Solutia, Inc. *and* United Food & Commercial Workers Union Local 414c/International Chemical Workers Union Council, affiliated with United Food and Commercial Workers International Union, CLC and IUE-CWA, Local 288, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers of America, AFL–CIO. Case 1–CA–45447

July 15, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND PEARCE

On July 30, 2010, Administrative Law Judge Jeffrey D. Wedekind issued the attached decision. The Respondent filed exceptions and a supporting brief, the Acting General Counsel and the Charging Party filed answering briefs, and the Respondent filed a reply brief. The General Counsel and the Charging Party filed cross-exceptions and supporting briefs, and the Respondent filed answering briefs to both parties' cross-exceptions.

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

The Board has considered the record in light of the exceptions,[1] cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that Respondent, Solutia, Inc., Springfield, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(g).

"(g) Within 14 days after service by the Region, post at its Indian Orchard facility, including the Saflex Control Lab, copies of the attached notice marked "Appendix."[24] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the Indian Orchard facility, 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 August 2, 2009. In addition, the Respondent shall also duplicate and mail, at its own expense, a copy of the notice to all employees who retired after the consolidation."

Dated, Washington, D.C. July 15, 2011

Wilma B. Liebman, Chairman

Craig Becker, Member

Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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[1] The Respondent urges the Board to disregard the Charging Party's brief in support of its cross-exceptions because it fails to comply with the Sec. 102.46(c) of the Board Rules and Regulations. Specifically, the Respondent contends that the Charging Party's brief is deficient because the arguments fail to reference the exceptions to which they relate. The Board has discretion in determining compliance with its regulations, and finds that the Charging Party's brief is in substantial compliance with the relevant rules. See, e.g., *Metta Electric*, 338 NLRB 1059 (2003) (finding brief substantially complies with Sec. 102.46(c) and exercising discretion to accept it despite nonconformity with rule), enfd. in relevant part sub nom. *JHP & Associates, LLC v. NLRB*, 360 F.3d 904 (8th Cir. 2004).

[2] In accordance with our decision in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010), we modify the judge's recommended remedy by requiring that backpay and other monetary awards shall be paid with interest compounded on a daily basis.

Also, we shall modify the judge's recommended Order to provide for the posting of the notice in accord with *J. Picini Flooring,* 356 NLRB No. 9 (2010).

Finally, the Charging Party excepted to the judge's failure to require the Respondent to mail notices to the employees who retired following the consolidation. The Charging Party also takes issue with the judge's failure to require notice posting at the Saflex Control Lab. In its answering brief, the Respondent expresses a willingness to mail the notice to the retirees and to post the notice at the Saflex Control Lab. Therefore, we have modified the Order to reflect these additional requirements.

Joanne P. Howlett, Esq., for the General Counsel.
Hugh F. Murray, Esq. (Murtha Cullina LLP), for the Respondent.
Randall Vehar, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

JEFFREY D. WEDEKIND, Administrative Law Judge. In August 2009, Respondent consolidated two chemical testing laboratories located at its Springfield, Massachusetts facility (the "Indian Orchard" plant), thereby transferring work previously performed by employees represented by UFCW Local 414C (the Charging Party) to employees represented by IUE-CWA Local 288 (the Party in Interest). The General Counsel alleges that this conduct violated Section 8(a)(5) and (1) of the Act for two, alternative reasons: (1) because Respondent transferred the work without Local 414C's consent, or (2) because Respondent failed to afford Local 414C an opportunity to bargain over the decision and its effects on employees.

The underlying charge was filed by Local 414C on June 2, 2009. The General Counsel issued the complaint on December 31, 2009, and Respondent filed its answer denying the substantive allegations on January 20, 2010.

Following two prehearing conferences, the case was tried before me on April 8 and 9, 2010, in Amherst, Massachusetts.[1] Thereafter, on July 14, 2010, the General Counsel, Local 414C, and Respondent filed posthearing briefs. After considering the briefs and the entire record,[2] including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Delaware corporation with its principal office in St. Louis, Missouri. It owns and operates facilities located throughout the U.S., including the subject Indian Orchard facility in Springfield, Massachusetts where it manufactures chemically-based specialty products. Respondent admits, and I find, that during the 12 months preceding the complaint, it purchased and received at the Indian Orchard facility goods valued over $50,000 from outside Massachusetts, and that, at all material times, it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that Local 414C is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The essential facts are undisputed. The Indian Orchard plant is located on a relatively large, 250-acre site owned by Respondent that includes numerous buildings and/or work areas. Respondent operates three manufacturing units at the site: two that manufacture Butvar polyvinyl butyral resins, and one that manufactures Saflex, a plasticized resin that is used to make laminated safety glass. There are also two "guest"/third-party operations on the site: Cytec Industries, which produces adhesives, and INEOS, which produces Resimene liquid coatings. (GC Exh. 2; R. Exh. 4; and Tr. 148–152.)

The relevant events here concern two laboratories that perform quality testing at the site: the West Control Lab (WCL), which is located in Building 160, and the Saflex Control Lab (SCL or Saflex Lab), located in Building 99. Historically, the two labs were owned and operated by different companies (Shawinigan Resins and Fiberloid, respectively) and were completely separate facilities. Indeed, there was a locked chain-link fence between them. The WCL (then part of the so-called Bircham Bend plant) was on the west side of the fence, and the Saflex Lab (then part of the so-called Springfield Plant) was on the east side. The employees in each lab were also separately represented by different unions—the west-side by Local 414C, and the east side by Local 288—and were covered by separate collective-bargaining agreements.[3]

By 1963, both the east and the west-side assets had been purchased by Monsanto. Nevertheless, the separation between the labs, both physical and otherwise, continued for many years thereafter. Eventually, however, in 1982 Monsanto consolidated the salaried manufacturing and service department offices and staffs for both sides. It also took down the fence. (Jt. Exh. 5; GC Exh. 2; and Tr. 49, 54–55, 92–93, 225, 252, and 360–361.)

The 1982 consolidation did not immediately or directly affect the lab analysts or other hourly production and maintenance employees represented by Locals 414C and 288 on either side (Tr. 365). Nevertheless, during negotiations over a new collective-bargaining agreement at that time, Monsanto and Local 414C agreed to modify the recognition clause (Art. I, Sec. I) of the Local 414C contract as follows (new language is underlined):

> The Company recognizes [Local 414C] as the sole collective bargaining agency for:
>
> A Unit comprising all hourly rated employees, excluding executives, office and clerical employees, guards, professional employees and supervisors as set forth in the National Labor Relations Board Certification of Representatives dated October 26, 1950, <u>for the then existing Bircham Bend Plant. This recognition clause shall be unaffected by any future consolidation of the plants at the Indian Orchard Site.</u> (GC Exh. 5; and Tr. 55–57, and 363–364).

Following the 1982 consolidation, issues occasionally arose over which Union had the right to certain work performed at the site. For example, at some point after the consolidation,

[1] Party-in-Interest Local 288 did not file a formal appearance at the hearing.

[2] Pursuant to the Charging Party's unopposed request, the hearing transcript is corrected as follows: on p. 50, L. 12, "THE WITNESS" should read "MR. MURRAY"; and on p. 247, LL. 6 and 8, "recognition meeting" should be changed to "negotiation meeting."

[3] The record indicates that both Unions have changed their affiliations over the years. UFCW Local 414C/ICWU used to be ICWU Local 414. And IUE/CWA Local 288 used to be IUE Local 288. See Jt. Exh. 5, p. 6; and GC Exhs. 3–7. See also *Shawinigan Resins Corp*. 91 NLRB 354 (1950).

Monsanto built a new Central Systems Facility (Building 100) that actually straddled the historic line between both sides. Monsanto and Locals 414C and 288 executed a "Memo of Understanding" (MOU) providing that the building would be "geographically neutral" and that "each Union will continue to be recognized as the sole collective bargaining agent for their respective employees who shall work in this new Central Systems Facility." (GC Exh. 6; and Tr. 61–65. See also Jt. Exh. 3, p. 52, and Jt. Exh. 4, p. 114.)

Monsanto and Locals 414C and 288 also executed a MOU with respect to a new Fork Truck Repair Yard (Buildings 60 and 61), which was located on the east side, and for Building 138 Storage, located on the west side. The MOU stated that Buildings 60 and 61 would likewise be "geographically neutral," although maintenance of the buildings would be the responsibility of Local 288. It also indicated that members of either union could utilize Building 138, but that maintenance of the building would "continue to be the responsibility of [Local 414C]." (GC Exh. 7; and Tr. 66. See also Jt. Exh. 3, p. 53, and Jt. Exh. 4, p. 116.)[4]

Eventually, in 1997, Monsanto "spun off" its chemical business to form a separate company called Solutia (Tr. 148). Solutia (Respondent) continued thereafter to recognize and negotiate successive collective-bargaining agreements with Local 414C. In each of those agreements, including the 2006 agreement in effect at the time of the relevant events here (Jt. Exh. 1), Respondent and Local 414C retained the same recognition language as amended in 1982.

Respondent also continued to negotiate separate collective-bargaining agreements with Local 288. The recognition clause in Respondent's 2006 agreement with Local 288 (Jt. Exh. 3) read as follows:

> The Company recognizes [Local 288] as the sole collective bargaining agent for all production, maintenance, service and research employees, excluding guards, salaried employees, office and factory clerks, clerical employees, salaried research employees, draftsmen, technical trainees, process investigators, hospital employees, executive foremen, assistant foremen, shift foremen, and all other supervisors. The terms "employee" and "employees" as used in this Agreement shall include only those employees at that portion of the Indian Orchard Plant formerly known as the Springfield Plant for whom [Local 288] is recognized as collective bargaining agent as set forth in this Section.

In June and August 2006, Respondent also executed separate MOUs with both Unions. The MOUs superseded the prior, joint MOU with Monsanto regarding Buildings 60, 61 and 138, and stated that it was "the Company's right to require" that each Local "either share Maintenance, Stores/Utility and Shipping work or perform Maintenance, Stores/Utility and Shipping work which has customarily been performed by other unions in those areas."[5] In effect, this provision allowed employees to "cross lines" in areas where the Unions had previously opposed it. The MOUs also contained provisions allocating future staffing among each Local in the same areas. (Jt. Exh. 1, p. 89–92; Jt. Exh. 3, p. 59; and Tr. 78–81, 281–282.)

In November 2006, Respondent also executed a separate MOU with Local 414C regarding Respondent's "ALS (Pre-Lam)" operation. ALS was originally a pilot research project, performed by nonunion workers. However, the project eventually turned into a full-fledged manufacturing operation. Accordingly, inasmuch as the work was being performed on the west side of the historic line, Local 414C demanded jurisdiction over it, and Respondent eventually agreed after Local 414C filed an unfair labor practice charge over the matter. (Tr. 254–256, and 282–283.) The parties' MOU specifically stated that recognition was being extended to Local 414C "based on the current location of the ALS operation in the facility formerly known as the Bircham Bend Plant," and "only for any period of time in which the ALS operation is located in [that facility]." It further noted that "nothing in this memorandum constitutes an obligation on the company to maintain the ALS operation at its current location." (Jt. Exh. 1, p. 92.)

B. The August 2009 Consolidation

Respondent began considering consolidation/transfer of the WCL testing work into the Saflex Lab as early as July 2008 (GC Exh. 15, p. 169; Tr. 190; and R. Br. 6). Strategic analysis and planning continued thereafter through February 2009 with respect to various issues, including which Union would have the rights to the consolidated work (GC Exh. 15. pp. 170–171 and 175; R. Exhs. 8; and Tr. 159, 193–196, and 218–219).

Respondent ultimately concluded that Local 288 would have rights to the work, since the work would be in the east-side Saflex Lab. During this same period, Respondent also concluded that there was no duty to bargain with Local 414C over the decision to consolidate/transfer the work (Tr. 197–198, and 210–214). Joseph Coppola, Respondent's human resources (HR) director since March 2006, was the "key" or "primary" person on the site leadership team who made this determination. He based it on both the consolidation language in the Local 414C recognition clause—which he interpreted to mean that the geographical location of the work would remain controlling, absent specific agreement to contrary—and the recognition clause of the Local 288 contract (Tr. 199, 207, and 211–214).[6]

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[4] Another example occurred in 1994, when Monsanto moved certain quality-control testing work on RV Butvar samples from the east-side Saflex Lab to the WCL, which resulted in Local 288 employees losing work. Monsanto and Local 288 executed a MOU memorializing this change as well. (Jt. Exh. 3, p. 55; GC Exh. 8, p. 3; and Tr. 68–70, 77, 128, and 242–243.) Local 414C, however, was not party to the agreement. Further, contrary to the GC's posthearing brief (p. 8), there is no record evidence that the change was separately bargained with Local 414C.

[5] By its terms, the MOU with Local 288 also superseded the MOU with Monsanto regarding the Central Systems facility.

[6] Respondent's plant manager at Indian Orchard, David Lahr, who was also on the site leadership team, testified that he likewise concluded, based on the recognition clauses in both collective-bargaining agreements, that the "physical boundaries of the former plants dictate who owns the work." He further testified that he interpreted the consolidation language in the Local 414C contract to apply only to consolidations "more on the site level," like the "major" action in 1982 that involved the consolidation of the "entire salary organization," as op-

Respondent first notified Local 414C of the planned consolidation the following month, at a meeting on March 4 (GC Exh. 18; R. Exh. 9; and Tr. 221 and 238). Then-Local 414C President Robert Bellerive responded at another meeting the following day, stating that the Union did not believe Respondent had the right to consolidate the work (GC Exh. 19, p. 3; and Tr. 240).

Nevertheless, in late April or early May, Respondent decided to proceed as planned (Tr. 123–125). Respondent was concerned about the impact of the economic downturn in the automobile and housing industries, and anticipated that the consolidation would help cut its overall costs, including total labor costs. Specifically, Respondent expected a net reduction of approximately three quality control analysts, for a savings of at least $249,000.[7] Respondent also anticipated that the consolidation would provide more work for the east side lab employees, who were being underutilized, as well as increase their skills. Moreover, Respondent concluded that the consolidation could be accomplished simply by moving the existing equipment, i.e. no new capital equipment would need to be purchased. (GC Exh. 11; R. Exh. 9; and Tr. 105–109, 135, 157, 161–162, and 166–169.)

About this same time, on May 7, Local 414C sent a letter to Respondent (Jt. Exh. 9) requesting further information regarding the move, including the proposed date and the contract language Respondent believed gave it the right to move the work unilaterally. The letter further stated that "should the union agree with the company's decision to take this action after reviewing the information requested . . . , the union demands to bargain this issue with the company." Finally, the letter asked Respondent to "reconsider this breach of our bargaining agreement."

Thereafter, at another meeting on May 27, HR Director Coppola advised Local 414C that the Company had made the decision to transfer the work out of the WCL; that it would result in four WCL positions being eliminated; and that the Company did not believe it needed to bargain over the work transfer (GC Exh. 20). Two days later, on May 29, Respondent also sent a formal, written reply to Local 414C's May 7 letter. The letter (Jt. Exh. 7) stated that testing of Respondent's products at the WCL would cease no later than August 31, and that, because the testing would be moved to the east-side Saflex lab, it would "necessarily" be performed by members of Local 288 pursuant to the terms of the Local 288 collective-bargaining agreement. In addition, the letter specifically denied that Respondent's decision breached the Local 414C collective-bargaining agreement. The letter stated that the decision to relocate the work to the Saflex lab fell within the company's "management rights" to direct the operations of its facility as set forth in Article I, Section 4 of the agreement,[8] and was not otherwise addressed or limited by the agreement. Finally, the letter advised that Respondent had "no obligation to bargain with [Local 414C] regarding the location of the testing operations," but was "willing to discuss . . . any reasonable proposals" regarding unit employees who may be "affected by" the decision.

In response, on June 2, 2009, Local 414C filed the instant unfair labor practice charge. The charge alleged that Respondent had "unilaterally modified the current collective-bargaining agreement and/or unilaterally altered the bargaining unit and unilaterally removed and/or transferred unit laboratory work to another unit of a different union" in violation of Sections 8(a)(5) and 8(d) of the Act. (GC Exh. 1(a).) The following day, Local 414C also filed a grievance (R. Exh. 14), asserting that Respondent had likewise "violated its contractual duty-to-bargain (which the Recognition Clause incorporated from Sections 8(a)(5) and 8(d) of the National Labor Relations Act)."

Thereafter, on June 16, Respondent formally notified Local 414C in writing that it had decided to "cutback four TA positions in the West Control Lab effective Sunday, August 2, 2009, at midnight," and that "affected employees will be placed per Article VI [Seniority] of the collective-bargaining agreement" (GC Exh. 9). A few days later, by letter dated June 19 (Jt. Exh. 8), Respondent also specifically denied Local 414C's grievance, essentially for the same reasons set forth in its May 29 letter.[9]

About the same time, in late June, Respondent and Local 288 began negotiations over a new collective bargaining agreement to succeed their 2006 agreement, which was scheduled to expire in July. An agreement was reached a few weeks later, which, among other things, made various changes in the qualifications and job descriptions of the Saflex lab personnel in anticipation of the upcoming consolidation. (Jt. Exh. 4, pp. 84, 119–120, and 127; and Tr. 85–86, 102–104, and 121.)

As planned, the consolidation was implemented the following month, during a regularly scheduled 2-week shutdown of the Saflex and Butvar units beginning August 3. (Tr. 107, 164, and 212). Equipment was moved to the Saflex Lab, and some construction modifications were made to the lab to accommodate the move (Tr. 143).

Notwithstanding the transfer of the WCL work and "cutback" of WCL positions, no WCL employees were actually terminated or laid off as a result of the consolidation. However, some bid for and were hired into production jobs, which were

posed to "something small" like the 2009 move. (Tr. 92.) However, both HR Director Coppola and Robert Bellerive, who served as Local 414C's president through June 2009, disavowed that interpretation of the language (Tr. 208 and 248).

[7] Respondent also initially considered the possibility that the Cytec "guest" operation, which up until that time had split the costs of the WCL with Respondent, could assume the entire cost of the building (GC Exh. 11). However, Cytec instead decided to move its testing to a different, production facility at the site (GC Exh. 14).

[8] Art. I, Sec. 4 states:

> [Local 414C] recognizes that subject to the provisions of this Agreement, the operation of the plant, including but not limited to the right to employ, promote, lay-off, discipline or discharge for just cause, and to judge the qualifications and competency of all employees, are reserved by and vested in the Company. (Jt. Exh. 1.)

[9] On June 25, Local 414C replied that it intended to continue pursuing the matter through every avenue available (GC Exh. 10). Later that year, however, Local 414C withdrew the grievance, electing to pursue the unfair labor practice charge instead. See R. Exh. 17. Respondent has not asserted in this proceeding that the charge should be deferred to contractual grievance-arbitration procedures.

considered less desirable, particularly by more senior lab employees, because they required substantially greater physical exertion. In addition, some exercised their option to retire (although the parties dispute whether they would have done so regardless of the consolidation/transfer, as they were scheduled to lose their "lump sum" option at the end of the year). And others continued to perform testing work on adhesive products for Cytec, one of the two "guest"/third-party operations, at a different location on the site.[10] (Tr. 115–117, 137, 174, 298, 305–307, 319, 337–339, 345–346, 392–400, 409, and 416–417.)

Following the consolidation, in September 2009, Respondent and Local 414C commenced negotiations over a successor agreement to the 2006 contract, which was scheduled to expire by its terms October 1 (Jt. Exh. 1, p. 35–36). Although a new contract was eventually reached (Jt. Exh. 2; and Tr. 243–244), no bargaining ever occurred over either the decision to transfer the WCL work or the effects of that decision (Tr. 302–303). Respondent never wavered from its position that the decision was not negotiable, and Local 414C never directly responded to Respondent's offer, at the conclusion of its May 29 letter, to discuss proposals regarding employees affected by the consolidation (Tr. 320).[11]

C. Analysis

As indicated above, the General Counsel alleges an 8(a)(5) violation based on two alternative theories. The first theory is that the consolidation/work transfer effectively modified the scope of the unit and/or violated the consolidation language of the contractual recognition clause, and that Respondent therefore unlawfully implemented it midterm without Local 414C's consent. The second theory is that, even if Local 414C's consent was not required, Respondent nevertheless unlawfully failed to afford Local 414C an opportunity to bargain over the decision and its effects prior to implementation.

For the reasons discussed below, I find that a preponderance of the evidence supports the second theory, but not the first.

1. Whether Respondent unlawfully implemented the work transfer without Local 414C's consent

a. Whether the work transfer modified the scope of the unit

It is well-established that the scope of the bargaining unit is a permissive subject of bargaining, and cannot be modified by the employer without the approval of the union or Board. See, e.g. *Wackenhut Corp*., 345 NLRB 850, 852 (2005); and *Beverly Enterprises*, 341 NLRB 296, 307 (2004). However, not every work transfer constitutes a unit modification. Further, the Board and the courts have sometimes disagreed over whether a particular work transfer constituted a unit modification. See, e.g., *Hill-Rom Co. v. NLRB*, 957 F.2d 454, 457 (7th Cir. 1992), denying enf. of 297 NLRB 351 (1989).

After careful consideration, contrary to the General Counsel, I find that the instant transfer did not modify the scope of the unit. Thus, unlike in *Wackenhut*, supra, here the transferred jobs had not been specifically included in the Local 414C unit. Nor, unlike in *Beverly Enterprises*, supra, did the former WCL employees continue to perform the same work outside the Local 414C unit after the transfer. See also *Mt. Sinai Hospital*, 331 NLRB 895 fn. 2, and 907–908 (2000), enfd. 8 Fed. Appx. 111 (2d Cir. 2001) (unpublished) (finding that employer's unilateral reclassification of employees modified the unit where the position had been specifically included in the unit and the employees continued to do the same work thereafter); and *Facet Enterprises*, 290 NLRB 152 (1988), enfd. in relevant part 907 F.2d 963, 975 (10th Cir. 1990) (finding that employer's proposal to remove a classification from the unit "under the guise" of promoting the employees to supervisors constituted a unit modification as the employees would have continued performing the same work as before). Further, unlike in *Hill-Rom,* supra, where the Board (but not the court) likewise found a unit-modification violation, here the Local 288 employees who continued to perform the previous WCL work did so in a different location/building.

The General Counsel's posthearing brief fails to address any of these cases. Instead, it cites *Antelope Valley Press*, 311 NLRB 459 (1993); specifically, the Board's holding that an employer may lawfully seek the right to transfer work out of the unit, provided that it does not deprive the union of the right to contend, in a unit clarification or 8(a)(5) proceeding, that the persons performing the transferred work are in the unit.

However, the situation in *Antelope Valley* bears little or no resemblance to the situation here. In *Antelope Valley,* the employer proposed an addition to the recognition clause during negotiations over a new collective-bargaining agreement that would have given the employer the unilateral right to transfer certain work out of the unit. Neither the timing of such a transfer, nor the location to which the work could or would be transferred, was defined in the proposal. Here, in contrast, a single, discrete transfer was contemplated, which was clearly defined as to both location and time. Further, unlike in *Antelope Valley*, the scope of the Local 414C unit here is expressly defined by the geographical location of the employees performing the work, as is the Local 288 unit to which the work was transferred.[12]

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[10] As noted previously, the testing work for Cytec has been moved to the adhesives manufacturing facility. Although the WCL/Building 160 remains, no testing is currently performed there. (Tr. 143, 205, 216–217, 307.)

[11] At some point, Respondent suggested to Local 414C that their lawyers get together to discuss the meaning of the recognition clause, i.e., whether Respondent had the "right" to consolidate/transfer the work, which Local 414C rejected (Tr. 256–257 and 289). However, this was clearly not an offer to bargain over the decision. In late September, Respondent also specifically offered to "make whole" those employees who received lower, training wages after the consolidation. However, this offer was made to encourage the Union to recommend ratification of the new contract, and was not intended to resolve any of the issues raised by the current unfair labor practice charge. (GC Exh. 13; R. Exh. 20; and Tr. 117 and 422.)

[12] The General Counsel also cites *Bremerton Sun Publishing Co.*, 311 NLRB 467 (1993), the companion case to *Antelope Valley*. However, in that case, the employer specifically proposed deleting a significant portion of the recognition clause. Again, that is not what occurred here.

Thus, as Respondent itself concluded, it was clear that Local 414C would no longer have a claim to the work after it was transferred to the geographical location covered by the Local 288 contract (at least not without the agreement of Local 288). Accordingly, I find that *Antelope Valley* is distinguishable, and that, applying the factors and analysis set forth in the prior and subsequent Board decisions cited above, the consolidation/work transfer constituted a unilateral change rather than a unit modification.

b. Whether the work transfer violated the consolidation language in the recognition clause

As indicated above, the General Counsel also relies on the consolidation language that was added to the recognition clause of the Local 414C contract in 1982 ("This recognition clause shall be unaffected by any future consolidation of the plants at the Indian Orchard Site"). The General Counsel argues that this language plainly prohibits Respondent's action; that Respondent's contrary interpretation of the language is inconsistent with the parties' history of bargaining over any movement across the historic boundary and effectively renders the language "meaningless;" and that Respondent's unilateral consolidation and transfer of the WCL work therefore constituted an unlawful midterm contract modification under Section 8(d) of the Act. See GC Exh. 1(c), par. 18; Tr. 18–19; and Br. 1, 8, and 20–25.[13] This argument, however, is also unsupported.

Like a unit modification, a midterm contract modification cannot be implemented without the union's consent. However, again, not every midterm unilateral change constitutes a contract modification. The Board applies a "sound arguable basis" standard in determining whether an employer's midterm unilateral change constitutes an impermissible contract modification within the meaning of Section 8(d) of the Act. See *Hospital San Carlos Borromeo*, 355 NLRB No. 26 (2010)**;** *Bath Iron Works*, 345 NLRB 499, 501 (2005), affd. sub nom. *Bath Marine Draftsmen Assn. v. NLRB*, 475 F.3d 14 (1st Cir. 2007); and *Westinghouse Electric*, 313 NLRB 452, 453 (1993), enfd. sub nom. *Salaried Employees Assn v. NLRB*, 46 F.3d 1126 (4th Cir. 1995), cert denied 115 S.Ct. 1403 (1995).[14]

Here, Respondent clearly had a sound arguable basis for concluding that the language of the Local 414C recognition clause did not prohibit the consolidation. On its face, the consolidation language does not prohibit unilateral consolidations; rather, at most it prohibits Respondent from unilaterally modifying the unit pursuant to a consolidation. Further, as discussed above, the consolidation here did not, in fact, modify the unit.

Moreover, contrary to the General Counsel's contention, Respondent's interpretation is not inconsistent with the parties' history of bargaining over movements across the geographic boundary. With the exception of the 1994 transfer of work from the east to the west side, which Monsanto bargained over with Local 288 not Local 414C (see fn. 4, supra), the prior "movements" appear to have involved movement of employees, rather than work, across the line, i.e. they involved situations where employees on either side performed work on the opposite side while remaining in their respective units. In any event, the fact that the parties bargained over "crossing lines" in the past suggests, at most, that they believed bargaining was required; it does not necessarily suggest that they believed consent was required. Indeed, as Local 414C acknowledges (Br. 13-14), if consent was required, it could have refused to bargain with Respondent.

Finally, Respondent's interpretation of the consolidation language also does not necessarily render the language "meaningless." As noted by Respondent (Br. 13–14), if the consolidation had, in fact, modified the scope of the unit (for example, in the manner set forth in the Board decisions cited in the previous discussion above), the language might well have prohibited the transfer without Local 414C's consent.

Accordingly, in agreement with Respondent, I find that the August 2009 consolidation/work transfer did not constitute an 8(d) contract modification under extant Board law.

2. Whether Respondent unlawfully failed to afford Local 414C an opportunity to bargain over the decision and its effects

As indicated above, the General Counsel alternatively argues that Respondent had a duty to provide Local 414C with an opportunity to bargain over the decision and its effects, but failed to do so. For the reasons set forth below, I find that a preponderance of the evidence supports this theory.

a. Whether the decision was a mandatory subject of bargaining

Respondent's decision to consolidate and transfer the former WCL work into the Saflex Lab was clearly a mandatory subject of bargaining under Board law. Notwithstanding the Respondent's contention otherwise, there was no change in the nature, scope, or direction of the corporate enterprise. Respondent continued to test products as it had done in the past; it simply decided to do so with fewer employees by shifting testing work from one group of employees to another group of employees at another building on the same site.[15] As noted by the General

[13] The complaint is not a model of clarity in this respect. Thus, for example, par. 18 (which contains the 8(d) allegation) references par. 14 (which alleges that the work transfer was a permissive subject of bargaining), but not par. 12 (which alternatively alleges that the transfer was a mandatory subject). However, Section 8(d) only applies to mandatory subjects of bargaining. See *Milwaukee Spring Div. (Milwaukee Spring II)*, 268 NLRB 601, 603 fn. 13 (1984), enfd. sub nom. *Auto Workers Local 547 v. NLRB*, 765 F.2d 175 (D.C. Cir. 1985); *Bath Marine Draftsmen Assn. v. NLRB*, 475 F.3d 14, 20 (1st Cir. 2007); and *Hill-Rom Co.*, 957 F.2d 454, 457 (7th Cir. 1992). Nevertheless, counsel for the General Counsel made clear in her opening statement at trial that the 8(d) theory was being alleged, and the parties' posthearing briefs all specifically address the 8(d) theory. Accordingly, I find that Respondent was given adequate notice of the General Counsel's theory. Cf. *Baptist Hospital of East Tennessee*, 351 NLRB 71, 72 fn. 5 (2007).

[14] The General Counsel does not contend that the consolidation/transfer was motivated by antiunion animus. See generally *Milwaukee Spring II*, supra, 268 NLRB at 602–604 (overruling prior Board decisions and adopting the Seventh Circuit's holding in *University of Chicago*, 514 F.2d 942, 949 (1975), that unless specifically prohibited by the bargaining agreement, an employer is free to transfer work out of the unit if the employer bargains in good faith to impasse and is not motivated by antiunion animus).

[15] Although the transfer of the WCL testing work to the east side increased the volume of work and skill level of the Local 288 employees in the Saflex Lab, such increases are a natural consequence of any work

Counsel, on essentially identical facts, the Board in *Westinghouse Electric*, supra, held that an employer has a statutory obligation to bargain over such decisions regardless of whether labor costs are a factor, i.e. even without applying the multi-step analysis for relocations set forth in *Dubuque Packing*, 303 NLRB 386 (1991), enfd. in relevant part 1 F.3d 24 (D.C. Cir. 1993).[16]

Moreover, as indicated above, labor costs clearly were a factor in Respondent's decision to consolidate/reassign the work. See *Westinghouse Electric*, supra, 313 NLRB at 453 fn. 5 (labor costs are not limited to a comparison of the respective employees' wages, but also include total labor costs). Further, Respondent has failed to show that Local 414C could not have offered any labor cost concessions that could have altered its decision. Respondent's mere assertion that Local 414C could not have done so (Br. 21), is insufficient to carry its burden. See, e.g., *Comar, Inc*., 349 NLRB 342, 359 (2007), and cases cited there. Thus, even applying the multi-step *Dubuque* analysis, Respondent had a statutory duty to bargain with Local 414C over the decision. See also *Pan American Grain Co.,* 351 NLRB 1412 (2007), enfd. 558 F.3d 22, 29 (1st Cir. 2009) (layoffs motivated in part by desire to reduce labor costs prompted by substantial reduction in production and sales constituted mandatory subject of bargaining even if an additional motivation was to modernize/automate the plant).

b. Whether Local 414C waived its right to bargain over the decision

Respondent argues that, even if the consolidation/work transfer was a mandatory subject of bargaining, Local 414C waived its right to bargain by failing to request bargaining over the decision (Tr. 31–33; and Br. 21). However, the argument is without merit. Whether or not Local 414C requested bargaining immediately after being notified of the planned move in March,[17] it effectively did so both by its May 7 letter to Respondent and by its subsequent unfair labor practice charge and grievance. In any event, no specific demand was necessary given that Respondent had already decided, even before notifying Local 414C of the planned move in March, that the decision was not negotiable, and clearly notified Local 414C that this was its position at least by May 29, in its reply to the Union's May 7 letter. See *Regal Cinemas*, 334 NLRB 304, 315 (2001), enfd. in relevant part 317 F.3d 300, 314 (D.C. Cir. 2003); and *Westinghouse Electric*, supra, 313 NLRB at 453 (union has no duty to make formal request to bargain where management clearly indicated its view that the decision is within its sole discretion, and thereby effectively presented it as a fait accompli).

As discussed above, Respondent's May 29 response to Local 414C's May 7 letter also asserted that the management-rights provision in the 2006 contract (Section 4 of the Recognition Clause) effectively waived Local 414C's right to bargain over the consolidation/transfer. Respondent made the same assertion in its June 19 letter denying Local 414C's grievance. However, Respondent has not specifically repeated this argument in the instant unfair labor practice proceeding. In any event, for the reasons set forth below, it is likewise without merit.

Under well-established Board precedent, a waiver of the statutory right to bargain must be "clear and unmistakable." *Provena St. Joseph Medical Center*, 350 NLRB 808 (2007). Pursuant to this standard, a previously negotiated contract provision will be found to constitute a waiver of the right to bargain over a unilateral change only if the text, or the parties' past practice and bargaining history, "unequivocally and specifically" reveals a mutual intention to permit the unilateral action. Id. at 811.

Here, as noted above (fn. 8, supra), the management-rights clause of the 2006 contract generally reserves to the Company "the operation of the plant, including but not limited to the right to employ, promote, lay-off, discipline or discharge for just cause, and to judge the qualifications and competency of all employees." Nowhere, however, does it specifically reserve the right to unilaterally consolidate operations, transfer work, or eliminate unit positions. Nor do the parties' past practice and bargaining history reveal an intention to reserve such actions to management. Accordingly, the record fails to establish that Local 414C clearly and unmistakably waived its right to bargain over the consolidation and transfer of the WCL testing work. See, e.g., *Provena St. Joseph*, supra, 350 NLRB at 815 fn. 34; and *Public Service Co. of New Mexico*, 337 NLRB 193, 199 (2001).

The Board's "clear and unmistakable waiver" standard has been rejected by a few courts of appeals, including both the First Circuit (where this case arises) and the D.C. Circuit. These circuits instead apply a less-stringent "contract coverage" test. See *Bath Marine Draftsmen's Assn. v. NLRB*, 475 F.3d 14, 25 (1st Cir. 2007); and *U.S. Postal Service v. NLRB*, 8 F.3d 832, 837 (D.C. Cir. 1993). See also *Chicago Tribune Co. v. NLRB*, 974 F.2d 933 (7th Cir. 1992).

However, Respondent fares no better under the "contract coverage" test, as the management-rights clause does not even cover the type of actions at issue. Thus, although it begins with a general authorization to "operate" the plant, and includes a non-exhaustive list of specific examples, the examples are all of one type or class: routine employment actions ("the right to employ, promote, lay-off, discipline or discharge for just cause, and to judge the qualifications and competency of all employees"). In contrast, Respondent's action here involved a consolidation of operations, transfer of work out of the unit, and

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transfer and do not constitute a change in the nature, scope, or direction of the corporate enterprise. See *Holmes & Narver*, 309 NLRB 146, 147 (1992), and cases cited there. Indeed, as previously noted (fn. 6, supra), Respondent's plant manager at Indian Orchard, David Lahr, specifically admitted that the 2009 move was "something small" compared to the "major" consolidation of salaried personnel in 1982.

[16] The *Dubuque* test requires that the General Counsel initially show that the relocation decision was unaccompanied by a basic change in the nature of the operation. If the General Counsel successfully carries this burden, the employer may rebut by showing that labor costs were not a factor in the decision, or that the union could not have offered labor cost concessions that could have changed the decision. 303 NLRB at 391.

[17] The record is less than clear whether Bellerive requested bargaining during his formal or informal meetings with Coppola prior to May. However, in light of my other findings, it is unnecessary to decide this issue.

elimination of unit positions—actions which could affect the entire bargaining unit, rather than just individual employees.

Moreover, as discussed above, in a separate 2006 MOU regarding the new ALS (Pre-Lam) work, the parties specifically included a provision addressing Respondent's right to move the work from the west side. If Respondent believed the management-rights clause of the collective- bargaining agreement already permitted this, there was no need to include such a provision in the ALS MOU.

In short, although the management-rights clause indicates (by use of the phrase "including but not limited to") that the list was not meant to be exhaustive, neither the language nor the bargaining history supports a finding that the clause was meant to encompass the kind of action at issue here. Accordingly, there is no reasonable or sound arguable basis for concluding that Local 414C had previously negotiated away its statutory right to bargain over such issues by agreeing to the management-rights clause. Cf. *Regal Cinemas, Inc. v. NLRB*, 317 F.3d 300, 313 (D.C. Cir. 2003), enfg. 334 NLRB 304, 315 (2001) (management rights clause that expressly authorized employer to "change or eliminate existing . . . procedures or work" did not encompass employer's transfer of employees' work to managers). Compare also *Conoco Inc*., 91 F.3d 1523, 1527 (D.C. Cir. 1996) (reaching contrary result where employer increased the number of progression/seniority units in connection with a realignment of divisions, and the management-rights clause specifically reserved the right to "redetermine the organization of the . . . Division including but not limited to its location, relocation, [and] types of operation;" to "discontinue in whole or in part processes or operations or . . . their performance by employees of the . . . Division or Company;" and to "transfer within or without the Company any work, technology, equipment, or process").

c. Whether Respondent failed to provide Local 414C an adequate opportunity to bargain over the effects

Finally, Respondent argues that it actually fulfilled its statutory obligations regarding the effects of its decision. Respondent cites its May 29 letter, which offered to "discuss . . . any reasonable proposals" regarding employees who may be "affected by" the consolidation, and Local 414C's failure to respond to this offer. (Tr. 34–35; and Br. 22–23.)

However, as discussed above, Respondent was legally obligated to bargain with Local 414C to agreement or impasse over *both* the decision *and* its effects. Further, Local 414C would reasonably expect to bargain over the former before (or at least contemporaneously with) the latter. See *Dan Dee West Virginia Corp*., 180 NLRB 534, 539 (1970) ("It may be true that the Union avoided bargaining about the effects of the change, but bargaining on that subject was premature until the matter of the change was resolved or an impasse reached on it.") Accordingly, Respondent's limited offer to bargain only over the latter without the former was insufficient to satisfy its obligations as to either, or to avoid the standard remedial order. See *Public Service Co.*, supra, 337 NLRB at 199 (reaching similar conclusion even though the parties had actually met and bargained over effects).

CONCLUSIONS OF LAW

1. Respondent did not modify the scope of the bargaining unit, or otherwise modify the contractual recognition clause during the term of its collective-bargaining agreement with Local 414C within the meaning of Section 8(d) of the Act, by consolidating its laboratory operations and transferring work out of the Local 414C unit in August 2009.

2. However, by failing and refusing to provide Local 414C with an opportunity to bargain over its decision to consolidate and transfer the work and the effects on unit employees of that decision, Respondent engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, as requested by the General Counsel and Charging Party, I shall order Respondent to rescind its unlawful, unilateral changes and return to the status quo ante by restoring the West Control Lab as it existed on or about August 1, 2009.[18] Such a restoration order is presumptively appropriate to remedy unlawful unilateral changes. Further, Respondent has not to date shown that restoration of the WCL would be unduly burdensome. As indicated above, the transferred work was performed in the WCL for many years; the consolidation and transfer of the work to the Saflex Lab was accomplished without significant capital expenditures; and both the building that housed the WCL (Building 160) and the lab equipment remain available for use. Moreover, Respondent has presented no specific evidence or argument that restoration would otherwise cause it undue economic hardship. Accordingly, I find that a restoration order is appropriate. See generally *Lear Siegler, Inc*., 295 NLRB 857, 861 (1989). See also *Pan American Grain Co. v. NLRB*, 558 F.3d 22, 29 (1st Cir. 2009), enfg. 351 NLRB 1412 (2007); and *Regal Cinemas v. NLRB*, supra, 317 F.3d at 315.[19]

As requested by the General Counsel and Charging Party, I shall also order Respondent to offer immediate and full reinstatement to their former jobs to any current or former WCL employees who may have been reassigned, bid into other jobs, or opted to retire as a result of Respondent's unilateral consolidation/work transfer and elimination of unit positions. To the extent Respondent has not already done so (see fn. 11, supra), I shall also order it to make whole any such employees who have lost earnings and other benefits as a result of its unfair labor practices. See, e.g., *Mt. Sinai Hospital*, supra, 331 NLRB at

[18] Nothing herein shall be construed to authorize or require the withdrawal or elimination of any wage increase or other improved benefits or terms or conditions of employment implemented by Respondent.

[19] If there is any new or previously unavailable evidence showing that restoration of the WCL has become unduly burdensome since the hearing, Respondent may present that evidence in the compliance proceeding. See, e.g., *Regal Cinemas*, supra, 334 NLRB at 306.

912.[20] Backpay shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[21]

Respondent shall also be required to remit all contributions it would have made on the employees' behalf to employee retirement, 401(k), and/or health care funds absent its unlawful unilateral changes, including any additional amounts due the funds in accordance with *Merryweather Optical Co.,* 240 NLRB 1213, 1216 fn. 6 (1979). In addition, Respondent shall reimburse the employees for any expenses they may have incurred as a result of its failure to make such benefit fund contributions, as set forth in *Kraft Plumbing & Heating,* 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra.[22]

Respondent shall also be required to reimburse Local 414C for any dues that it would have deducted from the employees and remitted to Local 414C under the collective-bargaining agreement absent its unlawful unilateral changes. Such sums shall likewise be calculated in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, I shall order Respondent to notify and, on request, bargain collectively and in good faith with Local 414C as the exclusive representative of the unit employees before implementing any similar changes in wages, hours, or other terms and conditions of employment of unit employees in the future. See, e.g. *St. George Warehouse,* 341 NLRB 904 (2004), enfd. 420 F.3d 294 (3d Cir. 2005).

Accordingly, on the foregoing findings of fact and conclusions of law, and on the entire record, I issue the following recommended[23]

ORDER

The Respondent, Solutia, Inc., Springfield, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with United Food & Commercial Workers Union Local 414C/International Chemical Workers Union Council, Affiliated with United Food & Commercial Workers International Union, CLC, as the exclusive collective-bargaining representative of the employees in the following unit, over the decision to consolidate and transfer unit work from the West Control Lab to the Saflex Lab, and the effects of that decision on the unit employees:

> All hourly rated employees, excluding executives, office and clerical employees, guards, professional employees and supervisors as set forth in the National Labor Relations Board Certification of Representatives dated October 26, 1950, for the then existing Bircham Bend Plant.

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

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

(a) Rescind the unilateral consolidation and transfer of work from the West Control Lab to the Saflex Lab and return to the status quo ante by restoring the West Control Lab as it existed on or about August 1, 2009.

(b) Offer immediate and full reinstatement to their former jobs to any current or former employees in the West Control Lab who may have been reassigned, bid into other jobs, or opted to retire as a result of its unilateral consolidation/work transfer and elimination of unit positions.

(c) To the extent it has not already done so, make whole, with interest, any such employees who have lost earnings and other benefits as a result of its unlawful unilateral changes, in the manner set forth in the remedy section above.

(d) Remit all contributions it would have made on the employees' behalf to employee retirement, 401(k), and/or health care funds absent its unlawful unilateral changes, and reimburse the employees for any expenses they may have incurred as a result of its failure to make such benefit fund contributions, in the manner set forth in the remedy section above.

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[20] The General Counsel and Local 414C presented testimonial evidence and offers of proof at the hearing to provide a foundation for issuing these reinstatement and make whole remedies. However, to avoid further delay in a decision on the merits, all parties agreed to defer fully litigating which, if any, employees are entitled to these remedies to the compliance proceeding. See Tr. 9–14, 368–372, 398–99, 423–425, and 433–434; and R. Br. 24. Accordingly, given that: 1) there is no dispute that at least some unit positions were eliminated; 2) evidence has been presented that, if ultimately credited and not rebutted, would establish that one or more employees were reassigned, bid for other jobs, or opted to retire as a result; and 3) all parties rested with the understanding that full litigation of the reinstatement and make whole issues would be deferred to compliance (absent a posthearing request by the General Counsel to reopen, which has not been filed), I find that it is appropriate to do so. Cf. *Borden, Inc*., 308 NLRB 113, 114 fn. 12 (1992), enfd. 19 F.3d 502 (10th Cir.), cert. denied 115 S.Ct. 316 (1994) (Board found that issue of whether employees who took early retirement were constructively discharged was "fully and fairly litigated," but left to compliance "the number and identity" of such employees); and *Beverly Enterprises*, 341 NLRB 296, 296, and 308 (2004) (Board reversed ALJ's order deferring constructive discharge issue to compliance where the General Counsel had merely "raised the possibility" that some employees were constructively discharged as a result of being unilaterally transferred out of the unit, and there was no indication that the respondent had agreed to defer litigation of the issue to compliance).

[21] The General Counsel requests that Respondent be ordered to pay quarterly compound interest on any monetary remedy (GC Exh. 1(c), p. 5; and Br. 34). The Charging Party also requests compound interest, albeit calculated daily rather than quarterly (Br. 25). However, current Board practice is to assess only simple interest. See, e.g., *Bobbitt Electrical Service*, 355 NLRB No. 37, slip op. at 1, fn. 2 (2010) and cases cited there.

[22] To the extent that an employee has made personal contributions to a fund that were accepted by the fund in lieu of Respondent's contributions, Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that Respondent otherwise owes the fund.

[23] 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.

(e) Reimburse Local 414C for any dues that it would have deducted from the employees and remitted to Local 414C under the collective-bargaining agreement absent its unlawful unilateral changes, as set forth in the remedy section above.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Indian Orchard facility copies of the attached notice marked "Appendix."[24] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the Indian Orchard facility, 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 August 2, 2009.

(h) 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.

Dated, Washington, D.C. July 30, 2010

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with United Food & Commercial Workers Union Local 414C/International Chemical Workers Union Council, Affiliated with United Food & Commercial Workers International Union, CLC, as the exclusive collective-bargaining representative of the employees in the following unit, over our decision to consolidate and transfer unit work from the West Control Lab to the Saflex Lab, and the effects of that decision on the unit employees:

> All hourly rated employees, excluding executives, office and clerical employees, guards, professional employees and supervisors as set forth in the National Labor Relations Board Certification of Representatives dated October 26, 1950, for the then existing Bircham Bend Plant.

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

WE WILL rescind the August 2009 unilateral consolidation and transfer of work from the West Control Lab to the Saflex Lab and return to the status quo ante by restoring the West Control Lab as it existed immediately prior thereto.

WE WILL offer immediate and full reinstatement to their former jobs to any current or former employees in the West Control Lab who may have been reassigned, bid into other jobs, or opted to retire as a result of our unilateral consolidation/work transfer and elimination of unit positions.

WE WILL make whole, with interest, any such employees who have lost earnings and other benefits as a result of our unlawful unilateral changes, to the extent we have not already done so.

WE WILL remit all contributions we would have made on the employees' behalf to employee retirement, 401(k), and/or health care funds absent our unlawful unilateral changes, and reimburse the employees for any expenses they may have incurred as a result of our failure to make such benefit fund contributions.

WE WILL reimburse Local 414C for any dues that we would have deducted from the employees and remitted to Local 414C under the collective-bargaining agreement absent our unlawful unilateral changes.

SOLUTIA, INC.

[24] 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."