

**Allis-Chalmers Corporation and International Union of United Automobile, Aerospace and Agricultural Implement Workers. Cases 13-CA-22505 and 13-CA-22164**

30 September 1987

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
JOHANSEN AND BABSON**

On 30 March 1987 Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief.<sup>1</sup>

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions, to modify the remedy,<sup>2</sup> and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Allis-Chalmers Corporation, Batavia, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> Following submission of this case to the Board, the Respondent filed a motion to reopen the record to consider a bankruptcy petition, which it filed in the United States Bankruptcy Court for the Southern District of New York on 29 June 1987. The Respondent contends that the bankruptcy petition should be considered as further evidence of its poor financial condition, which excuses its otherwise unlawful action. The Respondent further argues that even assuming its economic defense is rejected and it is found in violation of the Act, the bankruptcy petition should be considered in determining whether the Board should provide for a remedy of monetary relief. We deny the motion as it proffers evidence concerning an alleged event that occurred after the close of the hearing *K & E Bus Lines*, 255 NLRB 1022 fn 2 (1981). We further note that a bankruptcy petition does not preclude the Board from fully remedying prepetition unfair labor practices. See *Edward Cooper Painting*, 273 NLRB 1870 (1985).

<sup>2</sup> In accordance with our decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), interest on and after 1 January 1987 shall be computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest on amounts accrued prior to 1 January 1987 (the effective date of the 1986 amendment to 26 U.S.C. § 6621) shall be computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977).

*Douchan Pouritch, Esq.*, for the General Counsel.  
*Charles I. Cohen, Esq.*, of Washington, D.C., for the Respondent.

*Irving M. Friedman, Esq.*, of Chicago, Illinois, for the Petitioner.

**DECISION**

**STATEMENT OF THE CASE**

WALLACE H. NATIONS, Administrative Law Judge. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (Union) on 21 April 1982 filed a charge in Case 13-CA-22164 and on 30 August 1982 filed the charge in Case 13-CA-22505. On 4 October 1982 the Regional Director for Region 13 issued an order consolidating cases, which alleges 8(a)(5) violations of the Act by Allis-Chalmers Corporation (Respondent).

A hearing in these cases was held on 12 January 1987 before me in Chicago, Illinois. Briefs were received from the General Counsel and Charging Parties.

**I. THE BUSINESS OF THE RESPONDENT**

Respondent is a manufacturer of industrial products maintaining facilities throughout the United States. At all times material to these proceedings, Respondent maintained a warehousing facility located in Batavia, Illinois. Respondent admits and I find that it has been at all times material an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

The Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

**III. THE ALLEGED UNFAIR LABOR PRACTICES**

*A. Procedural Background*

The procedural background of these cases is necessary to a full understanding of the issues involved. This background was stipulated to by the parties at the hearing.

A petition for a representation election was filed by the Charging Party, the International Union, United Automobile, Aerospace and Agricultural Workers of America, UAW (the Union) on 13 July 1979 (Case 13-RC-15189). Pursuant to a stipulation for certification upon consent election agreement, an election was held on 31 August 1979 in a unit consisting of the warehouse and warehouse maintenance employees of Allis-Chalmers Corporation (Allis-Chalmers or the Company) at its Batavia, Illinois facility. There were approximately 201 eligible voters, and 96 ballots were cast for the Union and 81 against the Union (Case 13-RC-15189).

Allis-Chalmers timely filed objections to conduct affecting results of an election (objections) specifying numerous threats, misrepresentations, and bribery of employees to show support for the Union. On 12 December 1979 the then Regional Director for Region 13, without holding a hearing, issued a report on objections recommending that the objections be overruled and the union certified. Allis-Chalmers filed timely exceptions with the Board requesting that the election be set aside or that a hearing be held. On 27 March 1980 the Board issued a Decision and Certification of Representative adopting the Regional Director's findings and recommendations.

During its consideration of Allis-Chalmers' exceptions to the Regional Director's report on objections, the Board did not review the materials compiled during the investigation of the objections.

A certification test 8(a)(5) proceeding ensued (Case 13-CA-19918). On 30 September 1980 the Board issued a Decision and Order (252 NLRB 606) finding that Allis-Chalmers had violated Section 8(a)(1) and (5) of the Act by refusing to bargain with the Union.

Thereafter, the Board filed an application for enforcement of its Order with the United States Court of Appeals for the Seventh Circuit. On 16 June 1982 the court denied enforcement of the Board's Order, set aside the certification on which it was based, and remanded the matter to the Board for further proceedings (680 F.2d 1166).

Subsequently, on 19 January 1983, the Board accepted the remand and on 11 April 1984 the Board issued an Order remanding for hearing, mandating that the record in Case 13-CA-19918 be reopened and a hearing be held before an administrative law judge. That hearing was held before Administrative Law Judge Claude R. Wolfe on 13 June, 7, 30, and 31 August, and 16 October 1984.

On 15 January 1985 Judge Wolfe issued his supplemental decision ordering that the Company's objections be overruled and that the Board's previous Decision and Order 252 NLRB 606 (1980), finding violations of Section 8(a)(1) and (5) of the Act, be reaffirmed. The Company filed exceptions and, on 13 February 1986, the Board issued a Second Supplemental Decision (278 NLRB 561) affirming the decision and ordering the Company to bargain with the Union. The Board's Order has been complied with and that case has been closed.

Meanwhile, two events have occurred. First, in June 1983, apart from the certification contest, Allis-Chalmers began recognizing and bargaining with the Union for the Batavia unit employees. Second, as of 24 May 1985, Allis-Chalmers has no longer owned or operated the Batavia, Illinois facility that was subject of the Board proceedings. Rather, since that time, that facility has been owned and controlled by Deutz-Allis Corporation, an entity not commonly owned or controlled by Allis-Chalmers Corporation. Deutz-Allis Corporation has been recognizing and bargaining with the Union for its Batavia employees. Deutz-Allis Corporation is not a party to, and did not appear at, the proceedings concerning the subject cases.

#### *B. The Allegations of the Complaint*

The complaints allege that the Respondent violated Section 8(a)(5) of the Act when it changed the terms and conditions of employment for employees in the Batavia bargaining unit in the following manner:

1. About 1 March 1982 it reduced the paid holidays from 10 plus 1 floating holiday to 8 holidays plus 2 floating holidays per year.

2. About 1 March 1982 it reduced vacations for 1982 by 20 percent.

3. About 1 April 1982 it instituted a wage freeze.

4. About 1 April 1982 it discontinued the tuition reimbursement plan.

5. About 1 April 1982 it discontinued the U.S. Savings Bond program for employees with good attendance records.

6. About 1 September 1982 it reduced the wages of the employees by 10 percent.

There were essentially no facts in dispute concerning the allegations of the complaint. There is no contention by the parties that the actions taken by Respondent were done for discriminatory and/or antiunion purposes. The actions taken as alleged in the complaint were for economic reasons that will be discussed and detailed hereafter. All the bargaining unit employees of Allis-Chalmers at Batavia were salaried at all times material to these proceedings. The facts relating to each allegation set out above will be stated below, separately.

Allegation of complaint in Case 13-CA-22164 that Allis-Chalmers reduced paid holidays from 13 to 10 per year and instituted 2 floating holidays per year: Allis-Chalmers, as a matter of corporate policy, decided that all salaried employees in the United States, of whom there were about 8000, were to be held to a maximum of 10 holidays per year. At Batavia, this meant that the then existing 10 plus 1 floating holiday plan was changed to 8 plus 2 floating holidays for all salaried employees, including those in the collective-bargaining unit. This change was in effect until 23 May 1985, the last date that Allis-Chalmers owned and operated the Batavia facility.

Allegation of complaint in Case 13-CA-22164 that Allis-Chalmers reduced vacations for 1982 by 20 percent: This change occurred on 1 March 1982, and applied to all 8000 salaried employees. It was a one-time reduction and full vacations were restored effective 1 January 1983 at Batavia and elsewhere.

Allegation of complaint in Case 13-CA-22164 that Allis-Chalmers instituted a wage freeze: Early in 1982, a wage freeze was instituted for all salaried employees in the agricultural business group, of whom there were about 1500, including those at Batavia. On 1 July 1982 the freeze was made applicable to the remaining 6500 salaried employees. The freeze continued until May 1984.

Allegation of complaint in Case 13-CA-22164 that Allis-Chalmers discontinued the tuition reimbursement plan: Effective 1 April 1982, all Allis-Chalmers facilities were instructed to discontinue the tuition reimbursement plan, which was in effect for all 8000 employees. The tuition reimbursement plan was not a program for generalized education. Rather, it was to assist an employee with training in his particular job. At Batavia, between 1976-1982 that plan had been used by two of three employees who took technical courses lasting less than an academic semester. The cost of each course was less than \$100. In 1984 the tuition reimbursement plan was reinstated companywide with again but few employees at Batavia participating.

Allegation of complaint in Case 13-CA-22164 that Allis-Chalmers discontinued the U.S. Savings Bond program for employees with good attendance records: Less than 1 year before 1 April 1982, Allis-Chalmers had instituted a program giving employees with perfect attendance records for 3 consecutive months a \$50 U.S. savings bond. Approximately 10 employees received an award

under the program. Effective 1 April 1982 Allis-Chalmers discontinued this program and it remained discontinued until 23 May 1985, the last day Allis-Chalmers owned and operated the Batavia facility.

Allegation of complaint in Case 13-CA-22505 that Allis-Chalmers unilaterally reduced the wages of the Batavia employees by 10 percent: A 10-percent salary reduction did go into effect on 1 September 1982. At this point in time, the United States Court of Appeals for the Seventh Circuit had denied enforcement of the Board's bargaining order, set aside the certification on which it was based, and remanded the matter to the Board for further proceedings. The reduction applied to all 8000 salaried employees of Allis-Chalmers. The reductions were made companywide even to profitable business segments. The agricultural business group, of which Batavia warehouse was a part, was losing massive amounts of money. Among others, the reduction applied to other salaried warehouse employees of Allis-Chalmers including those in Atlanta, Columbus, Syracuse, Des Moines, Dallas, and Kansas City.

There was a two-step restoration of the salary reduction. Effective 1 January 1984 the cut was restored prospectively by adding the 10 percent directly into the paychecks of the employees. The portion of the restoration was done simultaneously for all 8000 salaried employees including those at Batavia.

The other aspect of the restoration involved the granting of Allis-Chalmers common stock that was to restore lost salary for the period from 1 July through 31 December 1983. At the time this restoration was announced, June 1983, Allis-Chalmers was recognizing and bargaining with the Union. Nicholas Jordan, Respondent's director of industrial relations, testified without contradiction that during the bargaining for a collective-bargaining agreement, it was contemplated by both the Company and the Union that, if the terms for a collective-bargaining agreement were agreed to, the Union would seek withdrawal of the subject unfair labor practice charges. However, as no comprehensive agreement was reached, in September 1984, Allis-Chalmers issued common stock to its employees in an amount equal to the loss each employee had incurred for the period 1 July-31 December 1983.

### C. Economic Circumstances of Allis-Chalmers

The actions taken by Allis-Chalmers, which are alleged to be lawful in the complaints, were taken for economic reasons. What follows next is a description of the economic circumstances facing Allis-Chalmers at the time before and after those actions were taken.

In late 1981 Allis-Chalmers began suffering from financial and economic problems. In 1981 the Company lost \$29 million including a \$46 million loss in the fourth quarter. Allis-Chalmers lost \$207 million in 1982, \$133 million in 1983, \$261 million in 1984, and \$168 million in 1985. These losses translated into declines in Allis-Chalmers' stock. There was a \$2.86 per share loss for 1981, \$17.24 for 1982, \$11.14 for 1983, \$19.26 for 1984, and \$12.27 for 1985.

The price of Allis-Chalmers' common stock went down from a price of approximately \$30 per share in the

period just prior to 1982 to a current price of \$3. Dividends on Allis-Chalmers' common stock ceased in the fourth quarter of 1981 and there have been none declared since then. Dividends on Allis-Chalmers preferred stock have been suspended since 1982.

These losses referred to above led Allis-Chalmers to sell or close the following facilities:

1982	
<i>Location</i>	<i>Disposition</i>
West Allis, WI Foundry	Closed
Decatur, IL Plant	Closed
St. Louis, MO Plant	Sold
Oxnard, CA Plant	Closed
West Allis, WI Marine Diesel Div.	Closed
Louisville, KY Plant	Closed
Lexington, SC Plant	Closed
Los Angeles, CA Plant	Closed
1983	
LaPorte, IN Plant	Closed
Memphis, TN Warehouse	Closed
Pt. Washington, WI Plant	Sold
Grant, FL Plant	Sold
1984	
Cambridge, MA Plant	Closed
York, PA Precision Components Div.	Sold
Aurora, IL Plant	Closed
1985	
West Allis, WI Tractor Plant	Closed
Batavia, IL Warehouse	Sold
Independence, MO Plant	Sold
Topeka, KS Plant	Sold
Victor, NY Plant	Closed
Moline, IL Plant	Closed
1986	
Minneapolis, MN Warehouse	Closed
Matteson, IL Plant	Closed
Harvey, IL Plant	Closed
York, PA Hydro Turbine Div.	Sold
San Francisco, CA Repair Shop	Sold
Shreveport, LA Repair Shop	Sold
Philadelphia, PA Repair Shop	Sold

Denver, CO Repair Shop                      Closed

The sale or closing of the facilities listed above carried with it, of course, a severe curtailment in employment. At the end of 1981, Allis-Chalmers employed approximately 30,000 individuals; currently, it employs approximately 11,000 individuals.

At the following times, Allis-Chalmers had approximately the following number of salaried unit employees at Batavia:

March 1982	156
April 1982	155
September 1982	149
June 1983	142
January 1984	142
May 1985	133

In 1983 Allis-Chalmers applied for waiver by the Internal Revenue Service of a \$26 million funding requirement for certain of its pension plans. The test for the granting of this waiver was whether there was "substantial business hardship" involved. The Internal Revenue Service granted this request. Even though Allis-Chalmers received the waiver, in 1985 Allis-Chalmers terminated 11 of its pension plans for economic reasons. The Pension Benefit Guaranty Corporation appointed a trustee and assumed responsibility for the plan's approximate \$170 million in unfunded vested benefits.

In an effort to turn its economic picture around, Allis-Chalmers attempted to achieve concessions on many fronts. Lenders of the Company waived interest and penalty payments. Breaches of covenants were forgiven. Lenders took equity interest in exchange for debt, thereby reducing their holdings to a fraction of that owed. Officers of Allis-Chalmers took a 5-percent cut even before the 1 September 1982 reduction, which was then made applicable to them in the form of an additional 5-percent cut. Directors of the company took a 40-percent cut.

Suppliers of Allis-Chalmers were asked to extend the period of time for payment and to reduce prices of materials and services anywhere from 7 to 20 percent. Many of these suppliers granted those concessions. Where Allis-Chalmers had established collective-bargaining agreements covering hourly employees, Allis-Chalmers routinely sought, and usually obtained, labor cost concessions during negotiations for new contracts.

During the relevant time period, the Company effected no unilateral changes in wages or benefits for its hourly employees who were in bargaining units covered by collective-bargaining agreements. Instead, with respect to those employees, the Company waited for the expiration of each particular contract in attempting to negotiate wage and other reductions to effect cost savings.

At the time that the events in question occurred, Respondent had only one bargaining unit of salaried employees covered by a collective-bargaining agreement. This unit involved designers at Respondent's West Allis, Wisconsin facility represented by UAW Local 1164. As it did at Batavia, about 1 September 1982, Respondent unilaterally cut this unit's wages by about 10 percent.

The Union took this wage cut to arbitration and won the arbitration. Allis-Chalmers paid the involved employees backpay.

#### Discussion and Conclusion

Both the Respondent and the General Counsel agree that the Board has consistently held that economic necessity of any kind is not a defense to an unfair labor practice charge based on the repudiation of the monetary provisions of the collective-bargaining agreement. They also agree that the Board has generally held that an employer acts at its peril in making changes in terms and conditions of employment while objections to an election are pending and a final determination on those objections had not yet been made. Thus, where determination on the election objections ultimately results in certification of the representative, the Board has ruled that an employer's interim changes in terms and conditions of employment violate Section 8(a)(1) and (5) of the Act.

In *NLRB v. Katz*, 369 U.S. 736, 748 (1962), the Supreme Court held that an employer violated Section 8(a)(5) of the Act, when, engaged in bargaining with the union for an initial contract, it made unilateral changes in matters that were the subject of mandatory bargaining under Section 8(d) of the Act. However, in *NLRB v. Katz*, supra, the Court added that it did not "foreclose a possibility that there might be circumstances which the Board could or should accept as excusing or justifying unilateral action."

In *Mike O'Connor Chevrolet*, 209 NLRB 701, 703 (1975), enf. denied on other grounds 512 F.2d 684 (8th Cir. 1975), the Board stated:

The Board has long held that, absent *compelling economic considerations* for doing so, an employer acts at its peril in making changes in terms and conditions of employment during the period that objections to an election are pending and the determination has not yet been made. And where the final determination on the objections results in the certification of a representative, the Board has held the employer to have violated Section 8(a)(5) and (1) for having made such unilateral changes. Such changes have the effect of bypassing, undercutting, and undermining the union's status as the statutory representative of the employees in the event a certification is issued. To hold otherwise would allow an employer to box the union in on future bargaining positions by implementing changes of policy and practice during a period when objections or determinative challenges to the election are pending. Accordingly, since we have already determined in this case that the Union should be certified, we find, contrary to the Administrative Law Judge, that Respondent was not free to make changes in terms and conditions of employment during pendency of post-election objections and challenges without first consulting with the Union. [Emphasis added.]

In *Van Dorn Plastic Machinery Co.*, 265 NLRB 864, 865 (1982), enf. in part as modified 736 F.2d 343 (6th Cir. 1984), the Board stated:

Contrary to the Administrative Law Judge, we do not believe that the term "business necessity," without more, encompasses the concept of "compelling economic considerations." Indeed, the fair import of the Board's statements in *Mike O'Connor Chevrolet* is that the circumstances amounting to "compelling economic considerations" would be rare. Thus, "business necessity" may well encompass considerations beyond the realm of "compelling economic considerations." Indeed that which makes good "business" sense is not at all the equivalent of a "compelling economic consideration."

Both Respondent and the General Counsel, while citing the *Van Dorn* and *Mike O'Connor* cases have not noted any case subsequent to these in which the Board has actually found "compelling economic considerations" that excused an employer's unilateral changes in terms and conditions of employment during the period the objections to an election are pending and a final determination has not yet been made.

Turning to the case in question, the Board held that Respondent violated Section 8(a)(5) of the Act when it refused to bargain with the Union for the Batavia warehouse employees after the Union won the representation election that was held on 31 August 1979. *Allis-Chalmers*, 278 NLRB 561 (1986). Respondent does not dispute that there existed a *Mike O'Connor Chevrolet* situation when Respondent made in 1982 the unilateral changes in matters that were the subject of mandatory bargaining under Section 8(d) of the Act as alleged in the complaint and as admitted in its answer to the complaint.

Respondent was, therefore, required to bargain with the Union in 1982 before making its unilateral changes, unless Respondent could show that it had "compelling economic considerations" for not doing so. Consequently, the main issue in this case is: Did Respondent prove that it had "compelling economic considerations" for not bargaining with the Union concerning its unilateral changes at the Batavia warehouse?

Allis-Chalmers' financial condition from 1981 through 1985 is detailed in the facts found above. Without reiterating those details at this point, I would agree with the Respondent that its financial condition was dire and can only be considered extremely poor during the entire period. However, I do not find that its economic condition constituted "compelling economic considerations" requiring it to unilaterally make changes in the terms and conditions of employment of the Batavia bargaining unit.

With the sole exception of its bargaining unit of designers at West Allis, Wisconsin, Respondent recognized that it would be required to bargain for cost-cutting concessions with its unionized employees and waited until the expiration of existing contracts to seek such concessions. In the one instance when it did not wait for the expiration of the contract and made the unilateral cuts, the Company was required in arbitration to restore the cuts it unilaterally made. Clearly, Respondent, recognizing that it needed to effect cost-cutting measures in 1981 and 1982, could have begun bargaining in good faith with the Union with respect to the Batavia unit and sought the agreement of the Union and the employees in

accepting the changes that it made unilaterally. Had the Company bargained in good faith to impasse, it could have lawfully implemented the changes that it did implement without bargaining. I can find no convincing evidence in the record that would show why the Company was compelled to take the unilateral actions rather than attempting to bargain over these actions with the Union on behalf of the Batavia unit. To the contrary, the Company only a year later began bargaining with the Union and continued bargaining up until the sale of the Batavia facility in 1985.

The cost savings made possible by the implementation of the unilateral changes for the Batavia unit from only an extremely small portion of the Company's overall cost and certainly not such a significant portion of those costs as to justify making the changes unilaterally without even attempting to bargain over them in good faith. Respondent argues that if it made exceptions to its cost-cutting actions, it would have destroyed the equality of sacrifice needed in order to make the program work. I do not find that this argument has merit. The Company never afforded the Batavia unit the opportunity to voluntarily share in the sacrifices being made by other employees of the Company. Had the Company bargained with the unit's representative and asked for the sacrifices to be accepted by the employees in the unit and no agreement or mutually satisfactory ground being found, the Company could have then, as noted above, made the changes it did, without fear of legal sanction.

However, the Company chose to bypass its employees' chosen representative and, as stated in the cases cited above, "acted at its peril." I find that by refusing to bargain with the Union during the pendency of its objections to the election and the final determination on the issue of certification, the Company's unilateral actions in changing the terms and conditions of employment, as alleged in the complaint, constitute a violation by it of Section 8(a)(5) and (1) of the Act.

The Respondent also offers three other defenses that I find have no merit in the circumstances. It first argues that there should be no violation of the Act found for its unilateral 10-percent salary cut in September 1982 because on 16 June 1982, the United States Court of Appeals for the Seventh Circuit denied enforcement of the Board's bargaining order, set aside the certification on which it was based, and remanded the matter to the Board for further proceedings. Respondent urges that by virtue of the court order, there was no certification and, hence, no reason for the Union to be accorded recognition. I consider the Company's position as of September 1982 no different than its position while the matter was pending on appeal on objections before the Board. The date of the final certification would revert back to the date of the certification being appealed and thus Respondent acted in its peril throughout the entire procedure in effecting unilateral changes without bargaining. Its own actions in beginning bargaining with the Union in 1983 belie its position in this regard as well, as the Board did not issue its final order in the proceeding on the election until 13 February 1986. Yet, while the case was still the same status as it had been in 1982, the Com-

pany considered itself obligated in 1983 to begin bargaining.

Next, Respondent urges that the complaint should be dismissed because the Union failed to request bargaining respecting the unilateral changes that it proposed, though the Union had notice prior to the institution of at least some of these changes. In this regard, I would point out that the Union had requested bargaining well before 1982 and had filed a charge with the Board resulting in a complaint in Case 13-CA-19918 alleging Respondent's refusal to recognize the Union and bargain with it. I find that during the pendency of that action to request further bargaining would have been futile and unnecessary. Certainly, under these circumstances, the filing of the unfair labor practice charges involved in these proceedings reflect the Union's continued interest in the bargaining unit and its continued desire to bargain over the terms and conditions of employment of the employees in the Batavia bargaining unit.

Last, Respondent requested in the event that a violation of the Act is found in these proceedings, as is the case, that the Board not provide for monetary relief. It urges that no monetary relief should be awarded because the Company's difficult economic conditions made the Employer's action inevitable and there is no charge of antiunion animus.

On brief, Respondent argues that it is undisputed that Allis-Chalmers had no antiunion animus in taking the actions complained of. Rather, Respondent was unquestionably reacting to its economic circumstances. Given the economic realities of the situation, it urges that it is proper to infer that the Union would not have been successful, through bargaining, in convincing the Company not to apply its uniform policy of reductions for all salaried employees.

I find that if Allis-Chalmers believed that the Union would not have been successful through bargaining in convincing the Company not to make the changes that it did, that it could have bargained with the Union over the changes in good faith and then implemented the changes. It took the actions that it did with full knowledge of the possible monetary liabilities which might result from its actions. By so doing, it took a knowledgeable gamble. Now that it has lost that gamble, it asks to be relieved of the responsibilities that will result from the loss. I do not find that this requested relief is warranted. Having found that the Company was not faced with economic conditions so compelling that it justified refusal to bargain over the changes it desired to implement with the Union, I cannot now find any circumstances so compelling that would warrant relieving Respondent of the legal obligations it incurred by taking the actions it did.

#### CONCLUSIONS OF LAW

1. Allis-Chalmers Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) and (5) of the Act when, without bargaining with the Union, it changed the terms and conditions of employment of the employees in the Batavia bargaining unit in the following manner:

(a) About 1 March 1982 it reduced the paid holidays from 10 holidays plus 1 floating holiday to 8 holidays plus 2 floating holidays per year.

(b) About 1 March 1982 it reduced vacations for 1982 by 20 percent.

(c) About 1 April 1982 it instituted a wage freeze.

(d) About 1 April 1982 it discontinued its tuition reimbursement plan.

(e) About 1 April 1982 it discontinued its U.S. Savings Bond Program for employees with good attendance records.

(f) About 1 September 1982 it reduced the wages of the employees by about 10 percent.

#### REMEDY

Having found that Respondent unlawfully unilaterally changed the terms and conditions of employment of employees in the Batavia bargaining unit in the manner set out immediately above in the conclusions of law section of this decision, paragraphs 3(a)-(f), I order Respondent to make its employees in the Batavia bargaining unit whole for any loss of benefits resulting from Respondent's unlawful conduct. The amount of backpay determined to be owed the employees shall be paid with interest to be computed in accordance with the formula set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with the interest thereon computed in the manner generally described in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

I will not order Respondent to restore the status quo by rescinding its unilateral changes for the reasons that it has already rescinded most if not all of the changes and it has sold the Batavia facility to a third party and no longer has any legal connection with the facility or the unit.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>1</sup>

#### ORDER

The Respondent, Allis-Chalmers Corporation, Batavia, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing, in violation of Section 8(a)(5) and (1) of the Act to recognize, meet, and bargain with the Union as the certified, exclusive collective-bargaining representative of the certified bargaining unit of Respondent's employees at Batavia, Illinois, before instituting unilateral changes in the unit's terms and conditions of employment, including reducing paid holidays, reducing vaca-

<sup>1</sup> 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

tions, instituting a wage freeze, discontinuing the tuition reimbursement plan, discontinuing the U.S. Savings Bond Program for employees with good attendance records, and reducing the wages of its employees in the unit.

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

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

(a) Make the employees in its Batavia, Illinois bargaining unit whole for lost earnings and benefits as described in the remedy section of this decision.

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

(c) Post at the involved Batavia, Illinois warehouse facility, if its current owner is willing, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, 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.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

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

#### 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 unlawfully refuse to recognize, meet, and bargain with International Union of United Automobile, Aerospace and Agricultural Implement Workers as the certified, exclusive collective-bargaining representative of the bargaining unit of Allis-Chalmers Corporation employees at Batavia, Illinois, before instituting unilateral changes in the bargaining unit's terms and conditions of employment, including reducing paid holidays, reducing vacations, instituting a wage freeze, discontinuing the tuition reimbursement plan, discontinuing the U.S. Savings Bond program for employees with good attendance records, and reducing the wages of our employees in the unit.

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

WE WILL make our employees in the Batavia, Illinois bargaining unit whole for lost earnings and benefits which resulted from our unlawful unilateral actions.

ALLIS-CHALMERS CORPORATION