed to demonstrate that the collective-bargaining contract or its incorporated RPT progression program allowed it to suspend familiarization as prescribed in the latter, Respondent next points to purported failure by the Union, itself, to honor the program's provisions on particular occasions. At the outset, the Act does not usually countenance such a ''if I'm one, you once were too'' defense as being a valid one. If there were prior unconsented to midterm modifications by the Union, Respondent's remedy was to file a charge because of them, not to proceed vigilante-like to later make its own modifications. Furthermore, whatever possible modifications the evidence shows had occurred before July were not ones that obliterated an entire portion of the progression program executed for RPTs in August 1991. Nor, were they ones that rendered the program completely inoperable. Rather, the program continued to be operative in July. Consequently, neither party was free to unilaterally disregard its terms, particularly ones pertaining to familiarization, because of some purported past nonobservance of one or more of its other terms.

The weakness of this defense, in general, is illustrated by an event which Respondent seems to try to elevate to a prominent position. As described in section III, supra, Respondent had been unable to provide the classroom instruction mandated by the program until January. Some subcommittee members, apparently from both sides, decided that it would be a fine idea to save some overall training time by, during the pre-January period, conducting partial familiarization of some RPT trainees. Of course, such action reversed the training order specified by the 1991 RPT progression program and, at a level or levels higher that the sub-

committee, the Union objected to it. In fact, Wise went so far as to direct subordinates to pick up RPT trainees' books in which sheets for various skills learned by trainees were being signed off under the ad hoc familiarization process.

Obviously, Wise's direction was an act of self-help displaying a certain bravado. But, it was not one that effected a change in RPT progression training. To the contrary, it prevented a practice from being developed of, in effect, familiarizing RPTs before they received classroom instruction. And, of course, it occurred because of Respondent's own noncompliance with the program's specification of immediate classroom instruction for RPTs. Indeed, at some points it appeared as if Respondent's witnesses were relying on that disregard by Respondent to evidence a practice of noncompliance with the program's schedule of training for RPTs—reliance not dissimilar from a plea of orphancy by a child who has murdered his own parents. To be sure, the delay in initiating classroom instruction had been caused by the unpreparedness of Respondent's training personnel. However, intrainstitutional difficulties are not a satisfactory defense to failure to honor a contract. In any event, absent a showing, not present here, that they effectively nullified the entire agreement of the parties, unrelated past nonobservance or modification of some contract terms hardly gives rise to entitlement to thereafter ignore its terms whenever it suits a party to do so.

In addition to its contentions relating directly to the collective-bargaining contract and its incorporated 1991 RPT progression program, Respondent advances certain more generally based arguments. First, while not disputing that employee training is a term or condition of employment within the meaning of Section 8(d) of the Act—especially where, as here, it directly affects workplace and employee safety—Respondent argues that a ''temporary suspension [is not] a mandatory subject of bargaining.'' Whatever the merit of whether or not ''suspension'' as a subject is one, ''suspension'' as a verb clearly is encompassed by an employer's bargaining obligation when it is applied, as here, to a mandatory bargaining subject. The mandatory subject here is an aspect of employee safety training. Suspension is the action which Respondent took with regard to it. That worked a change in employment terms no less than would a suspension of contractual bonuses or holidays for employees. With respect to each of these employment terms, suspension of thier implementation would operate as a modification: ''a change which has a continuing impact on a basic term or condition of employment.'' *C & S Industries*, 158 NLRB 454, 458 (1966).

As to the related contention that the suspension had been only a temporary one, the fact is that it has continued since July and, accordingly, can hardly be characterized as temporary, under the broadest definition of that term. Even if Respondent truly had intended in July for it to be of only temporary duration, a temporary suspension of an employment term is ''more than a de minimus failure to adhere to contractually mandated terms and conditions of employment.'' *Zimmerman Painting & Decorating*, 302 NLRB 856, 857 (1991).

In fact, the record refutes any argument that, in July, Respondent had intended suspension of familiarization, as specified in the 1991 RPT progression program, to be merely temporary. To the contrary, it intended to suspend that contractual training phase until a replacement procedure for it could be negotiated. Its own progression program position paper, quoted in section III, supra, makes that quite plain: ''As a result, [Respondent] proposes to suspend the current familiarization portion of the Progression Program . . . until the Union and [Respondent] arrive at a mutually acceptable change to the program.'' In short, Respondent had no intention of resuming familiarization in its by-then contractually prescribed form.

That was made even more plain by Respondent's own witnesses. For example, asked if familiarization's suspension had been intended as a 5-week measure or had been intended to last until the Union agreed to make it permanent, Manager of Labor Relations Piers answered:

> And that really gets down to the heart of the matter, doesn't it? I don't think the issue was, will they agree to this or will they agree to that. I think the issue was, Hey, can we sit down and have some dialogue, have some discussion, have some problem-solving relative to the progression program.

Asked if that dialogue would include agreement by the Union to perpetuation of familiarization's suspension during it, Piers replied, ''I must say that I think there were other ways that it could have been done, and with some meaningful dialogue on both sides, I think there were some other alternatives.'' That Respondent did not contemplate resuming familiarization as contractually provided was made even more plain by Director of Radiation Protection Sullivan:

> The details on what would constitute reimplementation of the familiarization program was not clear at that time. . . . if the need for RPTs had dropped off completely, we might very well ha[ve] reinstated that program. . . . the intent was rather to discuss with the [U]nion and arrive at a mutually acceptable solution to what we felt like were issues in the progression program and the familiarization portion of the program in particular.

What emerges from the evidence is that Respondent wanted to renegotiate familiarization procedures then contractually existing. As was its statutory right, the Union declined to do so. As a result, Respondent unilaterally suspended familiarization procedures under the 1991 RPT progression program and returned to the pre-August 1991 building-specific format. Thereafter, Respondent refused to resume contractual familiarization until the Union agreed to negotiate about changing its provisions, a course that Respondent had already determined that it regarded as necessary. In sum there was nothing temporary about what Respondent did in July. Its conduct then had been but part of an overall intention to compel renegotiation of a contract's term despite the objections of the Union. Under the principles set forth at the beginning of section III, supra, such conduct violates the obligation to refrain from midterm modifications absent consent of all parties.

Third, Respondent argues that the nature of operations at Rocky Flats had changed over the years as production had been steadily cut back and, ultimately, terminated in January of 1992. Thus, Respondent further argues, there had been ''a basic change in the fundamental direction of the firm'' that

left Respondent ''free to act independently and only bargain about the effects of it decision'' under the doctrine *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). The problem with that argument is that it simply is inapplicable to a situation such as the one presented in the instant case.

While production ceased at Rocky Flats, those of Respondent's witnesses questioned about the subject conceded that Respondent had continued conducting operations there and, further, that RPTs had continued to be employed in connection with those continued operations. In fact, Respondent increased its RPT complement during the spring. Further, it is undisputed that RPTs' duties had remained essentially the same after August 1991 as they had been prior to execution of the progression program for them. In sum, at no point has Respondent shown with any degree of particularity that cessation of production at Rocky Flats, standing alone, had any meaningful effect on either the continued employment of RPTs there or on the nature of their duties. In these circumstances, the doctrine of *First National Maintenance Corp*. is inapplicable to Respondent's situation and does not allow the suspension of familiarization as prescribed by the 1991 RPT progression program.

Fourth, Respondent argues that its July and post-July conduct regarding familiarization had not been undertaken in bad faith. Although that argument is subject to factual dispute, given Respondent's cavalier approach to its statutory obligation to refrain from unconsented-to midterm contractual modifications, the fact is that Respondent's state of mind is not a relevant consideration to the statutory violations alleged here. ''In situations involving a unilateral change in contractually established terms and conditions of employment, good or bad faith is not a relevant consideration.'' (Citation omitted.) *Sturdevant Sheet Metal Co. v. NLRB*, 636 F.2d 271, 275 (10th Cir. 1980).

Finally, based on the inherently dangerous operations conducted at Rocky Flats, Respondent makes a sometimes emotion-laden argument that, in essence, safety concerns had necessitated modification of familiarization as prescribed in the 1991 RPT progression program. No one can deny the particular validity of safety concerns there. However, in section III, supra, I have reproduced that portion of the July IROC report which pertains to familiarization. As can be seen by reading it, nothing in that report mentions safety considerations as a basis for the report's criticism of familiarization as then being conducted by Respondent. In that same section, I also have reproduced in full the text of Respondent's own RPT progression program position paper. Although that document refers to contractual familiarization as ''a particularly weak program element'' and as one not ''working in the best interests of [Respondent] or the bargaining unit,'' one searches the report in vain for even a mention of possible safety problems posed by familiarization under the 1991 RPT progression program.

Nor is any particularized risk to safety disclosed by the testimony of Respondent's witnesses. To be sure, by the spring Respondent had begun to experience problems because so many RPT trainees were being familiarized and so many experienced RPTs were familiarizing them. Yet, it should not be overlooked, as Wise inferentially pointed out during his July 14 meeting with Zane, described in section III, supra, that Respondent's own failure to promptly follow the program, by delaying commencement of classroom instruction until January, had contributed to the delay in completing training of some new RPTs and, concomitantly, to the midyear shortage of experienced RPTs.

It also should not be overlooked that, so far as the record discloses, the summer shortage of experienced RPTs did not appear to be a lasting problem. As new RPTs, and experienced but unfamiliarized RPTs, completed familiarization, the shortfall would abate, as least so far as Respondent's evidence shows. Consequently, even a truly temporary shortage could have been corrected by measures less drastic than complete and permanent obliteration of familiarization as contractually prescribed in the 1991 RPT progression program.

I advisedly use the word ''truly'' in the immediately preceding sentence. For, as pointed out in section III, supra, Ubias, who managed radiological operations throughout the summer, and Sullivan, the director of radiological operations, gave testimony that undermines any argument that risks to safety necessitated the July midterm modification. Thus, Respondent's witnesses agreed that, used prudently, overtime had been one means by which RPT shortages had been alleviated historically at Rocky Flats. Asked, with reference to the summer situation, ''Could you, with overtime, do the job of having sufficient personnel to meet your safety envelopes [the minimum number of RPTs to assure safe operations] with so many involved in the familiarization program or off for other reasons [sick or vacation leave],'' Ubias conceded, ''Barely, yes.'' Similarly, asked if there had been ''enough people to make sure that the safety envelopes were actually safety envelopes,'' Sullivan admitted, ''Yes, sir.'' Apparently appreciating the significance of that answer, Sullivan seemed to then try to mitigate its impact in his subsequent testimony. However, in the end, he never withdrew his admission.

In sum, the record simply does not support Respondent's argument that it had available so few experienced RPTs in the summer that danger to personnel and the environment justified discontinuance of contractually prescribed familiarization. Instead, its true motivation appears to have been shown by the various complaints about the program's familiarization procedures voiced by Respondent's witnesses: that it caused extra expense, that it was inconvenient to administer, that many of exhibit X's skill factors were no longer utilized, that the 1991 negotiated familiarization format had proven simply not as effective as its negotiators had anticipated. However, those are the types of problems that can arise under any contract. They should be addressed when a contract is negotiated to succeed the 1990–1993 one. They do not warrant unconsented-to midterm modifications of an existing contract.

CONCLUSION OF LAW

E.G. & G. Rocky Flats, Inc. has committed unfair labor practices affecting commerce by suspending familiarization as prescribed in its 1991 RPT progression program, incorporated into its 1990–1993 collective-bargaining contract, without the consent of United Steelworkers of America, Local Union 8031, AFL–CIO–CLC—the representative of employees in an appropriate bargaining unit of all hourly paid production and maintenance employees and including crewleaders employed by E.G. & G. Rocky Flats, Inc., at the Department of Energy Rocky Flats Plant, but excluding all salaried personnel, office clerical employees, guards,

watchmen, professional personnel, and supervisors as defined in the Act—and by thereafter conducting familiarization in a different manner, refusing to continue implementing it in the manner required by the 1990–1993 contract between the parties.

REMEDY

Having concluded that E.G. & G. Rocky Flats, Inc. has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and, further, that it be ordered to take certain affirmative action to effectuate the policies of the Act. With respect to the latter, while the parties represented that there has been no loss of pay by RPTs, it shall be ordered to restore familiarization as prescribed by the 1991 RPT progression program and to apply them to all RPTs who have not been permitted to participate in familiarization as specified by that program.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, E.G. & G. Rocky Flats, Inc., Golden, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Modifying familiarization procedures as prescribed by the 1991 RPT progression program, or any other contractual term or condition of employment of employees in the appropriate bargaining unit described below, during the term of a collective-bargaining contract with and without first obtaining the consent of, United Steelworkers of America, Local Union 8031, AFL–CIO–CLC. The appropriate bargaining unit is:

> All hourly paid production and maintenance employees and including crewleaders employed by E.G. & G. Rocky Flats, Inc. at the Department of Energy Rocky Flats plant, but excluding all salaried personnel, office clerical employees, guards, watchmen, professional personnel, and supervisors as defined in the Act.

(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) Restore and observe familiarization as prescribed by the 1991 progression program.

(b) Apply the procedures for familiarization as prescribed by the 1991 RPT progression program to all RPTs who have not been permitted to participate in familiarization as specified by that program.

(c) Post at its Golden, Colorado office and place of business copies of the attached notice marked ''Appendix.''[3] Copies of that notice, on forms provided by the Regional Director for Region 27, after being signed by its authorized representative, shall be posted by the Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter 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.

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

[2] 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.

[3] 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 modify familiarization procedures as prescribed by the 1991 RPT progression program, nor modify any other contractual terms or conditions of employment of employees in the appropriate bargaining unit described below during the term of a collective-bargaining contract with and without first obtaining the consent of United Steelworkers of America, Local Union 8031, AFL–CIO–CLC. The appropriate bargaining unit is:

> All hourly paid production and maintenance employees and including crewleaders employed by E.G. & G. Rocky Flats, Inc. at the Department of Energy Rocky Flats plant, but excluding all salaried personnel, office clerical employees, guards, watchmen, professional personnel, and supervisors as defined in the Act.

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 restore and observe familiarization as prescribed by the 1991 RPT progression program.

WE WILL apply the procedures for familiarization as prescribed by the 1991 RPT progression program to all RPTs who have not been permitted to participate in familiarization as specified by that program.

E.G. & G. ROCKY FLATS, INC.