AlliedSignal Aerospace, a Division of Allied Signal, Inc. *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, Local 376 *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, Local 1010. Cases 34–CA–7898–2 and 34–CA–7905

April 12, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On November 30, 1998, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Parties filed briefs answering the Respondent's exceptions, and the Respondent filed a brief in reply to their answering briefs. In addition, the Council on Labor Law Equality filed a brief as amicus curiae in support of the Respondent's exceptions.

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, findings,[1] and conclusions and to adopt the recommended Order.

Our dissenting colleague misperceives the essential issue in this case. The issue is whether the Respondent was obligated under Section 8(d) of the National Labor Relations Act to maintain existing conditions concerning severance benefits after the expiration of the Effects Bargaining Agreement, not whether the Respondent had an enforceable contractual obligation. As the judge thoroughly explained, the Respondent did have such a maintenance-of-status-quo obligation under Section 8(d). This reflects black-letter labor law which has been established in Board and court precedent for decades. See, for example, *Litton Business Systems, Inc. v. NLRB,* 501 U.S. 190, 198 (1991), citing *Laborers Health & Welfare Trust Fund v. Advanced Lightweight Concrete Co*., 484 U.S. 539, 544 fn. 6 (1988); *St. Agnes Medical Center v. NLRB,* 871 F.2d 137, 145 (D.C. Cir. 1989). The "contract coverage" theory on which our colleague relies is thus entirely inapposite.

Whatever the scope of the Respondent's obligation as a matter of contract, there is no basis for finding that the Union waived its right to continuance of the status quo as to terms and conditions of employment after contract expiration. Indeed, there is absolutely no evidence that the Respondent and the Union, as negotiating parties in 1994, even considered the question of the Respondent's *statutory* obligation to maintain existing severance benefits after the expiration of the agreement in 1997. As the judge correctly explained, the "Duration Clause" on which our colleague relies simply makes clear that the agreement as a whole may not be automatically renewed or extended unless the parties agree to that in writing. It does not mean that all terms and conditions of employment previously set by the contract became subject to unilateral action by the Respondent upon contract expiration. Similarly, the last sentence of the clause referring to "bonuses or other benefits" simply specifies the contractually enforceable rights to payments of benefits accruing during the term of the contract. It does not give the Respondent the right to terminate unilaterally the contractually established practice of paying them.

On the basis of the record and the above-stated legal principles, we adopt the judge's conclusion that the Respondent unlawfully refused to bargain in good faith when it unilaterally extinguished severance benefits as soon as the contract expired.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, AlliedSignal Aerospace, a Division of Allied Signal, Inc., Morristown, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

MEMBER HURTGEN, dissenting.

My colleagues conclude that the Respondent violated Section 8(a)(5) by failing to pay severance benefits after the expiration date of the Effects Bargaining Agreement (EBA). I disagree. In my view, the EBA covered the issue of the duration of severance benefits. The EBA, reasonably construed, provided that entitlement to such benefits would end upon the expiration of the EBA. Consistent with the principles of collective bargaining, I would give effect to this mutual intention of the parties. Thus, the Respondent was under no obligation to pay severance benefits accruing after the expiration of the EBA.

In brief, the facts are as follows: The Respondent and the Unions entered into an Effects Bargaining Agreement in 1994. It contained an expiration date of June 6, 1997. The EBA was incorporated into a collective-bargaining agreement which contained the same expiration date. The Respondent paid severance benefits to employees

[1] The Respondent has 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.

In adopting the judge's finding that the severance benefits were a term and condition of employment, we also note that severance benefits were not, as the Respondent contends, a "one-time," stand-alone benefit, for art. XXIII of the parties' 1994–1997 collective-bargaining agreement explicitly incorporates the Effects Bargaining Agreement as a supplement to the collective-bargaining agreement.

who were laid off during the life of the 3-year contract. On May 29, 1997, the Respondent announced that severance benefits would not be paid for layoffs occurring after the expiration date of June 6. A plant closure occurred after that date, and employees were laid off. The Respondent did not pay severance benefits to these employees.

As discussed above, the EBA contained a clause that covered the issue of the duration of the EBA. Indeed, the clause was called the "Duration Clause." That clause provided as follows:

> This Effects Bargaining Agreement shall be effective as of May 30, 1994, and shall remain in effect until midnight on June 6, 1997, but not thereafter unless renewed or extended in writing by the parties. It is understood that expiration of this Agreement shall not foreclose the post-expiration payment to employees of bonuses or other benefits which accrued to them because of layoff during the term of this agreement, or the post-expiration presentation in a timely fashion of claims regarding matters arising out of the application of its terms prior to the expiration date.

As I have explained elsewhere, I agree with the D.C. Circuit that a "contract coverage" analysis is appropriate where, as here, the contract covers the issue involved.[1] Where the parties have bargained about a subject, and have reached an accord, I believe that the Board should give effect to that accord. That approach is consistent with the goals of collective bargaining. The goal of such bargaining is to reach an agreement and to honor the terms of that agreement.

In the instant case, the EBA provided that it would end on June 6, 1997, unless renewed or extended in writing by the parties. There was no such renewal or extension. Therefore, the EBA expired on June 6, 1997.[2]

The last sentence of the Duration Clause adds further support to my view. The sentence has two parts. The first part was intended to deal with a situation where the layoff occurs during the term of the EBA, but the employee's 12-month waiting period (for severance benefits) has not been completed by the time of the expiration of the EBA. In those circumstances, the employee could collect severance benefits upon completion of the 12-month period. Thus, the provision deals with a layoff that occurs *during the life of the EBA*.

Similarly, the second part of the sentence also deals with layoffs occurring during the life of the EBA. Under this provision, the fact that the EBA has expired does not preclude the presentation of a union claim concerning a layoff occurring *during the life of the EBA*.

The administrative law judge does not quarrel with this contractual analysis. Rather, he refused to apply a contractual analysis. Instead, he applied a "waiver" analysis and reached a different result. That is, he concluded that the Unions did not clearly and unmistakably waive their statutory right to continue, postcontract, the employment condition of severance benefits. As I have explained elsewhere, this case (and others like it) are not about "waiver" of a right to bargain. Where the contract covers the issue, the parties *have bargained* about the issue. The Board's task is to ascertain the contractual intent of the parties and to give effect to it.

Contrary to the suggestion of my colleagues, I understand the "black-letter labor law" principle that most terms and conditions of employment continue as a matter of statutory law after the expiration of the contract. However, as discussed above, it is also clear that parties can mutually agree to the contrary, i.e., they agree that one or more terms and conditions will end upon the expiration of the contract. It is the Board's duty to give effect to such mutual intention. As discussed herein, I conclude that the parties herein intended that severance benefits would end upon the expiration of the contract. My colleagues are of a contrary view. It is this difference, rather than a misunderstanding of black-letter law, that separates our positions.

In sum, the EBA here concerned severance benefits for layoffs occurring during the life of the contract. The Respondent was privileged to deny severance benefits with respect to layoffs occurring after the expiration of the EBA.

Thomas E. Quiqley, Esq., for the General Counsel.
Charles P. O'Conner, Esq. and *John Ring, Esq.,* of Washington, D.C., for the Respondent.
Thomas Meiklejohn, Esq., of Hartford, Connecticut, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Hartford, Connecticut, on October 6 and 7, 1998. The charge in Case 34–CA–7898–2 was filed by International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, Local 376[1] on June 11, 1997,[2] and the charge in Case 34–CA–7905 was filed by International Union United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, Local 1010[3] on June 16, 1997. On May 27, 1998, the Regional Director for Region 34 issued a final order consolidating cases, consolidated complaint and notice of hearing. Respondent filed a timely answer admitting most of the factual allegations of the complaint, including jurisdiction.

[1] See my dissent in *Dorsey Trailers, Inc.,* 327 NLRB 835 (1999).

[2] By contrast, the collective-bargaining agreement provided that it would automatically renew itself on June 6, 1997, unless there was notice given 60 days prior thereto. Thus, the parties knew the difference in duration provisions, and chose to have the EBA expire on June 6, 1997, absent agreement to renew or extend.

[1] Hereinafter referred to as Local 376.

[2] All dates are in 1994 unless otherwise indicated.

[3] Hereinafter referred to as Local 1010.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel,[4] the Charging Parties, and the Respondent on or about November 13, 1998, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Delaware corporation, has at all times material to this proceeding, maintained its corporate office and principal place of business in Morristown, New Jersey, and a production facility in Stratford, Connecticut, where it manufactured engines and related products. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW and the two Local Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background and Issues for Determination

In late 1993, Respondent began to actively consider purchasing the business of Textron Lycoming Division of Textron, Inc. (Textron) located in Stratford, Connecticut. The Stratford facility is commonly known in the defense industry as the Stratford Army Engine Plant or (SAEP). For many years, the plant's primary products were helicopter and tank engines for the Armed Services. Two units of Textron's employees were represented by the involved Unions, Locals 376 and 1010.[5] As will be detailed below, Respondent, through the offices of Textron officials, participated in 1994 negotiations for new collective-bargaining agreements to replace the ones expiring on May 30. Because Local 1010 represented a much larger group of employees, historically, bargaining with that Local occurred first, with bargaining over issues unique to Local 376 occurring later. Contracts with both Locals were reached on July 19, and made retroactive to May 30. These contracts were adopted by Respondent upon the effective date of its purchase of Textron, October 28. In a separately negotiated documents (the Effects Bargaining Agreements), Respondent agreed to provide certain benefits, including severance pay, to its represented employees. The complaint alleges that Respondent, in violation of Section 8(a)(1) and (5) of the Act, ceased providing benefits pursuant to the Effects Bargaining Agreements on June 6, 1997. Respondent admits that it ceased providing such benefits, but contends that the Effects Bargaining Agreements terminated on June 6, 1997, and that its duties under that Agreement ceased as of that date. Thus, the issue for determination is whether the Respondent's obligations under the Effects Bargaining Agreements terminated on June 6, 1997, or whether such obligations continued past that date.

[4] In addition to a brief, the General Counsel has also filed a four-page Motion to Correct Transcript, dated November 12, 1998. This motion is granted.

[5] Local 376 represents a unit of Respondent's office clerical and technical employees and Local 1010 represents a much larger unit of Respondent's production and maintenance and plant clerical employees at the Stratford facility.

B. The Facts Related to the Creation of the Effects Bargaining Agreements

1. Events leading to negotiations over the Effects Bargaining Agreements

Testimony concerning the Effects Bargaining Agreements was given by Ed Bocik, AlliedSignal's vice president for Labor Relations and by David Kelly, Local 1010's vice president and then president during all times material to this discussion.[6] Bocik testified that in late 1993 and early 1994, Respondent began considering acquiring Textron, including its facilities in Stratford, Connecticut; Greer, South Carolina; and Luton, England. The Stratford plant is owned by the U.S. Army and Textron operated in the facility under an agreement with the Army. It produced tank, helicopter, and a marine engines. In preparation for the purchase of Textron, Bocik met in Chicago in January 1994 with other members of Respondent's management and Textron's human resources vice president, George Metzger, to discuss the labor relations aspects of the acquisition. Another such meeting was held in Seattle, Washington, in February. Later that year, it would be necessary for Textron to negotiate new collective-bargaining agreements with the two Locals to replace the ones expiring on May 30, 1994. In this regard, Respondent and Textron agreed at the Seattle meeting that Textron would have to negotiate a collective-bargaining agreement satisfactory to Respondent before Respondent would finalize the purchase of Textron. This condition was included in a 13-page memorandum of understanding that the parties executed.

Additionally, at the Seattle meeting, the parties discussed a number of labor issues including economics, wages, pensions, healthcare cost management, and severance. They also set up a meeting in Detroit with officials of the UAW. This meeting was held on March 10, 1994, and it was attended, inter alia, by Brad Marshall, a Connecticut representative of the UAW and Caroline Forrest, a UAW vice president who was in charge of its AlliedSignal department. The meeting was requested by the UAW, which had learned of Respondent's interest in purchasing Textron. Respondent has a long bargaining relationship with the UAW at some other of its facilities. At this meeting, the UAW inquired if Respondent's intention was to close the Stratford facility. Bocik informed her that there were no guarantees, that the Respondent would have to assess what the future could be for the business and whether it could be competitive in the facility. He noted that Respondent would not be bargaining directly in the upcoming contract negotiations, but would assume the contracts if they were competitive.

In its labor relations meetings with Textron prior to the start of bargaining, the matter of severance pay for Stratford employees who were permanently laid off as a result of the purchase was discussed. Bocik testified that he told Metzger that AlliedSignal had a policy of not paying severance to employees laid off because of work relocation. In this regard, he noted a facility operated by Respondent that involved employees represented by the UAW. At this facility, employees laid off because of work relocation were not given severance pay. On the other hand, Respondent had in the past provided severance pay in exchange for waiver of any further liability from impacted un-

[6] Kelly was an officer in Local 1010 from 1962 until he was permanently laid off from Respondent on July 31, 1998, and retired. He participated in all negotiations between Local 1010 and Textron, its predecessors and it successor, AlliedSignal from 1973 to the date of his layoff.

ions or employees when it permanently closed a facility. Metzger however, identified severance as one of the key issues in the upcoming negotiations. Metzger suggested an approach to severance pay he termed "declining balance severance pay." Under this concept, full severance pay would be offered at the beginning of the contract and then steadily decline on a monthly basis until nothing was offered at the end of the contract term. Bocik agreed that Metzger should come up with language defining this concept, but insisted that Respondent did not want to institutionalize severance pay in its contracts, as it feared having to deal with the issue in its other UAW contracts. For its part, Textron had not paid severance to employees permanently laid off at Stratford during the term of the expiring collective-bargaining agreements with Locals 1010 and 376.

Bocik testified that if Respondent acquired Textron there would be some relocation of work as Respondent had an existing facility in Phoenix, Arizona, where it duplicated some work performed by Textron at Stratford. Metzger was attempting to deal with the Unions' reaction to this foreseeable relocation of work by means of severance pay. Bocik wanted to have flexibility in relocation of work and would consider severance pay for employees impacted by the relocation of work. If severance pay was offered to the involved Locals, Bocik wanted in return the right to transfer work without restriction, full cooperation of the Unions and employees in any transfer of operations, a waiver signed by the Union with respect to any issues arising out of the transfer of operations, and releases signed by any employees who received severance pay. At the time of these talks with Metzger, Respondent produced an internal memorandum describing Textron's labor relations at Stratford. It described such relations as "hostile."

2. Negotiations over the Effects Bargaining Agreement

On May 12, 1997, the Respondent issued a press release officially announcing the proposed acquisition. Local 1010 had known since 1993 that there might be a developing relationship between Textron and AlliedSignal with regard to the Stratford plant. On February 28, 1994, the UAW sent a letter to Local 1010 replying to questions posed to the International Union about approaches to take if AlliedSignal did purchase Textron. Kelly testified that he had no knowledge of any request made by Local 1010 for this information or of the reply. It was addressed to then-Local 1010 President Joseph Cuici, who subsequently passed away. Kelly also testified that Local 1010's objectives in light of the potential acquisition was to protect jobs at Stratford and at the same time seek benefits for employees who lost their jobs by layoffs or transfer of work.

On May 16, 1994, Bocik first met with representatives of Locals 376 and 1010.[7] He met face to face with them three times, the other two being June 27 and 28, 1994. They also met for the formal signing. In the May 16, 1994 meeting, Bocik explained to the union officials that Respondent had good relations with the UAW at other facilities and it was Respondent's intention to support the Stratford facility. He urged that they reach a competitive contract and said that Respondent's assumption of the contracts upon acquisition depended on them being competitive. Cuici noted to Bocik his view that the tank engine business was worsening. Metzger had noted to Bocik earlier that for 1991 to date there had been large permanent layoffs at the facility because of declining tank engine business.[8]

Negotiations for the Local 1010 contract were conducted in Shelton, Connecticut, over an approximately 6-week period. Local 1010 was primarily represented by Joe Cuici. Metzger was the primary representative for Textron. Bocik had rooms in the hotel in which negotiations were conducted and regularly met with Textron negotiators for updates and discussion of issues. Before Textron would place a proposal on the table, it was cleared with Bocik and his team. Union counterproposals were likewise discussed with Bocik before Textron made a response. Going into negotiations, Bocik expected to have transfers of Stratford work to other of AlliedSignal's facilities and at the same time foresaw a decline in the tank engine business at Stratford. Both of these expectations would lead to temporary and permanent layoffs.

After the formal announcement of the proposed acquisition, the Unions requested effects or impact bargaining with Textron. Negotiations over what came to be called the Effects Bargaining Agreement began on May 20 and ended on July 13. On May 20, the Union gave Textron an "Effects Proposal" which included severance pay calculated on the basis of 40 hours of severance for each year of employment, with a graduated payment scale based on number of years of service. This proposal was drafted to deal with the purchase of the facility by AlliedSignal, though it does not mention AlliedSignal by name.

According to Kelly, the severance pay issue was tied to a Supplementary Unemployment Benefit Plan (SUB plan) that was in existence in the expiring collective-bargaining agreement. Under this plan, Textron was to contribute 5 cents per compensated hour to the plan's fund. The fund then paid up to $150 a week to employees on layoff status for up to 2 years. The money in this plan had run out because of the large number of layoffs in 1991 and 1992. The union team was looking for an alternative to the SUB plan and thus were interested in working out a severance program. There was no severance program in the existing collective-bargaining agreement. It was the Union's understanding that Textron was philosophically opposed to providing severance benefits. Nothing in the early union effects proposals notes this tie-in between severance and SUB plan. Other than what is in the agreements themselves, there is nothing in all the written documents, newsletters, or letters between the parties making this connection.

Kelly testified that at a May 21 bargaining session, Metzger told the Union that AlliedSignal had six so-called "hot button" issues, one of which was to do away with the SUB plan. According to Kelly, Metzger stated that if the Union agreed to drop the SUB plan, AlliedSignal was prepared to replace it with a severance plan. Metzger indicated that AlliedSignal did have severance plans and preferred them to a SUB plan because a severance plan was cheaper and easier to administer. The Union agreed that if the parties could come up with a satisfactory severance plan, it would agree to drop the existing SUB plan. The only bargaining notes supporting this alleged passage are contained in union notes of a bargaining session held May 21,

[7] Local 1010 represented about 1000 of Textron's employees at this time. Local 376 represented about 100 employees. Bocik was assisted in negotiations by Don Shaw, Respondent's then-vice president of human resources for New Business Development. Metzger for Textron was assisted by another Textron negotiator, Frank McNally. Local 1010 was represented by Cuici and Kelly, and Local 376 by its president, Russell See.

[8] Kelly testified that in this regard that about 700 unit positions had been permanently lost in layoffs in 1991 and 1992.

which show Metzger stating: "Eliminate the SUB Plan, we feel a better product can be delivered." Kelly testified that he understood this to be the severance package. There were no other notes of meetings introduced which would make this connection. The General Counsel, in an objection to a question at page 204 of the transcript stated: "It was never testified that the Effects Agreement was a trade off, he [Kelly] was simply talking about one aspect of the Effects Agreement in 1994." Kelly then contradicted the General Counsel by saying that he assumed both sides were aware that [the severance agreement was in return for a suspension of the SUB plan]. Neither the General Counsel nor the Charging Parties argue on brief that the severance pay provisions were offered as a trade off for suspending the SUB plan.

In the 1994 Effects Bargaining Agreement at page 9, under the heading "4. TLTED (Textron) Transition Bonus,"[9] the following language appears:

> "[I]in the event Textron shall sell its assets to AlliedSignal, Textron shall provide for a special transition bonus fund of $526, 687[10] to be administered by AlliedSignal for the purpose of providing a one-time transition bonus to employees who are thereafter involuntarily laid off for a period of at least ninety (90) consecutive calendar days. To be eligible an employee must have also been on the active payroll with one or more years of seniority on the date of the closing of the sale of the assets of the Company to AlliedSignal, or on medical leave of absence on such date and subsequently returned to work. . . .'' "The transition bonus is contingent upon the suspension (as to both benefits and contributions) of the Supplemental Unemployment Benefit Plan (SUB), effective with ratification of the new 1994 Labor Agreement." "It is expressly understood that receipt of the transition bonus shall not disqualify an employee from receipt at some future date of a severance bonus, if otherwise eligible.''

At the expiration of the collective-bargaining agreement, there was over $400,000 left in the Transition Bonus fund, and this money was transferred to the SUB plan. It appears to me that this provision was clearly the quid pro quo for suspension of the SUB plan.[11]

The Employer's first draft Effects Agreement was presented to the Union on May 28. This proposed draft used as a multiplier 40 hours for each year of employment and was a version of Metzger's "declining balance" severance proposal. Under this proposal, all benefits under it would clearly end with the end of the Agreement as the severance benefits declined to zero at that point. It retains the SUB plan with amendments. It also included language which would permit work relocation and a waiver dealing with both the decision and effects of the sale and any work transfer. The Union objected to the declining balance severance plan because under seniority rules, the most junior employees are laid off first. Thus, under the declining balance plan, the more junior employees who would be laid off earliest would receive more severance pay than more senior employees laid off later.

The Union also presented a revised effects proposal on May 28. This one does refer to AlliedSignal. The Union's proposal calls for the payment of severance to "Employees on the active payroll with one or more years of seniority as of the closing date of sale of assets, who are laid off as direct result of transfer of any bargaining unit operations by AlliedSignal to another AlliedSignal facility outside Fairfield County." Both this proposal and the Union's first one proposed making benefits under the proposal retroactive to 1991.

On June 2, a draft Effects Bargaining Agreement was offered by the Employer. As pertinent, it added for the first time a duration clause, which read:

> This Effects Bargaining Agreement shall be effective as of the date first above written, and shall remain in effect until the date of expiration of the new 1994 labor agreement between the parties, but not thereafter unless renewed or extended in writing by the parties.

The duration clause proposed by Textron also included for the first time language to make the agreement retroactive to May 30, 1994, a union goal from its first draft effects agreement. The Employer's June 2 proposal also retained the declining balance severance proposal.[12] The Union did not approve of this duration clause. As described by Kelly, the reason for its disapproval was "[w]ell, there was a twelve month time period before a laid off employee could come in and apply for their severance. And in view of that, an employee could be laid off, for instance, six months prior to the end of the labor agreement and not be able to apply for benefits; and in some cases they might have even volunteered to take the layoff with severance as an incentive. In the 1997 negotiations, the Union [or] the Company would then have an opportunity to propose either the elimination or the reduction of those benefits. And we felt some kind of language was necessary to protect them."

Local 1010 made this concern known to Metzger and on the next day Textron proposed adding to the duration clause a sentence reading: "It is understood that expiration of this Agreement does not foreclose the post-expiration presentation in a timely fashion of claims regarding matters arising out of the application of its terms prior to the expiration date." Between the date of this proposal and the execution of the final document, at the Union's request, this language was modified in the next draft to read: "It is understood that expiration of this Agreement shall not foreclose the post-expiration payment to employees of bonuses or other benefits which accrued to them because of layoff during the term of this agreement, or the post-expiration presentation in a timely fashion of claims regarding matters arising out of the application of its terms prior to the expiration date." In the Union's view, this last sentence related to severance as well as other benefits including retiree medical benefits. I find it significant that the only evidence offered with respect to the drafting of this sentence in the duration clause was Kelly's explanation of why it was requested. I find in the circumstances that it was drafted to meet the Union's concerns

[9] "TLTED" appears in various documents of record and refers to Textron. Anywhere TLTED appears, I have substituted Textron.

[10] This clause in the Effects Agreement appears in both versions.

[11] On the same date the parties executed the Effects Bargaining Agreement, they also agreed to an article in the collective-bargaining agreement which suspended the SUB plan for the duration of the Agreement. Nothing in this article ties the dropping of the SUB plan to the institution of the severance plan. Kelly contends however, that the severance plan was intended to replace the SUB plan, which was an ongoing benefit.

[12] To the extent that one would argue later that elimination of the declining balance method of severance pay was tied to the acceptance of a duration clause, I find that it was not. They were both offered together and Respondent's proposal with respect to duration remained essentially unchanged throughout the negotiations.

as stated by Kelly and was not intended to be a waiver of the Union's right to bargain over severance after the expiration of the agreement and/or a waiver of the Union's rights under the NLRA for the continuation of severance after the expiration of the agreement.

In this draft under the severance clause at page 2, the Union had made notes on its copy to have Textron's printed language changed to add the phrase in italics: "In the event Textron shall sell its assets to a Purchaser, then employees who are thereafter laid off as a direct consequence of *a force reduction due to lack of work or* the transfer of any bargaining unit operations by the Purchaser to another facility shall be eligible for a severance bonus from the Purchaser as specified hereafter." According to Kelly, this language change was believed necessary as Textron had originally proposed making severance available only to employees laid off for specified reasons. The Union wanted severance available to any employee laid off for more than 12 months for any reason. The Union also changed the severance multiplier at page 4 of this draft from 40 to 45 hours. In the next draft of the Effects Bargaining Agreement, Textron changed its language on eligibility to read simply "employees who are thereafter laid off" to address the Union's concerns. It also acceded to the Union's request to increase the hourly multiplier from 40 to 45 hours.

Each of the Employer's draft Effects Agreements had some form of a waiver contained therein in return for offering severance. The June 9 Effects Bargaining Agreement draft was signed by the parties. It includes a waiver by Local 1010 which clearly waives Local 1010's "right to bargain over any future work transfer, reduction in the working force (regardless of its scope), and any partial or total shutdown or closure of the Stratford Plant, or the impact of any such action by [Textron] or the purchaser [Allied Signal] upon bargaining unit employees . . . ." This draft also included, as had earlier drafts, the final language of the duration clause.

Also on June 9, the parties agreed to a new article XXIII in the collective-bargaining agreement titled "Effects Bargaining Benefits." And which reads: "The Company and the Union have agreed to certain terms, conditions and benefits which shall be applicable in the event that the Company should sell its assets to a third-party Purchaser. These commitments will be incorporated into an Effects Bargaining Agreement which shall be part hereof as a supplement." This article was proposed by the Union. Up to this point the Effects Bargaining Agreement with Local 1010 had been a stand alone agreement. By agreeing to article XXIII, the parties agreed to make the Effects Agreement part of the collective-bargaining agreement.

Shortly after the signing of this Agreement with Local 1010, a planning document was inadvertently faxed to Stratford from Respondent's Phoenix, Arizona facility and made its way to the plant floor. Inter alia, the document contained the following sentences: "Best assumption today is that the Army will not buy any new tank engines. We need to evaluate the barriers to closing the plant in case that it eventually becomes expedient."

Upon the fax becoming public, negotiations over the collective-bargaining agreement halted around June 10 or 11. A few days later, Bocik called Caroline Forrest with the UAW in Detroit to try to jump start negotiations. Bocik assured her that the leaked fax was just a planning document and did not express the Company's intentions. She suggested that he contact Phil Wheeler, who was the UAW's regional director. Bocik reached Wheeler by phone and in response to Wheeler's concerns about Respondent's intentions with respect to the Stratford facility, Bocik pointed to the Effects Bargaining Agreement. He noted that it provided generous severance payments for the first time at the facility. He also assured Wheeler that the leaked fax was merely a planning document. Wheeler told Bocik that he might have a signed Effects Bargaining Agreement with Local 1010, but that he did not have one with Local 376 or with him, and would never have such an agreement as long as the waiver provision was part of the agreement. Bocik suggested a face to face meeting to address Wheeler's concerns.

They met on June 27, and Bocik presented Wheeler with a proposal that came to be called the "Competitiveness Agreement."[13] The Competitiveness Agreement was a document which outlined the terms under which AlliedSignal would be able to manufacture certain engines at Stratford. This Agreement became final and was ultimately made part of the overall collective-bargaining agreements with Locals 1010 and 376. It was also the subject of litigation before the Board. A decision dealing with the Competitiveness Agreement was issued by Administrative Law Judge D. Barry Morris on April 21, 1997. In addition to presenting the Competitiveness Agreement proposal, Bocik addressed the matter of the waiver with Wheeler. He told Wheeler that Respondent proposed that the Locals would have restored the opportunity to bargain further over the effects of the acquisition and included language to that effect in the Competitiveness Agreement. This language was included in section 4 of the Competitiveness Agreement. Respondent also had a revised Effects Bargaining Agreement which deleted the waiver, and a proposal on economics. Bocik testified that he made these proposals to Wheeler because he was convinced that Respondent would never get acceptable collective-bargaining agreements with the Locals unless Wheeler's concerns about the waiver in the Effects Bargaining Agreement and Respondent's intent with respect to the closure of the plant were satisfactorily addressed.

After some by-play, Wheeler and the other union officials present agreed to study the Competitiveness Agreement. After some study, Wheeler stated that with some changes, the Competitiveness Agreement would satisfy the Union's concerns. Bocik suggested the parties get back to the bargaining table and they did.

Bocik called Forrest the next morning and told her that negotiations would resume later that day. He also faxed her the Competitive Agreement. Also, on this day, he met face to face with Local 1010's bargaining team. Bocik gave them the revised Effects Bargaining Agreement. Cuici, who was present, asked why the waiver was missing. Bocik explained that Wheeler had objected to it. Cuici then again presented his view that the plant had no future and that Respondent would close it. Bocik countered by saying that Respondent would try to make a go of it. The meeting ended with the Union stating they would get back with counterproposals.

Following this meeting, Bocik went on vacation and his place in the negotiations was taken by other AlliedSignal officials. On vacation, he was given regular updates on progress at the bargaining table. During this time, most of the attention was given to the Competitiveness Agreement. The Effects Bargaining Agreement that was ultimately signed was the one given the

[13] Also at this meeting were Metzger, Cuici, as well as some other Textron, AlliedSignal and union representatives.

Union on June 28.[14] Bocik noted that in the event of a massive layoff or plant closing, there would have to be effects bargaining. Thus, the language in the Competitiveness Agreement addressed that issue. The specific language is at pages 3 and 4, paragraph 4, which reads:

> Regardless of any provisions of the separate Effects Bargaining Agreement between the parties concerning severance payments to laid off employees, the Union retains the right to *engage* in collective bargaining with AlliedSignal with respect to the effects upon bargaining unit employees should AlliedSignal decide in the future to close the Stratford Plant, or should it give notice to the Union of a mass layoff within the meaning of the Worker Adjustment and Retraining Notification Act (WARN), as now in effect or as hereafter amended.
>
> In any discussions which are undertaken as a result of such a request by the Union for impact bargaining because of plant closure or mass layoff, it is understood that the parties shall give important attention to the following factors:
>
> (i) Methods and practices for making the Stratford Plant more competitive and for focusing on total quality as an imperative;
>
> (ii) Enhancement of customer satisfaction;
>
> (iii) Measures for the more active engagement of bargaining unit members in the advancement of the Stratford Plant as a successful enterprise; and
>
> (iv)Potential opportunities for the reloading of work which may be performed more efficiently and competitively within the bargaining unit.

In this regard Bocik testified, "[F]irst of all, this gave the Union the opportunity to come back and bargain more in an effects setting than what was contained in the original Effects Agreement of the Collective Bargaining Agreement." "Given that opportunity at least, we couldn't assert that no, you can't even talk to us about more severance or something else under the effects." The Competitiveness Agreement was to take place immediately and as the second sentence of section 1's "Basic Principles" makes clear: "This imperative joint effort *should* be *undertaken* both before and after any sale of [Textron's] assets to AlliedSignal as not proposed."

The final version of the Effects Bargaining Agreement was signed July 13, absent the waiver and with no other changes from the June 9 draft. At page 2, paragraph 3, under the word "severance," the first sentence reads: "In the event TLTED [Textron] shall sell its assets to AlliedSignal, then employees who are hereafter laid off shall be eligible for a severance bonus from AlliedSignal as specified in this Section 3."

The duration of the Agreement was set out thusly:

> This Effects Bargaining Agreement shall be effective as of May 30, 1994, and shall remain in effect until midnight on June 6, 1997, but not thereafter unless renewed or extended in writing by the parties. It is understood that expiration of this Agreement shall not foreclose the post-expiration payment to employees of bonuses or other benefits which accrued to them because of layoff during the term of this Agreement, or the post-expiration presentation in a timely fashion of claims regarding matters arising out of the application of its terms prior to the expiration date.

The entire collective-bargaining agreement, including article XXIII, was ratified on July 21. At the ratification, the Union gave members a brochure which describes in general the Effects Bargaining Agreement, but says nothing about its duration and certainly says nothing about the severance benefits ceasing as of June 6, 1997.

After the negotiations with Local 1010 concluded, they commenced with Local 376. In these negotiations the primary negotiators were Metzger for Textron and Russ See for the Local. At the outset of bargaining, See demanded that the Competitiveness Agreement which Local 376 would sign must include the right to decision bargaining over the matter of closing the facility. Though Respondent objected, Local 376's Competitiveness Agreement ultimately contained language reading: "By doing the above, the Union does not give up any right to request decision bargaining which it may be entitled by law."

Local 376's Competitive Agreement also contains the language about effects bargaining contained in Local 1010's Competitive Agreement. The Effects Bargaining Agreement for Local 376 was signed on July 28.

According to the undisputed testimony of Kelly, no one from Textron or AlliedSignal stated in negotiations over the Effects Bargaining Agreement that anyone laid off after June 6, 1997, would not receive severance pay under the Agreement. Also according to Kelly, the Union did not understand that benefits under the Effects Bargaining Agreement would cease after June 6, 1997. Employees laid off between May 30, the expiration date of the old collective-bargaining agreement and October 28, the date the acquisition by AlliedSignal was made final, were paid severance under the Effects Bargaining Agreement because it was made retroactive to May 30. When the collective-bargaining agreements between Textron and the two Locals expired at the end of May 1994, the contractual benefits and terms of those agreements continued to be adhered to by the parties until new agreements were reached.

Based upon the evidence of record regarding the 1994 negotiations over the Effects Bargaining Agreements, I find that there is no evidence that the parties intended for the benefits, including severance benefits, to end with the expiration of the Agreements. I also find that the parties never discussed a waiver of the Union's right to such continuation of benefits after the waiver contained in Local 1010's Effects Bargaining Agreement was deleted by AlliedSignal/Textron. I further find that no waiver was discussed or intended in these negations by the Duration Clause of the Effects Bargaining Agreement.

C. Events Occurring Subsequent to the Execution of the Effects Bargaining Agreements

1. Events occurring in 1995 and 1996

In September 1995, Respondent announced the termination of the Competitiveness Agreements and the closing of the plant. In one such written announcement there is a sentence reading: "The company . . . will . . . tailor severance and outplacement arrangements to support workers to transition to other state and industry employers." General Counsel's Exhibit 9 is a memorandum to employees at Stratford from Respondent issued at the time of these announcements. It poses the question: "What are the Bargaining Unit Severance Bonus provi-

[14] The only real change in this one as opposed to the one the parties signed on June 9 was the deletion of the waiver.

sions?" It answers: "Each of the AlliedSignal bargaining units (UAW 1010, UAW 376, UPGWA 539) has an Effects Agreement in place which defines severance benefits." These agreements were negotiated by the union leadership during 1994 contract negotiations. Generally, these agreements provide for severance of 45 hours of pay for each year of service. However, employees should refer to their Union's Effects Agreement for specific details. Contrary to rumors, there are no plans to either reduce or increase the benefits in these packages.

Kelly testified that after the Union received a letter from Respondent in which it canceled the Competitiveness Agreement, it requested bargaining over the impact of this decision. The parties met on this issue six times between November 13, 1995, and April 29, 1996. In this time frame, the Unions also pursued an unfair labor practice case over the Respondent's failure to bargain over the decision to terminate the Agreement. The judge's decision, issued April 21, 1997, finds that the Respondent did not violate the Act by unilaterally terminating the Competitiveness Agreement, though it did commit unfair labor practices by refusing to bargain over the decision to transfer unit work to its Phoenix facility and refusing to supply certain information to the Unions. This decision is currently under appeal. The parties had agreed in a letter of agreement dated January 24, 1996, to engage in effects bargain over the termination of the Competitiveness Agreement without prejudice to their respective positions before the NLRB.

According to Kelly, in their effects bargaining over the Competitiveness Agreement, Brian McMenamin, Respondent's director of human resources at Stratford, affirmatively stated that Respondent would not reduce or eliminate benefits under the Effects Bargaining Agreement, and did not state that benefits under that Agreement would cease on June 6, 1997. This testimony is undisputed.

In a June 7, 1996 letter from Bocik to another of Respondent's executives, he relates briefly the bargaining of 1994 and then states:

> Severance and other effects benefits were demanded and ultimately negotiated by the unions during the 1994 labor negotiations. It was the union position that two events would likely combine to trigger significant employment losses for their membership. The first was the sale of the business and merger with AlliedSignal. The second was the ending of production of the AGT-1500 tank engine. In 1994, it was known that active production of this product line was scheduled to end in about April 1995. As a result, the unions were very concerned about layoffs and sought to gain significant protection for their members during negotiations.
>
> During the course of negotiations, it became clear severance and effects benefits were firm union demands. In my opinion as the chief AlliedSignal representative to the negotiations, it would not have been possible to successfully negotiate a complete labor agreement without including severance and effects benefits. Failure to negotiate a labor agreement could have resulted in a work stoppage. In addition, there was a significant business need to maintain positive relationships with both the union and the represented work force after any sale. Providing the union employees with severance assistance ultimately helped achieve this critical goal.

As can be seen, there is nothing in this letter to indicate that Respondent would cease paying severance entirely after June 6, 1997.

In an October 24, 1996 letter sent to U.S. Representative Rosa DeLauro in response to her written criticism of AlliedSignal for announcing that it was closing the Stratford facility, Respondent stated:

> I realize that this is small comfort to the employees adversely affected. In order to mitigate the effect of a closure on the Stratford employees, we agreed during the last union contract negotiation to provide generous severance benefits for displaced workers, as well as outplacement services to assist them in finding new jobs.

I find this letter significant in two regards. First it does not state that severance benefits will only be available up to June 6, 1997. Second, it ties such benefits to the closure of the plant, an event which is also not tied a date prior to June 6, 1997. Respondent has argued that the Effects Bargaining Agreements dealt with a discrete event, the purchase of Textron by AlliedSignal and the effects or impact of that purchase as seen at the time of negotiations. Clearly, the possibility of plant closure was a possibility known at the time. Indeed, as the evidence reflects, President Cuici of Local 1010 expressed this view vigorously during negotiations. The waiver signed by Cuici in the Effects Bargaining Agreement on June 9 expressly runs to this possibility. Thus, plant closure was envisioned as one possible effect of the purchase. That Respondent chose to postpone closure until after June 6, 1997, though announcing such a closure in September 1995, does not change the fact that this possibility was addressed by the severance provisions of the Effects Bargaining Agreements.

2. Events occurring in 1997

In a January 10, 1997 letter to employees,[15] Respondent wrote:

> Another reality we still face is planning for implementation of the probable closure of the plant as mandated by the BRAC Commission. The Company has offered to bargain with the union over relocating operations from Stratford to Phoenix and over the effects of the closing. The stark reality remains that independent accountant's estimate that the current cost of running the business at Stratford rather than Phoenix is far in excess of $30 million a year. As a result, it is difficult to envision any scenario under which we can prudently continue to operate the business at the Stratford plant, but we are prepared to negotiate all aspects of the matter with the union leadership.
>
> (There followed some questions and answers) Q. When does the current contract expire? A. The current contract expires on June 6, 1997. We have asked both Local 1010 and Local 376 to start bargaining now so that we can resolve all labor contract issues as soon as possible so that union and management will understand well in advance of the June 6 contract expiration date what their rights and benefits will be after June 6. Q. When I get laid off what will happen to me? What is the company going to do for me? A. Layoffs prior to June 6 will follow the terms

[15] This notice was triggered by the permanent layoff of a number of employees in January 1997. These employees, as well as all other laid off during the term of the Effects Bargaining Agreement received severance.

> and conditions of the current labor agreement which expires on June 6. For instance: Severance: employees are eligible for one week's pay (calculated on 45 hours) for each year of service. Questions concerning layoffs after June 6 cannot be answered at this time, nor can we advise you of what benefits will be available after June 6. Benefits such as severance pay are subjects for negotiation.

A contemporaneous newsletter to employees poses the question: "If I am laid off after June 6, 1997, am I entitled to the current 'severance package?'" It answers this question thusly: the answer is not known at this time. Current entitlements to severance and other layoff benefits are defined in the 1994 Effects Bargaining Agreements. As previously stated, "[T]hese agreements end on June 6, 1997. Any changes to or continuation of the Effects Bargaining Agreements beyond June 6 need to be negotiated."

Also on January 10, 1997, Respondent sent another letter to both locals. Inter alia, it states:

> *We really need to begin substantive discussions now to address the real concerns of our employees.* Why the urgency? The labor agreements expire in June. Employees who are laid off during the current agreement deserve resolution of their very real questions about benefits they may be entitled to under the Effects Agreement. Active employees deserve to know what if any benefits will be available to them after the current agreements expire in the event of layoff. They deserve to know sooner rather than later. This cannot be done until we bargain. [Emphasis in original.]

Kelly testified that he did not interpret these letters as making a distinction between benefits under Effects Bargaining Agreement before June 6 and after June 6. Certainly, They do not clearly state that severance benefits will stop on June 6.

In a January 17, 1997 newsletter to employees, Respondent wrote:

> Q. If I am laid off after June 6, 1997, am I entitled to the current "severance package"? A. The answer is not known at this time. Current entitlements to severance and other layoff benefits are defined in the 1994 Effects Bargaining Agreements. As previously stated, these agreements end on June 6, 1997. Any changes to or continuation of the Effects Bargaining Agreements beyond June 6 need to be negotiated.

Kelly testified that he did not understand this newsletter to be saying that there would be no continuation of the severance benefits absent an agreement, and for a fact, they do not clearly say this.

In a letter dated January 27, 1997, from Respondent to Kelly, it states, inter alia:

> The current Effects Bargaining Agreement expires in June. We should begin to deal with the issues that will arise for those employees who continue to work at Stratford beyond the period of time covered by the current Effects Agreement.

Kelly replied to this letter with one of his own dated January 31, 1997. With regard to the Effects Bargaining Agreement, it states:

> Your letter refers to the expiration of the Effects Agreement, raises doubts about benefits available to employee who work beyond its expiration, and claims that employees would benefit from a quick resolution of issues. Please tell us clearly what you mean! Are you saying that if the Union asserts its position that you are obligated to keep the plant open and by pursuing our legal rights that you will take away existing benefits under the Effects Agreement? Does Allied intend to retaliate against Union members because the Union has pursued its legal rights? These are important questions being asked by our members.

With regard to this letter, Kelly testified that he knew there was an expiration date of June 6, but did not know what was the intention of the company with respect to benefits contained in it.

On February 13, 1997, Respondent replied to Kelly's letter. With regard to the matter of the Effects Bargaining Agreement, the letter states:

> Our proposal to begin bargaining early can hardly be characterized as retaliating against Union members. To the contrary, our voluntary invitation to begin bargaining early and negotiate over the decision and the relocation issues underscores our belief that the bargaining table is the appropriate location to resolve all of these issues. The collective bargaining agreement at Stratford, which includes the Competitiveness Agreement and the Effects Agreement, expires in June. In April, the Union will have a legal obligation to come to the table and bargain over these issues. Concerns for our employees' future should motivate the Union and Company to begin the process now.

On March 7, 1997, Kelly wrote the Respondent a letter, in which he states, inter alia:

> I am pleased to receive your assurance that Allied-Signal will not retaliate against Local 1010 members for exercising their statutory rights under the National Labor Relations Act. Many of our members interpreted your letter as an implied threat to take away existing benefits if the Union did not accede to your demands. With this in mind, it is important that you provide a written assurance to all Local 1010 members that AlliedSignal does not intend to reduce or eliminate existing contractual benefits such as severance pay or retirement benefits.

On March 21, Respondent responded to Kelly's March 7, 1997 letter and stated:

> With regard to your comments concerning the existing effects benefits, I am certain that you have correctly advised your members, both concerning AlliedSignal's position and the terms of the contract as it pertains to the need to negotiate and ultimately agree to the continuation of the Effects Agreement provisions beyond June 6, 1997. We believe those negotiations are critical.

I find that through the dates of these letter, Respondent had never clearly stated its intentions with respect to the continuation of benefits under the Effects Bargaining Agreements after June 6, 1997. Though Respondent on cross-examination of Kelly sought to elicit Kelly's agreement that such notice was given in the correspondence noted above, I do not find that such notice is clear and the pre-1997 pronouncements on the subject by Respondent would tend to indicate that such benefits would continue post June 6, 1997.

Though in September 1996, the Respondent had announced that it would close the Stratford plant, it had not done so by April 1997. In that month, Respondent notified Local 1010 and Local 376 that it had reached a tentative decision to close the facility and invited decision bargaining. Bargaining on that issue as well as a new collective-bargaining agreement began on April 15, 1997.

On the subject of when the Union was informed that Respondent would not continue benefits under the Effects Bargaining Agreements, Kelly remembered an exchange between himself and a negotiator for Respondent at an April 30 bargaining session. Kelly was given a list of points for negotiation which included effects bargaining. Kelly told Respondent, when they get to effects they will look at it, but until then it was getting in the way of a new collective-bargaining agreement. Later, in response to Kelly's reminder that June 6 was closer than the parties think, Respondent's representative stated: "You made a good point earlier. June 6 is closer than it looks, we need to negotiate severance, 401K, job placement." Kelly answered: "These things are covered in the labor agreement that is expiring. They're in the labor agreement." Respondent responded: "If you look at the Effects Agreement, it expires on June 6, it's clear." Kelly ended the discussion by saying: "The Effects Agreement deals with a specific set of circumstances. The sale of Textron to AlliedSignal. If there are new circumstances, you are required by law to negotiate with us over them."

In a newsletter to employees dated May 2, 1997, the Respondent notes that Local 1010 had stated in one of its newsletters that "[m]any members have express great concern over the fate of existing contract benefits after the contract expires on June 6, 1997. Could we lose our present pension or medical benefits if the plant is closed at some future date? Negotiated contract benefits are protected by law. They can only be changed or eliminated through the collective bargaining process in a new agreement requiring membership approval." Respondent's newsletter deemed this statement wrong and misleading and states: "The law has been clear for decades that once a contract expires, terms and conditions of employment can be changed in two ways: (1) as Local 1010 states, 'in a new agreement requiring membership approval'; or (2) after the employer has expressed a desire to change those expired contract terms and bargains to a good faith impasse about the changes. Under this second alternative, there is no Union consent or membership approval. The Company can put into effect the proposal it tried to negotiate at the bargaining table. (The only exception to this rule is an employee's right to vested pension benefits which are specifically protected under federal pension law.)"

On cros- examination, Kelly denied that he was informed by anyone from Local 376 that at bargaining session between that Local and Respondent on May 16 that Bocik said the benefits under the Effects Bargaining Agreement would not continue beyond June 6. He did remember asking Respondent at a meeting held May 22, 1997, what Respondent's position was with respect to extending the Effects Bargaining Agreement beyond June 6. He also recalled that he was told that it was all economic.

Kelly testified that Bocik informed the Unions on May 29, 1997, that the severance benefits under the 1994 Effects Bargaining Agreements would not continue after June 6, 1997.[16] Bocik told the Unions that these benefits related to issues tied to the acquisition of the business. He contends that the newsletter and other memos made available to employees made it clear that these benefits would not continue after June 6. At the meeting of May 29, Bocik remembered union official Tony Durace inquiring about the Effects Bargaining Agreements, specifically asking, "Why won't you extend them?" Bocik testified that the Unions disagreed that the severance benefits did not survive beyond June 6.

Bargaining continued until June 13, 1997, when the Respondent declared impasse in decision bargaining.[17] At no time during this period did Respondent make any written proposals with respect to the Effects Bargaining Agreement. Respondent also notified the Union on June 13, 1997, that it was closing the Stratford plant. On the same date, Respondent issued a newsletter to employees announcing the closing of the plant and stating in regard to severance: "We have provided the union locals the opportunity to begin effects bargaining so that we can negotiate a closure package that is fair to all. We look forward to starting these negotiations quickly so that union employees can know what to expect from the Company in terms of severance, insurance continuation and other benefits."

Subsequent to June 6, 1997, Respondent has closed the Stratford facility and laid off the remaining employees there, including some 459 Local 1010 members. Respondent has not paid severance to any employees permanently laid off subsequent to June 6, 1997. Its position is that the 1994 Effects Bargaining Agreements expired by their terms on June 6 and that no obligation to honor these Agreements continued after that date. Though there has been some effects bargain subsequent to that date, no agreement has been reached. Because of seniority rules in the parties collective bargaining agreements, it is true in general that the most senior employees were the last to be laid off, so the severance packages for these employees, if owed, would be larger than for those employees laid off before June 6.

In its statutory mandated "WARN" letters sent to the unions to advise of layoffs both before and after June 6, 1997, the Respondent advised: "As in the past, the Company is willing to discuss utilizing the voluntary off provisions of the collective bargaining agreement." The voluntary layoff provisions are contained in the Effects Bargaining Agreements at section VII thereof.

Based on the foregoing record evidence, I find that no clear notice of Respondent's intent to shut off severance and other benefits under the Effects Bargaining Agreement on June 6, 1997, was not given until the last minute. I further find that until this time, there was no clear indication that Respondent had ever taken this position at any time, either in negotiations over the Effects Bargaining Agreements or in public pronouncements thereafter. I further find that the bargaining history of the Effects Bargaining Agreements does not support a finding that the parties contemplated that the benefits would not continue past the expiration dates of the Effects Bargaining Agreements, just as the benefits contained in the underlying collective-bargaining agreements, of which the Effects Bargain-

[16] Bocik remembered an earlier meeting with Local 376 where he made a similar representation, but could not recall its date.

[17] There could be no impasse in effects bargaining as such bargaining had not occurred and in any event, in light of my finding of the commission of unfair labor practices, could not have occurred as a matter of law.

ing Agreements are a part, continued after the expiration of the collective-bargaining agreements. With these findings, and the others made above, I will explore the legal arguments advanced by the parties.

D. Conclusions with Respect to the Lawfulness of Respondent's Position

1. The effect of the NLRA on continuation of benefits

The proposition that an employer in a collective-bargaining relationship is prohibited from making unilateral changes in terms and conditions of employment is deeply entrenched in NLRB law. It is essential to bear in mind that this doctrine involves the implementation of the requirement in Section 8(a)(5) of the Act that parties bargain. It is not primarily a matter of contract interpretation. Rather the rule approved by the Supreme Court in *NLRB v. Katz,* 369 U.S. 736 (1962), is that unilateral changes in terms and conditions of employment are inherently inconsistent with the duty to bargain. "We hold that an employer's unilateral change in conditions of employment under negotiation is . . . a circumvention of the duty to negotiate which frustrates the objectives of Section 8(a)(5) much as does a flat refusal." 369 U.S. at 743. The Court then went on to discuss the disruptive impact of such unilateral action on a union's ability to bargain effectively.

Both the Supreme Court and the Board have recently had occasion to elaborate on this simple statement of a legal principle. In *Litton Business Systems, Inc. v. NLRB,* 501 U.S. 190 (1991), the Supreme Court emphasized that the *Katz* principle derives from the inconsistency between unilateral action and bargaining:

> The Board has taken the position that it is difficult to bargain if, during the negotiations, an employer is free to alter the very terms and conditions that are the subject of those negotiations. The Board has determined, with our acceptance, than an employer commits an unfair labor practice if, without bargaining to impasse, it effects a unilateral change of an existing term or condition of employment. [Citing *Katz*]. In *Katz* the union was newly certified and the parties had yet to reach an initial agreement. The *Katz* doctrine has been extended as well to cases where, as here, an existing agreement has expired and negotiations on a new one have yet to be completed. [Id at 198.]

Applying this reasoning to the instant case, it is difficult for the Union to bargain with the Respondent over the closing of the plant and its impact on bargaining unit employees if Respondent was free to discontinue the severance benefits.

More recently, the Board elaborated on the *Katz* principles in *Daily News of Los Angeles,* 315 NLRB 1236 (1994). Quoting at length from *Katz*, the Board emphasized the Court's holding that unilateral action frustrates the bargaining process and is tantamount to a refusal to bargain in fact. "Indeed, the Court viewed unilateral conduct so pernicious to the collective-bargaining process that it held that a showing of subjective bad faith on the employer's part is unnecessary to establish a violation." Id at 1237. After cataloging a wide range of cases applying *Katz* to a variety of terms and conditions of employment, the Board concluded, "[E]ach of the unilateral acts was struck down on the authority of *Katz* because a condition of employment had been unilaterally *changed."* Id at 1237. The Board then adopted the following test from the Fifth Circuit decision in *NLRB v. Dothan Eagle, Inc.,* 434 F.2d 93 (1970), for determining whether an employer had committed an unlawful unilateral change:

> The cases make it crystal clear that the vice involved in both the unlawful increase situation and the unlawful refusal to increase situation is that the employer has *changed* the existing conditions of employment. It is this *change* which is prohibited and which forms the basis of the unfair labor practice.
>
> In other words, whenever the employer by promises or by a course of conduct has made a particular benefit plan part of the established wage or compensation system, then he is not at liberty unilaterally to change this benefit either for better or worse during . . . the period of collective bargaining. Both unprecedented parsimony and deviational largess are viewed with a skeptic's eye during . . . bargaining. In those cases where the employer was found guilty of an unfair labor practice for withholding benefits during . . . the process of collective bargaining, the basis of the charge was a finding that the employer has changed the established structure of compensation.
>
> In our view, the standard set forth in *Dothan Eagle*, which looks to whether a *change* has been implemented in conditions of employment, captures best what lies at the heart of the *Katz* doctrine. It neither distinguishes among the various terms and conditions of employment on which an employer takes unilateral action nor does it discriminate on the basis of the nature of a particular unilateral act. It simply determines whether a change in any term and condition of employment has been effectuated, without first bargaining to impasse or agreement, and condemns the conduct if it has. [Id at 1237–1238.]

Applying this test, it is clear that the General Counsel has made a prima facie case that Respondent has violated Section 8(a)(5) by eliminating the severance benefits. The General Counsel has met this burden by showing that the severance benefits were a term or condition of employment and that Respondent unilaterally changed those benefits. There can be little question that severance benefits in general constitute a term and condition of employment. *Litton Business Systems, Inc.,* 286 NLRB 817 (1987). Moreover, the evidence discussed above establishes that, "by promises" and "by a course of conduct," the severance benefits set out in the Effects Bargaining Agreement had become part of the terms and conditions of employment of the bargaining unit employees. Those benefits were paid to all employees laid off over 3 years. The benefits contained in the Effects Bargaining Agreement displaced the SUB plan which had been in effect for many years. While Respondent initially proposed that the benefits be provided only to employees laid off in certain circumstances flowing from the sale, Respondent abandoned those limitations. The final Effects Bargaining Agreements established benefits for any employee whose layoff lasts 12 months or more. In newsletters and other correspondance over 2-1/2 years, Respondent's officials informed employees that these severance benefits were available, without any reference to any deadline or termination date. Indeed, Respondent explicitly denied any intention to make any changes in the effects benefit package (G.C. Exh. 9, p. 1). There can be no doubt that Respondent changed the effects benefits: it eliminated them. Respondent severance benefits constituted a term or condition of employment which was unilaterally changed by Respondent. Unless Respondent's actions

were privileged by the contract, this was a clear violation of Section 8(a)(5) of the Act.

2. Does the Duration Clause of the Effects Bargaining Agreements serve to curtail Respondent's statutory obligations?

Respondent's defense is based on the Duration Clause of the Effects Bargaining Agreement, which as set out earlier, reads:

> This Effects Bargaining Agreement shall be effective as of May 30, 1994, and shall remain in effect until midnight on June 6, 1997, but not thereafter unless renewed or extended in writing by the parties. It is understood that expiration of this Agreement shall not foreclose the post-expiration payment to employees of bonuses or other benefits which accrued to them because of layoff during the term of this Agreement, or the post-expiration presentation in a timely fashion of claims regarding matters arising out of the application of its terms prior to the expiration date.

Read literally, this language deals solely with the question of whether the Effects Bargaining Agreement remains in effect as a contract after June 6, 1997. The second sentence provides that benefits accrued by employees as a result of layoffs preceding expiration remain enforceable under the contract. The first sentence, relied upon by Respondent as a waiver, does not provide any right to eliminate benefits. The language, read literally, accomplishes only one objective. It prevents the contract from being automatically renewed in the absence of notice to terminate or modify. This is highlighted when this Duration Clause is contrasted with corresponding clauses in the collective-bargaining agreement and its supplements. The Local 1010 collective-bargaining agreement provides:

> Except as otherwise provided herein, this Agreement shall become effective as of May 30, 1994 and shall remain in effect up to and including June 6, 1997 and shall automatically renew itself from year to year thereafter unless written notice to terminate or amend the Agreement is given by either party to the other at least sixty (60) days prior to its expiration or any annual renewal thereof.
>
> a. If notice of termination shall be given, negotiations for a new agreement shall take place during the sixty (60) days prior to its expiration.
>
> b. If notice to amend shall be given, such notice shall set forth the proposed amendments. In the event that negotiations for an amended agreement shall continue beyond the expiration of the term of this Agreement, this Agreement shall continue in full force and effect, provided, however, that either party may then terminate this Agreement upon ten (10) days written notice to the other party.

Similar language is contained in duration clauses in specific sections of the collective-bargaining agreements and their supplements. The above-quoted language provides that, in the absence of notice, the contract automatically remains in effect for another year, and further, in the event of a notice to amend, the contract remains in effect during negotiations. The language of the Duration Clause of the Effects Bargaining Agreement would prevent that contract from renewing automatic renewal is an entirely separate process from the prohibition on unilateral changes. It does not follow from a clause foreclosing automatic renewal that Respondent authorized to unilaterally eliminate the effects benefits.

Respondent's argument relies upon a confusion between the issue of whether the contract remains in effect and the requirement imposed by *Katz* to maintain terms and conditions of employment in effect. This confusion is perhaps encouraged by the common practice of referring to the *Katz* doctrine as creating an obligation to maintain the contract in effect during bargaining. As the foregoing discussion of legal principles makes clear, *Katz* concerns, not a duty to maintain a contract in effect, but the duty to maintain terms and conditions of employment. Regardless of the status of the Effects Bargaining Agreement after June 6, *Katz* imposed on Respondent a duty to maintain the terms and conditions of employment which were initially created by that contract.

This distinction between the legal status of a contract and the duty to maintain terms and conditions of employment is discussed at length by the Supreme Court in *Litton:*

> Although after expiration most terms and conditions of employment are not subject to unilateral change, in order to protect the statutory right to bargain, those terms and conditions no longer have force by virtue of the contract. See *Office and Professional Employees Ins. Trust Fund v. Laborers Funds Administrative Office of Northern California, Inc.,* 783 F.2d 919, 922 (CA9 1986) ("An expired [collective bargaining agreement] . . . is no longer a `legally enforceable document." (citation omitted)); cf. *Derrico v. Sheehan Emergency Hosp.,* 844 F.2d 22, 25–27 [127 LRRM 3201] (CA2 1988) (Section 301 of the LMRA 29 U.S.C. § 185, does not provide a federal court jurisdiction where a bargaining agreement has expired, although rights and duties under the expired agreement "retain legal significance because they define the *status quo"* for purposes of the prohibition on unilateral changes).
>
> The difference is as elemental as that between *Nolde Bros.* and *Katz*. Under *Katz,* terms and conditions continue in effect by operation of the NLRA. They are no longer agreed-upon terms; they are terms imposed by law, at least so far as there is no unilateral right to change them. As the Union acknowledges, the obligation not to make unilateral changes is `rooted not in the contract but in preservation of existing terms and conditions of employment and applies before any contract has been negotiated.' Brief for Respondents 34, n. 21. *Katz* illustrates this point with utter clarity, for in *Katz* the employer was barred from imposing unilateral changes even though the parties had yet to execute their first collective-bargaining agreement.
>
> Our decision in *Laborers Health and Welfare Trust Fund v. Advances Lightweight Concrete Co., Inc.,* 484 U.S. 539 (1988), further demonstrates the distinction between contractual obligation and postexpiration terms imposed by the NLRA. There, a bargaining agreement required employer contributions to a pension fund. We assumed that under *Katz* the employer's failure to continue contributions after expiration of the agreement could constitute an unfair labor practice, and if so the Board could enforce the obligation. We rejected, however, the contention that such a failure amounted to a violation of the ERISA obligation to make contributions 'under the terms of a collectively bargained agreement . . . in accordance with the terms and conditions of . . . such agreement.' 29 U.S.C. § 1145. Any postexpiration obligation to contribute was imposed by the NLRA, not by the bargaining agreement, and so the District Court lacked jurisdiction under §

502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), to enforce the obligation. [501 at 206–207.]

The Duration Clause explicitly states that the contract cannot remain in effect after June 6, 1997, absent agreement of the parties. Nevertheless, the Effects Bargaining Agreement did establish terms and conditions of employment for the bargaining unit. The obligation to maintain those terms and conditions of employment in effect derives from a legal source, which is entirely separate and distinct from the contract. The question, then, is whether the Duration Clause constituted a waiver which gave Respondent the right to unilaterally eliminate those terms and conditions.

The Board has recognized that a union can contractually waive statutory rights, including the right to bargain over changes in fringe benefits. *General Tire & Rubber Co.,* 274 NLRB 591 (1985); *Cauthorne Trucking,* 256 NLRB 721 (1981). Proof of a contractual waiver is an affirmative defense which must meet a high standard. *Silver State Disposal Service,* 326 NLRB 84 (1998). It is Respondent's burden to show that the contractual waiver is "explicitly stated, clear and unmistakable." Id at 3, quoting *Lear Siegler, Inc.,* 293 NLRB 446, 447. Accord: *Metropolitan Edison Co. v. NLRB,* 460 U. S. 693, 708 (1983).

As the Board stated in *Johnson-Bateman Co.,* 295 NLRB 180, 185 (1989):

> Waiver of a statutory right may be evidenced by bargaining history, but the Board requires the matter at issue to have been fully discussed and consciously explored during negotiations and the union to have consciously yielded or clearly and unmistakably waived its interest in the matter.

While the duration language certainly might have been drafted differently in 1994, it certainly does not contain the clear and unmistakable waiver required by the Board and the Courts. In *General Tire,* supra, the Board found that a termination clause in a supplemental agreement to a collective-bargaining agreement did not permit the employer to terminate the underlying employee benefits, with bargaining to impasse, in the absence of a clear and unmistakable waiver of the union's right to bargain. In *General Tire,* the termination clause provided for termination of the supplemental agreement on a date certain, but also provided for continuation of the benefits for 90 days after that date. The Board noted that nowhere in the agreement was there any mention of what would happen to the benefits after the 90 days expired, and thus found no clear and unmistakable waiver over the benefits after the 90-day period expired.

Like the employer in *General Tire*, here, Respondent has unilaterally ceased providing the benefits after the contract's termination date. As in *General Tire,* the language of the Effects Bargaining Agreements does not show a clear and unmistakable waiver of the unions' statutory right to bargain about the discontinuation of such benefits, and here the contract provides no language stating what would happen after the contract's termination date. Kelly's testimony that in 1994 Respondent never once offered its current interpretation of the duration language in the Effects Bargaining Agreement stands unrebutted. Since it is clear that the issue was never "fully discussed and consciously explored" in the 1994 talks leading to the labor agreements, there can be no waiver found in the duration clause of the Effects Bargaining Agreements. Moreover, there is nothing clear and unmistakable about the duration language other than the fact that the contract expires on June 6, 1997.

The Board has found such a waiver in the case of *Cauthorne Trucking,* supra, which gave the employer the unilateral right to eliminate a fringe benefit. There, the parties' pension agreement provided:

> IT IS UNDERSTOOD AND AGREED that at the expiration of any particular collective bargaining agreement by and between the Union and any Company's obligation under this Pension Trust Agreement shall terminate, unless, in a new collective bargaining agreement, such obligation shall be continued. [Id at 722.]

The Board held that this provision constituted a waiver. The Board concluded that this language, explicitly stating that all company obligations under the pension agreement shall "terminate" upon expiration of the contract, expressed a clear intent to relieve the employer of any obligation to make payments after contract expiration. The Board premised its finding of a waiver on the fact that the contract language explicitly addressed the obligation to provide the benefits and the statement in the contract that the obligation would terminate. This is in sharp contrast to the Duration Clause, which says nothing about the termination of any duties or obligations on the part of Respondent.

Subsequent cases distinguishing *Cauthorne* confirm that the Board will only find a clear and unmistakable waiver of the obligation to continue providing fringe benefits where there is explicit contract language authorizing an employer to terminate its obligations. In another case involving benefits, *KBMS, Inc.,* 278 NLRB 826 (1986), the judge noted the holding of *Cauthorne* that benefit agreements would contain waivers of the right to continued benefits. However, the judge reiterated the requirement that "such a waiver must be in clear and unmistakable language." 278 NLRB at 849. Language requiring that contributions be made "so long as a Producer is obligated pursuant to said collective bargaining agreements" did not meet this standard. The judge distinguished *Cauthorne* on the ground that this language did not "deal with the termination of the employer's obligation to contribute to the funds." 278 NLRB at 849.

In *Schmidt-Tiago Construction Co.,* 286 NLRB 342 (1987), the Board explicitly adopted the judge's analysis of a waiver issue. 286 NLRB at 343 fn. 7. In finding no contractual waiver, the judge distinguished *Cauthorne* by stating, "This language does not on its face, as in *Cauthorne Trucking,* specifically state that Respondent's obligation to contribute to the pension trust fund ends with the expiration of the current collective-bargaining contract." 286 NLRB at 366. More recently, in *Natico, Inc.,* 302 NLRB 668 (1991), the Board again did not find a waiver. "The contractual language does not state that the pension program will terminate on the expiration of the contract. It appears that language to that effect is required either in the collective bargaining agreement or in the underlying pension agreement to satisfy a waiver condition." 302 NLRB at 685, citing on distinguishing *Cauthorne* on this basis. Similarly, there is no language in the Duration Clause of the Effects Bar-

gaining Agreement which states that the severance benefits will terminate on expiration of the agreement.[18]

It can be argued that the second sentence of the Effects Bargaining Agreement's Duration clause could be construed as a waiver. This sentence reads: "It is understood that expiration of this Agreement shall not foreclose the post-expiration payment to employees of bonuses or other benefits which accrued to them because of layoff during the term of this Agreement, or the post-expiration presentation in a timely fashion of claims regarding matters arising out of the application of its terms prior to the expiration date." Reading the sentence raises the question of the necessity for the sentence if the severance benefits survived the expiration of the Agreement as a matter of law until changed or ended in negotiations. However, this is not clear and the only evidence relating to this sentence was offered by Kelly. As noted earlier, Kelly testified that the language was there to protect an employee laid off before June 6, 1997, who would be collecting his or her severance sometime after June 6, 1997, because, for example, the employee's 12-month waiting period had not yet run. Kelly explained that the concept behind the sentence was the possibility that in negotiations after the expiration of the Agreement in 1997, Respondent may have been in a better negotiating position and bargaining for less severance pay than was in the Effects Bargaining Agreement. The second sentence of the Duration clause was to ensure that employee's laid off prior to June 6, 1997, were protected against this possibility.

Moreover, the second sentence of the Duration Clause only addresses the way in which preexpiration layoffs are paid and does not preclude the payment of postexpiration benefits. To that extent, the language is akin to the language in *General Tire,* and thus cannot constitute a clear and unmistakable waiver.

The language of the Effects Bargaining Agreement is not clear and unambiguous as to whether the benefits due to laid-off employees actually terminated, or whether it was simply the term of the Effects Bargaining Agreement that expired. If it is the latter, as noted in detail earlier, then the benefits under the Agreement obviously continue beyond the expiration date, just as the benefits and wages under the collective-bargaining agreement continued beyond the expiration date, absent a clear and unmistakable waiver to the contrary. It must be recognized that the Competitiveness Agreement and the Effects Bargaining Agreement are rather unusual pieces of work, which were carefully drafted by Respondent's skilled and experienced labor negotiators. They certainly were aware in 1994 of *Katz* and its progeny, and had the skill to insert such words as "benefits", "obligations" or "contributions" if they truly intended to shut off the benefits payable under the Effects Agreement on June 6, 1997. Yet entirely absent from any of the exhibits offered by Respondent, any drafts of the highlights to be covered in such meetings, or any document referring to the bargaining sessions at all, is there reference to Respondent's' belated interpretation intended to deny hundreds of senior employees severance pay negotiated in 1994. Moreover, there is no such reference to a "sunset" provision in any of the documents prepared by Respondent. I find that there is no clear and unmistakable waiver contained in the Duration Clause of the Effects Bargaining Agreements, the matter of severance benefits was an existing benefit and mandatory subject of bargaining that continued past the expiration date of the Effects Bargaining Agreement. Respondent's failure and refusal to continue to provide such benefits past that date until good faith bargaining leads to impasse or agreement constitutes a violation of Section 8(a)(5) of the Act.

[18] For the same reasons I find this case distinguishable from *Cauthorne,* I find it is distinguishable from *Duck Soup Production, Inc.,* 16 Adv. Mem. Rptr. Sec. 26106 (1989).

CONCLUSIONS OF LAW

1. The Respondent, AlliedSignal Aerospace, a Division of Allied Signal, Inc., is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Locals 1010 and 376, International Union, Automobile, Aerospace & Agricultural Implement Workers of America, UAW are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(a)(1) and (5) of the Act by refusing subsequent to June 6, 1997, to continue to provide benefits to bargaining unit members of Locals 376 and 1010 contained in their respective Effects Bargaining Agreements and thereafter failing and refusing to bargain in good faith with regard to such benefits.

4. The unfair labor practices committed by Respondent are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

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

Having unlawfully failed and refused to continue to provide benefits contained in Locals 376's and 1010's Effects Bargaining Agreement, Respondent should be ordered to bargain in good faith with the Unions over such benefits and restore the status quo ante as it existed prior to June 6, 1997, and make whole all bargaining unit members who have been denied such benefits, including severance benefits, with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[19]

ORDER

The Respondent, AlliedSignal Aerospace, a Division of Allied Signal, Inc., of Morristown, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing after June 6, 1997, to continue to provide benefits, including severance benefits, contained in its Effects Bargaining Agreements with Locals 376 and 1010 UAW, and failing and refusing to bargain in good faith with the Unions with respect to those benefits.

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

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

[19] 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.

(a) Restore the status quo ante as it existed prior to June 6, 1997, and make whole all bargaining unit members who have been denied benefits, including severance benefits, contained in the Unions' Effects Bargaining Agreements, with interest, and bargain in good faith with the Unions over such benefits.

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

(c) Within 14 days after service by the Region, post at its facility in Stratford, Connecticut, and mail a copy thereof to each bargaining unit member laid off subsequent to June 6, 1997,[20] copies of the attached notice marked "Appendix."[21] Copies of the notice, on forms provided by the Regional Director for Region 34, 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. The Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 6, 1997.

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

[20] As the Stratford, Connecticut facility may be entirely closed as of the date this Order becomes final, it is deemed necessary for Respondent to mail the notice to all employees affected by its unlawful actions in order to give them proper notice.

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

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.

WE WILL NOT fail and refuse to continue to provide benefits, including severance benefits, contained in our Effects Bargaining Agreements with UAW Locals 376 and 1010 and WE WILL NOT refuse to bargain in good faith with the Unions with respect to those benefits.

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

WE WILL restore the status quo ante as it existed prior to June 6, 1977, and make whole all bargaining unit members represented by Locals 376 and 1010 who have been denied benefits, including severance benefits, contained in the Unions' Effects Bargaining Agreements, with interest, and WE WILL bargain in good faith with the Unions over such benefits.

ALLIEDSIGNAL AEROSPACE, A DIVISION OF ALLIED SIGNAL, INC.