Otis Elevator Company, a wholly owned subsidiary of United Technologies *and* Local 989, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America. Case 22-CA-8507

March 25, 1981

DECISION AND ORDER

On November 29, 1979, Administrative Law Judge Irwin Kaplan issued the attached Decision in this proceeding. Thereafter, Respondent and the Charging Party filed exceptions and cross-exceptions, respectively, and briefs in support thereof. Respondent subsequently filed an answering brief to the Charging Party's cross-exceptions, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

The Board has considered the record and the attached Decision in light of the exceptions and briefs[1] and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge to the extent consistent herewith, to modify his recommended remedy, and to adopt his recommended Order.

We agree with the Administrative Law Judge that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union over its decision to relocate certain of its work and operations from its Mahwah, New Jersey, facility to its East Hartford, Connecticut, facility, and the effects on unit employees resulting therefrom; by not furnishing to the Union, upon request, information admittedly relevant to Respondent's decision to relocate certain of its work and operations; and by bypassing the Union as the exclusive bargaining representative of the unit employees and dealing directly with certain of these unit employees concerning offers to transfer them from Mahwah to East Hartford.

Respondent urges numerous exceptions to the Administrative Law Judge's conclusions, affirmed by us, that it failed to bargain concerning the decision to transfer part of its engineering division, that it failed to bargain in good faith concerning the effects of the transfer on unit employees, that it declined to provide certain studies undertaken prior to its decision to effect its research and development reorganization, and that it bypassed the Union when it selected certain unit employees for transfer.

Thus, Respondent argues that its decision to transfer unit employees was only "one element of a decision to restructure Otis' entire research and development effort, and construct a new multi-million dollar research and development center in Connecticut." Respondent maintains that the magnitude of its corporate reorganization and capital expenditure—of which the transfer of part of its engineering division from Mahwah to East Hartford was only a part—removed this decision from the arena of bargainable issues and rendered it a prerogative of management. Respondent further maintains that it satisfied its obligation to bargain with the Union over the effects of the decision; that it was not required either by law or by the applicable contract provisions to consult with the Union before selecting employees for transfer; and, finally, that the Booz-Allen study, as a comprehensive analysis of the engineering functions of Otis' North American Operations, was not wholly relevant to the particular determination with respect to the Mahwah employees.[3]

The threshold question is whether Respondent was required to bargain with the Union concerning its decision to transfer certain unit employees to a new facility in Connecticut. The record reveals that, after United Technologies acquired Otis Elevator in 1975, a study[4] was conducted by Dr. William M. Foley[5] which showed that much of the Otis engineering activity was diffuse and duplicative. The study apparently was undertaken because Otis had found that it was no longer competitive with either the domestic or foreign elevator markets not only with respect to sales, but also from a research and development aspect. Respondent's management believed that the overall engineering effort would be strengthened if research and development were conducted closer to Otis' research already ongoing in Connecticut and to other major United Technologies development groups. Thus, in July 1977 the Otis research and development center, which had been located in Parsippany, New Jersey, was moved to East Hartford, where United

[1] The Board's discussion of Respondent's motion to reopen the record and all subsequent responses is set out in its entirety in Appendix B.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] Respondent also argues that, since its decision falls within the area of management prerogative, it is under no obligation to provide the Booz-Allen report. We include in our analysis the Cole report, which the Administrative Law Judge found, and we agree, was necessary and relevant information which the Union required in order to bargain concerning the decision to transfer the unit employees, as well as the effects of the transfer on the unit.

[4] It is not clear whether this study was part of the Booz-Allen report or the Cole study (apparently undertaken by President Cole of Otis Elevator).

[5] Dr. Foley had been deputy director of research for United Technologies; and in 1977, 2 years after United Technologies acquired Otis Elevator, Foley became vice president of engineering for Otis.

Technologies had a research and development complement of about 1,000 employees, some of whom were working on elevator-related problems for Otis.[6] In addition, since the research and development carried out by the Parsippany group (now in East Hartford) sometimes overlapped with the functions of the Mahwah product improvement and product development groups, it was felt that a physical merger of these groups would be beneficial to Respondent. Moreover, Respondent had evaluated the Mahwah facilities, and had found them to be outdated and inadequate to the task of carrying on the kind of research and development contemplated by Respondent. It was therefore decided that a new research facility would be built in Connecticut where the combined staffs could work together.[7] The record testimony reveals that the cost of the research facility would be between $2 and $3-1/2 million. The plan did not contemplate any closing of the Mahwah site, which would continue to house contract engineering[8] and data functions, as well as final drafting. There were, as of December 1977—prior to any transfers—approximately 350 employees at Mahwah, including industrial relations personnel.

Although Respondent speaks in terms of a "comprehensive restructuring and reorganization," the record reflects that only about 17 employees transferred to Connecticut from Mahwah,[9] 25–35 persons transferred from Parsippany to Connecticut,[10] and 1 supervisor went to Connecticut from Bloomington, Indiana. We are thus concerned with a physical transfer of between 43 and 53 persons, only 17 of whom are unit employees, and the building of a new research facility to which Respondent committed between $2 and $3-1/2 million.

Respondent argues that these changes involved such a substantial shift in Respondent's assets and operations that bargaining about the decision to transfer the 17 unit employees would be a significant abridgment of Respondent's freedom to invest its capital and manage its business. See, generally, *International Harvester Company.*[11]

We disagree. We hold that bargaining with the Union concerning the transfer of the 17 unit employees would not have been a significant abridgment of Respondent's prerogative to carry on its business activities. While true that Respondent spent a fairly large sum of money to build its new research facility, this capital investment is not the type of shift of assets which we have found to be outside the scope of mandatory subjects of bargaining. The facts herein closely parallel the situation in *International Harvester,* which dealt with the issue of whether Harvester was legally entitled to remove unilaterally most of the fleet account work as well as the job classification of fleet account executive from the duly certified bargaining unit. The Board in that case held that respondent's actions did not involve the "termination, relocation, liquidation, closure, or sale of any of Respondent's activities, nor did it involve the sale of assets, basic capital reorganization, or significant investment or withdrawal of capital by Respondent."[12] Thus, in the case under consideration, Respondent consolidated its research and development function in one location—hardly a major corporate reorganization.[13] And while building the research center involved the investment of $2 or $3 million, this investment did not signal any change in the direction of Respondent's activities or in the character of its enterprise. Respondent continues to design and manufacture elevators, as it has always done, albeit within modernized facilities and with a perhaps more expeditious arrangement of its research and development personnel. Thus, Respondent has not, in our view, undergone a basic capital reorganization whereby it has conveyed any portion of its assets or operations to some other entity. Neither is there an evidence that Respondent has terminated any of its activities or liquidated any of its holdings in achieving its objectives.

We therefore find that Respondent was obligated to bargain with the Union concerning its decision to transfer certain of its unit employees from the Mahwah facility to East Hartford.[14]

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[6] The Parsippany group numbered about 50 persons, although not all of them transferred to East Hartford.

[7] The record does not specify whether any portion of the new facility would be used by other United Technologies employees.

[8] Contract engineering refers to that aspect of elevator design whereby various components of the elevator system are chosen to fit the needs of the particular customer. Research and development involves the actual formulation and design of the various components themselves.

[9] Approximately 350 persons were employed at Mahwah, of whom 75 were engineers.

[10] These employees are not represented by the Union.

[11] 236 NLRB 712 (1978), on remand from the Ninth Circuit, Docket No. 77-1349 (1977), for the purpose of receiving and considering additional evidence. On a petition for enforcemnt of the Board's Order in the above Supplemental Decision, the court denied enforcement of the Board's Order insofar as it required the employer to bargain concerning its decision to alter its marketing structure, but granted enforcement of that portion of the Board's Order requiring the employer to bargain concerning the effects of its decision. *N.L.R.B.* v. *International Harvester Company,* 618 F.2d 85 (9th Cir. 1980). The Board issued its initial Decision and Order in this case at 227 NLRB 85 (1976).

[12] 236 NLRB 712.

[13] Indeed, as noted *supra,* only 43–53 employees were affected out of the entire North American operations of Otis, only 17 of whom were unit employees.

[14] We also agree with the Administrative Law Judge that *Ozark Trailers, Incorporated and/or Hutco Equipment Company and/or Mobilefreeze Company, Inc.,* 161 NLRB 561 (1966), is applicable to the facts herein. See also *First National Maintenance Corp.,* 242 NLRB 462 (1979), wherein the Board ordered an employer to bargain over its decision to discontinue a portion of its operations, when that discontinuance did not

Continued

We also hold that Respondent failed to bargain in good faith with respect to the effects of its decision to transfer certain of its unit employees. While we agree with the Administrative Law Judge's rationale and his citation of *Ozark Trailers, Inc., supra*, concerning Respondent's failure to bargain over "effects," we are also of the opinion that the manner in which Respondent conducted itself during discussions with the Union after the reorganization announcement amounted to "take it or leave it" bargaining by Respondent. Thus, the record reveals that Respondent refused to provide necessary and relevant information that would have enabled the Union to bargain intelligently with Respondent.[15] Moreover, Respondent dealt directly with those employees it wished to transfer. Thus, the Union sitting at the "bargaining table" was never certain about what actions Respondent was taking in effecting its reorganization; nor would Respondent commit itself to a timetable for anticipated changes in the bargaining unit.[16] As a result of its uncertainty concerning what changes would occur, and when any changes would take place, the Union submitted its "Partial List of Demands" some 9 months after Respondent's announcement of its plans. Respondent made no formal counterproposals, and, in fact, rejected outright almost all of the Union's demands. Indeed, Respondent's answer to the Union's demands was that it was disappointed with what the Union presented, and that it had hoped that the Union would have submitted a request more closely aligned with what Respondent wished to accomplish. It thus becomes clear that Respondent engaged in a kind of "take it or leave it" bargaining, whereby Respondent would agree to clarify its actions "after the fact," but where meaningful bargaining seemed to have no place in Respondent's grand design.[17] Thus, and for the reasons set forth by the Administrative Law Judge, we find that Respondent failed to bargain over the effects of the transfer on unit employees.

For the reasons set out *supra*, and in agreement with the Administrative Law Judge, we also find

alter the nature of its business nor substantially affect its total size; enforcement granted 627 F.2d 596 (2d Cir. 1980).

[15] The colloquy which occurred at the April 27, 1978, meeting is illustrative:

U: Does Booz Allen give a definition of Central Engineering?

C: Not specifically. Our interpretation of Central Engineering is the Mahwah Engineering Center.

U: You mean that when they are talking about Central Engineering they are not talking about centralizing all of engineering to one location?

C: No. We do not believe that that is what they are talking about. The concept of a central engineering location may be the genesis of the term "Engineering Center."

* * * * *

U: Again, you say that the report has no definition of what they mean by Central Engineering?

C: Without going to the original report, on which the summary is based, we would not be able to tell you.

U: We ask that you please do that and, if it is defined somewhere in the report, we would like to know what the definition is.

C: OK. We will review the report and try to find that definition for you.

U: When Booz Allen says geographically separate, what do they mean?

C: If you are asking if Booz Allen explained where the engineering groups ought to be, the answer is no. However, they did feel that there was a need for them to be geographically separate. Perhaps in light of the acquisition of Otis by UT, there was a realization that with the UT Research Center in Hartford and with other UT locations in the greater Hartford area, there would be a potential synergy with these other locations.

(THE COMPANY CONTINUED TO READ. THEY READ THE SECTION ENTITLED "PEOPLE AND FUNCTIONS TRANSFERRED TO CENTRALIZE ENGINEERING," MARKED ATTACHMENT I.D.)

C: After reading this section there is a contradiction, it appears, between the definition of central engineering used here and the definition used earlier on. In this case central engineering could be interpreted to mean all those engineering elements that report to Bill Foley. This, of course, is one of the problems you run into when you have outside consultants in to look at a company. They may not be fully familiar with all the nuances of meaning contained in different phrases. [G.C. Exh. 3B.]

As is obvious from the above, Respondent did not come to the bargaining table prepared to set out a reasoned presentation of its position.

[16] The Union had been promised a table of organization by April 27, 1978, which would give them an idea of Respondent's plans with respect to Mahwah. The following colloquy occurred:

U: We won't be in a position until after our meeting with Dr. Foley to make a judgment as to how extensive your commitment is to Mahwah. His new organization will tell us how strong the commitment is. We wish the meeting were scheduled sooner.

C: We certainly hope to have that meeting before June but we have to be fair to Dr. Foley. There is an awful lot going on right now.

U: You have caused us a problem here, we have already reported to the membership that we would have a table of organization after this meeting.

C: We apologize for that, it was our good faith intent to have the table of organization available today. However, as we explained earlier, the decision was made to hold off until the whole package could be more solidified.

U: We are afraid you will be making organizational changes between now and our next meeting that we will not be aware of.

C: You have our assurance that no organizational announcements will be made, nor will any be acted upon between now and the next meeting if they affect you and your members. Except, of course, for those that have already been mentioned to you. Mickey is at this point in time working on specifying changes which should have a positive affect [sic] on your bargaining unit. You are probably aware of most of the details already. There may be some more dribbles of changes that result from them.

U: That is our fear, some of these dribbles can be embarrassing if we do not know them. [G.C. Exh. 3 B.]

The record reveals that a table of organization was not presented to the Union until January 31, 1979, 10 months after its promised date of publication.

Although Respondent, at the hearing, represented that the "minutes" were not verbatim transcripts, it is clear that they reflect the substance of the discussions.

[17] See *Endo Laboratories, Inc.*, 239 NLRB 1074 (1978), where the Board held that the respondent, during its contract negotiations, came to the bargaining table with a new benefit package that it wished to implement *in toto*, and about which it was unprepared to negotiate—either in terms of providing the union with information about the contents of the package, or engaging in any "give and take" with respect to the implementation of its provisions.

that Respondent violated Section 8(a)(5) and (1) of the Act by dealing directly with the unit employees concerning the transfers to Connecticut; and, further, that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish to the Union, upon its request, copies of the Booz-Allen and Cole reports on which Respondent relied in making its decision to transfer certain of the unit employees.[18]

AMENDED REMEDY

We agree with the provisions of paragraphs 1 through 5 of The Remedy section in the Administrative Law Judge's Decision, and shall order Respondent to comply therewith.[19]

The Administrative Law Judge provided in paragraph 6 of his recommended remedy that the employees, including one chemist and "approximately four other non-engineer unit employees," who were laid off as a result of Respondent's "decision" receive backpay with interest. The record is not clear, however, whether the classification of "chemist" is included in the bargaining unit herein. In addition, and as the Administrative Law Judge recognized, the record does not specify the total number of employees laid off as a result of Respondent's "decision," whether they are part of the bargaining unit herein, and the dates of their respective layoffs. Accordingly, we defer such determination to the compliance stage of this proceeding.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Otis Elevator Company, a wholly owned subsidiary of United Technologies, Mahwah, New Jersey, and East Hartford, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

APPENDIX A

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

WE WILL NOT fail and refuse to bargain collectively in good faith with Local 989, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, as the exclusive representative of our employees in the appropriate unit set forth hereinbelow concerning the decision to transfer and consolidate certain of our engineering operations, including unit work, from our Mahwah, New Jersey, facility to other facilities, including our facilities in Connecticut, and the effects of said decision to transfer and consolidate our unit employees. The appropriate unit is:

> All classifications of employees employed in our Engineering Division located in Mahwah and Harrison, New Jersey, and Yonkers, New York, in the classifications described in Appendix A of the collective-bargaining agreement effective April 1, 1977, to March 31, 1980, but excluding nontechnical, secretarial, clerical employees not described in Appendix A, maintenance employees, guards and supervisors as defined in the Act.

WE WILL NOT further transfer and consolidate unit jobs and transfer unit employees in conjunction therewith without first bargaining in good faith with the Union.

WE WILL NOT, upon request, fail and refuse to provide the Union with relevant information such as the Booz-Allen and Cole reports, so as to enable the Union to bargain.

WE WILL NOT fail and refuse, upon request, to permit the Union an opportunity to bargain about the basis on which employees are to be given the opportunity to transfer from our Mahwah, New Jersey, facility to other of our facilities in Connecticut and on the identity of the employees selected for transfer interviews.

WE WILL NOT bypass the Union as the exclusive bargaining representative of the employees in the unit described above, and deal directly with employees concerning their transfer and the transfer of unit work from our

[18] Respondent argues that, as comprehensive analyses of the engineering functions of Otis' North American operations, the reports were not wholly relevant to its decision to transfer certain of the Mahwah unit employees. We note, however, that Respondent, in support of its position that its decision herein is a prerogative of management, also maintains that the transfer of certain of the Mahwah employees was "one element of a decision to restructure Otis' entire research and development effort," and strenuously argues that this decision involved a major corporate restructuring.

[19] Member Jenkins finds merit in the Charging Party's contention that Respondent must return the bargaining unit to the *status quo ante*; and, in addition to ordering Respondent to bargain with the Union concerning the decision to transfer part of its Mahwah, New Jersey, operations to East Hartford, Connecticut, he would order Respondent to restore its Mahwah facility and operations to their pretransfer status.

Mahwah, New Jersey, facility to our unrepresented facilities in Connecticut.

WE WILL NOT in any like or related manner interfere with the Union's exercise of its rights to bargain collectively, or interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

WE WILL, upon the Union's request, bargain collectively with the Union as the exclusive bargaining representative of our employees in the appropriate unit with respect to wages, hours, and other terms and conditions of employment.

WE WILL, upon the Union's request, bargain with the Union concerning our decision to transfer and consolidate unit work from Mahwah, New Jersey, to other of our facilities in Connecticut and the effects on unit employees resulting therefrom.

WE WILL, upon the Union's request, furnish it relevant information, such as the Booz-Allen and Cole reports, needed to enable the Union to bargain.

WE WILL, upon the the Union's request, bargain with the Union about the basis on which our employees in the appropriate unit are to be given the opportunity or required to transfer to our facilities in Connecticut and on the identity of these employees.

WE WILL give the transferred employees an opportunity to continue to perform their unit work in Connecticut pending bargaining, but all other unit work is to be returned to the Mahwah facility.

WE WILL establish a preferential hiring list for laid-off employees and, if operations are resumed at Mahwah or anywhere in the Mahwah area, at that time we will offer reinstatement to those employees and bargain with the Union upon request.

WE WILL pay the laid-off employees their normal wages, plus interest.

OTIS ELEVATOR COMPANY, A WHOLLY OWNED SUBSIDIARY OF UNITED TECHNOLOGIES

APPENDIX B

On January 11, 1980, Respondent filed a motion to reopen the record for the "limited purpose of including therein [certain] . . . additional . . . exhibits," which were attached to its motion. These exhibits, which Respondent numbered 6 through 11, included two press releases dated April 14 and September 19, 1977, as well as excerpts from four "Otis Bulletins" dated April/May 1977, May 1978, October 1979, and January 1980. Respondent's stated basis for its motion is that the proffered exhibits would show that the Administrative Law judge "obviously misapprehended the corporate structure of Otis Elevator Company and the scope of the engineering division restructuring which was described in the testimony of the Company's witnesses. In addition, he appeared not to credit the testimony of the company witnesses with respect to the fact and the extent of the capital expenditures made by the Company to effect the reorganization in question." Subsequent to Respondent's motion to reopen the record, the General Counsel and the Charging Party filed, on February 4 and 15, 1980, respectively, oppositions thereto. On February 15, 1980, the Charging Party filed, in addition to its opposition, a countermotion requesting that the Board receive the Charging Party's proffered Exhibits 1 through 6, conditional upon the Board's granting Respondent's motion to reopen the record. Respondent then filed an opposition to the Charging Party's "conditional" countermotion.

In addition to its opposition and countermotion, the Charging Party, on February 15, 1980, filed a motion to strike portions of Respondent's brief in support of its exceptions. Those portions of Respondent's brief which are the subject of the Charging Party's motion are as follows:

(1) All portions which refer to exhibits designated Respondent's Exhibits 6 through 11, sought to be included in the record by means of Respondent's motion to reopen, discussed, *supra*, and

(2) Respondent's assertion that the Booz-Allen report is part of the record in this proceeding, and all references to that report appearing in Respondent's brief.

Respondent then filed, on February 20, 1980, an opposition to the Charging Party's motion to strike portions of Respondent's brief; and Respondent filed on that same date a motion to supplement the record, to which the Charging Party filed an opposition on February 25, 1980.

As is apparent from a review of the documents before us, this "war of paper" was sparked by Respondent's initial motion to reopen the record. Respondent's proffered Exhibits 6 through 9 were available to Respondent at the time of the hearing (February 5 and 6, 1979), and for whatever reasons considered by Respondent these documents were not offered at that time. The remaining proffered Exhibits 10 and 11 were published subsequent to the hearing. As set out *supra*, the gravamen of Respondent's motion is that the Administrative Law Judge, in reaching his findings and conclusions, "misapprehended" certain evidence, and, further, that the Administrative Law Judge failed to resolve certain issues of credibility in a manner favorable to Respondent. We note at the outset that the purpose of a hearing is to give all parties an opportunity to present such evidence that will allow an administrative law judge to make certain findings of fact. The responsibility of "making a record" supporting one's position not only devolves upon the parties, but particularly devolves upon them during the hearing and before the record is closed. Thus, it is then that each party must make its own judgment as to whether it has

presented the best possible case, so that, in the event of a possible "misapprehension" or adverse credibility resolution by an administrative law judge, the requisite evidence has already been placed in the record so as to allow the Board to consider a party's legal arguments on appeal. The effect of our granting Respondent's motion to reopen the record would be to have the record remain open indefinitely, giving the parties the option of presenting additional evidence in the event of an adverse finding by the Administrative Law Judge. Moreover, the evidence proffered by Respondent in its attempt to clarify the Administrative Law Judge's "misapprehension," and to reverse his "apparent" credibility resolutions, is in the form of Respondent's own press releases and its internal "house" publication. Our admission of such clearly self-serving documents at this stage of the proceeding would deny the other parties the opportunity to engage in *voir dire* or cross-examination. Accordingly, Respondent's motion to reopen the record is denied. Thus, we find it unnecessary to pass on the oppositions to Respondent's motion. In addition, and for the same reason, we find it unnecessary to pass on the Charging Party's countermotion, nor is it necessary for us to pass on Respondent's opposition to the Charging Party's countermotion.

There remains for our consideration the Charging Party's motion to strike portions of Respondent's brief in support of its exceptions and Respondent's opposition thereto, as well as Respondent's motion to supplement the record and the Charging Party's opposition. The Charging Party moved to strike those portions of Respondent's brief which referred to, and quoted from, the Booz-Allen report, a study on which Respondent relied in deciding to restructure its engineering division, and which Respondent refused to provide to the Charging Party upon its request. The nub of the dispute raised by the Charging Party's motion is its contention that the quoted portions of the Booz-Allen study are not part of the record, and that Respondent's position is and has been that the Charging Party is not entitled to the study, either in part or in whole. Respondent's opposition sets out four reasons for including a portion of the disputed document in the record: (1) Respondent's own copy of G.C. Exh. 3B (Respondent's minutes of the April 27, 1979, negotiating session) included the attachments (portions of the Booz-Allen study read at the meeting), thus implying that their omission from the official record was inadvertent; (2) the attachments are an integral part of the exhibit; (3) that when the minutes were introduced by the General Counsel there was no representation that any part of the minutes was being withheld; and (4) a company representative verified to Respondent's counsel that the now-disputed attachments were part of the official record. A review of G.C. Exh. 3B reveals that the Booz-Allen study was a subject of discussion between the Charging Party and Respondent at the April 27 meeting, and that one of Respondent's representatives noted that he had with him "some excerpts from the [Booz-Allen] summary report made to management. We think it would be appropriate to run through some specific quotes from the report that will give you an insight into some of the elements of the decision to relocate." Respondent then recognized that the Charging Party had already requested a copy of the study; and, in fact, that request was specifically renewed at the April 27 meeting. Respondent's answer was that it considered the study to be an internal company document and that it would not be released to the Union (the Charging Party herein). Although Respondent agreed to read aloud portions of the "Executive Summary" of the Booz-Allen study, it would not even allow the Union to tape record those portions; nor would it provide written copies of the portions read loud. It thus stretches the bounds of credibility to claim, as Respondent apparently does, that it wished to make part of a public record portions of a summary of the report which it repeatedly refused to provide to the Union during their discussions. Moreover, the record reflects that General Counsel's Exhibit 3B, along with the remainder of the "minutes" of the meetings, was provided at the hearing by Respondent at the request of the General Counsel, although it is not certain whether Respondent produced them pursuant to a subpena. The plain fact is, however, that the documents referred to, and quoted from, in Respondent's brief in support of its exceptions, which Respondent now submits in its motion to supplement the record, are not part of the official transcript. In addition, the copies of the documents provided to us as part of Respondent's motion show clearly that these documents have been edited. Admission of the proffered documents at this time would be to deny the General Counsel and the Charging Party the opportunity for cross-examination with respect to the substance of these documents, and would deny those parties *voir dire* examination as to their authenticity and the manner in which they were prepared. Accordingly, we deny Respondent's motion to supplement the record, and grant the Charging Party's motion to strike the portions of Respondent's brief which quote from the Booz-Allen study. We also grant the Charging Party's motion to strike from Respondent's brief any references to, or quotations from, Respondent's proffered Exhibits 6 through 11, as we have already denied Respondent's motion to reopen the record so as to allow for their admission into evidence. In light of the above, we find it unnecessary to pass on the Charging Party's opposition to Respondent's motion to supplement the record.

Respondent filed with the Board, on February 20, 1980, a motion to strike "Brief in Support of the Decision of the Administrative Law Judge on behalf of General Counsel" and a memorandum in support thereof. Respondent argues that pursuant to Section 102.46 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, a brief in support of the Administrative Law Judge's Decision must have been filed within the same time limit as is permitted for the filing of exceptions—in this instance, January 11, 1980. Respondent also points out that the General Counsel requested, and was granted, an extension of time until February 8, 1980, to file an answering brief to Respondent's exceptions, and that no such brief was filed within that time. The Board's records reflect that the General Counsel, on February 7, 1980, filed a document entitled "Brief in Support of the Administrative Law Judge."

We note that, although the General Counsel did not technically comply with Section 102.46(a) of the Rules and Regulations, his brief in support of the Administrative Law Judge's Decision qualifies as an answering brief, and, as such, was timely filed pursuant to Section 102.46(d). Respondent argues that the General Counsel's brief does not meet the requirements of the Rules and Regulations for an answering brief since it does not specifically refer to any of Respondent's exceptions. We point out, however, that Section 102.46(d) does not require such specificity, but merely states, *inter alia*, that the brief "shall be limited to the questions raised in the exceptions and in the brief in support thereof." The document filed by the General Counsel is clearly in compliance with that requirement, as well as the remaining requirements of that section. Also, we are mindful of the fact that the Rules and Regulations, Section 102.121, specify that they "shall be liberally construed to effectuate the purposes and provisions of the Act." Furthermore, the decision to allow receipt of such a brief, under these circumstances, is a procedural step and as such is within the discretion of the Board. Finally, Respondent has failed to show that it was prejudiced by our receipt of the General Counsel's brief. We therefore conclude that the purposes of the Act are best effectuated by accepting the General Counsel's brief, and we find no merit in Respondent's contention that the brief is improperly before the Board. See, generally, *Holly Manor Nursing Home*, 235 NLRB 426 (1978).

DECISION

STATEMENT OF THE CASE

IRWIN KAPLAN, Administrative Law Judge: This case was heard in Newark, New Jersey, on February 5 and 6, 1979.

The underlying charge was filed on June 7, 1978, by Local 989, United Automobile, Aerospace and Agricultural Implement Workers of America, herein called the Union. The complaint and amended complaint issued on July 27 and December 27, 1978, respectively, alleging in essence that Otis Elevator Company, a wholly owned subsidiary of United Technologies, herein called Respondent, violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, herein called the Act, by refusing to bargain with the Union over its decision to relocate certain of its work and operations from its Mahwah, New Jersey, facility to its East Hartford, Connecticut, facility and the effects on unit employees resulting therefrom. Further, it is alleged that Respondent independently violated Section 8(a)(5) and (1) of the Act by not furnishing the Union, on request, information admittedly relevant to Respondent's decision to relocate certain of its work and operations. Still further, it is alleged that Respondent independently violated Section 8(a)(5) and (1) of the Act by bypassing the Union as the exclusive bargaining representative for certain employees employed at Respondent's Mahwah, New Jersey, facility and dealing directly with said employees concerning offers to transfer them to East Hartford, Connecticut.

Respondent filed an answer dated September 6, 1978, and a further answer dated January 4, 1979, to the complaint and amended complaint respectively conceding, *inter alia*, jurisdictional facts but denying all allegations that it committed any unfair labor practices. While Respondent admits that it did not bargain *vis-a-vis* the "decision," it contends that it was not under any obligation to do so. On the other hand Respondent admits that it was obligated to bargain with the Union concerning the effects of its decision on bargaining unit employees and in this regard it asserts that it met said obligation.

Upon the entire record, including my observation of the demeanor of the witnesses, and after careful consideration of the post-trial briefs, I find as follows:

FINDINGS OF FACT

I. JURISDICTION

Respondent, Otis Elevator Company, a wholly owned subsidiary of United Technologies, is a New Jersey corporation engaged in the manufacture, research, development, sale and distribution of elevators and related products. In connection with producing the aforenoted products, the Respondent owns and operates a number of facilities including a facility in Mahwah, New Jersey. During the preceding 12 months and at all other times material herein, Respondent has derived revenue in excess of $50,000 in connection with its business operations at its Mahwah facility directly from points outside the State of New Jersey. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

Respondent admits and I find that Local 989, United Automobile, Aerospace and Agricultural Implement Workers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Setting*

In 1975 United Technologies Corporation (herein also called United) acquired Otis Elevator Corporation (herein also called Otis) by which transaction Otis became a wholly owned subsidiary of United. Dr. William Foley, Otis' vice president of engineering for its North American operations (herein also called NAO), testified that, at the time of the takeover, Otis' engineering activity was "very diffuse." For example, research and development were principally handled at Otis' Parsippany, New Jersey, facility, with a staff of approximately 50 individuals. Some of this work however was assertedly duplicated by employees employed at Otis' engineering center in Mahwah, New Jersey. Additionally, overlapping engineering activity was carried out in Bloomington, Indiana; Yonkers, New York; Denver, Colorado; and Canada and these facilities together with the above-noted New Jersey facilities made up Otis' North American operations. United already had a major research and development center with approximately 1,000 employees in East Hartford, Connecticut.

Following recommendations by a consulting firm (Booz-Allen & Hamilton) and after its own review of Otis' engineering operations, United's board of directors decided to centralize Otis' research and development operations with the parent corporation's facilities in and around the Hartford, Connecticut, area. According to Dr. Foley by the time the aforementioned decision was made there were already a comparable number of employees employed in the East Hartford research center servicing Otis on elevator-related problems as employed in the research center in Parsippany. Thus, in the summer of 1977, United closed Otis' Parsippany facility and moved the engineering operations therefrom to East Hartford, Connecticut, in close proximity to United's research center. Organizationally, however, Otis' employees continued to maintain its separate identity.

In October 1977, Robert Cole, president of NAO, approved Dr. Foley's recommendation to move and merge the product improvement group from Mahwah, New Jersey, with the research and development organization in East Hartford because, *inter alia*, assertedly there was a substantial overlapping of functions. Dr. Foley further recommended and obtained approval from the board of directors to build a suitable research and development center for Otis' employees in the Hartford area. Dr. Foley testified that construction on the building, a three-story structure with laboratory facilities, had already begun involving a capital investment of "something over two million (dollars)" and is expected to be operational in September 1979. Further, construction of a test tower with an estimated cost of $1-1/2 million is expected although the final design had not yet been approved at the time of the hearing. The site for these facilities is in Farmington, Connecticut, immediately adjacent to the NAO headquarters building.

On December 2, 1977, Dr. Foley informed union officials in Mahwah[1] of Respondent's decision to consolidate and restructure Otis' engineering functions. The principal changes which Dr. Foley announced on that occasion appear in a "Summary of Changes" (G.C. Exh. 4) which he handed the union officials and which read in its entirety as follows:

> Summary of Changes
>
> Product Imrpovement Group organizationally transferred from Mahwah to Hartford immediately.
>
> Works Engineering Function organizationally transferred from Mahwah to Hartford immetiately.
>
> Two permanent engineering facilities after July, 1979.
>
> Research & Development Center in Hartford—Research, Development, Product Engineering, and Improvement, Testing & Cost Reduction.
>
> Engineering Center in Mahwah—Contract Engineering, Final Drafting, Data Handling, Data Release and Worldwide Engineering Data Distribution.

Dr. Foley pointed out that while "organizationally" certain changes were effective immediately the physical changes "will be much more prolonged." Thus he explained that he expected to transfer 15 employees from Mahwah to East Hartford over a 5-month period and that these individuals would be notified within the next 8 weeks. Further, he revealed that, in July 1979, NAO would house the East Hartford staff of the product research and development center in a new facility in the Hartford area and some of the engineers from the product improvement group in Mahwah would move to the new site at that time. Dr. Foley advised the Union that the individuals selected to transfer to the new facility would be notified by January 1979. The Union's officials asked for additional time to digest Dr. Foley's statements before responding thereto.[2]

The parties met next on January 17, 1978.[3] Local Union President and Vice President Robert Kushnir and Allen Newell, respectively, appeared on behalf of the Union with Respondent represented by J. J. Cronin, manager of industrial relations, and Personnel Manager John Galligan. At the outset the union officials handed Cronin a letter addressed to him and signed by Kushnir, (G.C. Exh. 5), the body of which in its entirety reads as follows:

> The Company has advised us that members of management will be approaching certain members of the bargaining unit to discuss possible job opportunities at locations other than Mahwah. Please be advised that all such contacts must be made through the Local Union so that our contractual and bargaining rights can be maintained. Should any attempts to bypass the bargaining agent occur the Union will be forced to file an Unfair Labor Charge.

Cronin rejected the request to refrain from bypassing the Union and negotiating directly with employees concerning job transfer opportunities as set forth in the letter above on the basis that these employees "were being offered non-bargaining unit positions." On January 25, Respondent first contacted (unilaterally selected) engineers employed in Mahwah and, in the absence of any union representative, explained the transfer program and offered them jobs in East Hartford. On that day and the following day of the 13 engineers who were offered transfer opportunities, approximately 11 accepted including 1 who accepted a transfer to a supervisory position.

[1] The Union has long been the exclusive bargaining representative for a unit of professional and technical employees in Respondent's engineering division, which is headquartered in its engineering center at Mahwah, New Jersey, but also encompasses a small number of employees who spend most of their time at Respondent's Harrison, New Jersey, and Yonkers, New York, facilities. In December 1977, there were approximately 274 bargaining unit employees. The most recent collective-bargaining agreement by its terms is effective from April 1977 until March 31, 1980. See Resp. Exh. 1.

[2] Dr. Foley's presentation to the union officials was later that day given separately in a speech to rank-and-file employees and to the supervisory staff. See G.C. Exh. 2.

[3] All dates hereinafter refer to 1978 unless otherwise indicated.

(See G.C. Exhs. 6 and 7.) In addition, five supervisors employed in Mahwah were offered and accepted transfers to East Hartford.

The parties met again on January 26. On this occasion Newell asked Cronin whether Respondent was prepared to negotiate "the entire thing" and specifically referred to "transfer of engineers" and "technicians being laid off." With regard to layoffs, Cronin responded that the Company was not going to lay off anyone at that time and advised Newell that, when layoffs did occur, "[the Union] would be notified in accordance with [the] contract." Insofar as bargaining over the transfer of the engineers, Cronin refused for the same reasons he had expressed at the previous January 17 session, to wit, that Respondent was not obligated to do so because the individuals involved in the transfer would be employed in nonunit positions.

At the next session held on February 23, Newell asked Cronin whether the Company would negotiate three items: (1) the decision to relocate, (2) the impact on unit employees resulting from said decision, and (3) recognition at the facility in Connecticut. Newell testified that Cronin (who did not testify) stated that "there will be no negotiations" on any of these issues.[4]

By letter dated February 28, Thomas Bouchard, vice president of personnel and industrial relations, wrote to Union President Kushnir, in essence certifying the issues that the union officials placed before Cronin at the February 23 session and invited Kushnir to contact him to arrange a meeting to discuss "the impact of the Company's decisions." (Resp. Exh. 2.) Kushnir replied by letter dated March 6 noting therein, *inter alia* that Cronin had previously informed the Union "that there would be no negotiations" and expressing pleasure that Respondent was now willing to meet and bargain with the Union's officials.[5] (Resp. Exh. 3.)

Newell and Bouchard were the spokesmen for their respective negotiating teams at the next bargaining session which was held on April 3. Bouchard, noting that there was no formal agenda for the meeting, offered that the purpose of getting together was to review Dr. Foley's organizational plan and announcement of December 2, 1977.[6] Bouchard cautioned that, while he would try to be responsive to Newell's questions, there wasa degree of uncertainty with regard to some items. Thus, when asked by Newell for the total number of employees that would be asked to go to East Hartford, Bouchard replied, "As we said, the crystal is not all that clear right now, but our best guess would put the order of magnitude to be forty or fifty." (G.C. Exh. 3A, pp. 1, 6.) He asserted that most of these employees will be engineers from the product improvement department. With regard to technicians and draftsmen, Bouchard indicated that there was little chance that anyone in these categories would be asked to transfer but added that "it is too early to tell."

Among the principal items discussed at the session was the rationale behind Respondent's decision to relocate. Bouchard maintained that Respondent expected to realize a substantial product cost reduction "by moving the technological center of gravity to the East Hartford area." Bouchard also asserted that Otis would derive a "technological boost" as a concomitant benefit simply by virtue of its new proximity to United's substantial resources in Connecticut. Newell pressed for the data in support of Bouchard's conclusions including a Booz-Allen study which Bouchard acknowledged was relied on, *inter alia*, by Respondent in deciding to relocate and restructure Otis' engineering departments. Bouchard promised qualifiedly to produce some of this material. Thus he stated, "We plan to supply you with the background information that was used to reach our decision. Booz-Allen material will probably be a part of it."

During the course of the April 3 session Newell objected to Respondent's method in unilaterally selecting the first wave of engineers to offer transfer opportunities and not permitting a union representative to be present during the interviews. According to Bouchard the procedure objected to by the Union was consistent with Respondent's practice in Mahwah *vis-a-vis* employees transferring to assertedly nonbargaining unit positions. On the other hand Bouchard averred that "[i]f someone asked for bargaining unit representation they would have received it." Bouchard refused to withdraw the offers made to the first group of engineers although he agreed to review the selection criteria.

Near the end of the session, Newell again questioned Bouchard as to Respondent's willingness to bargain over the decision, its impact on Mahwah employees, and the transfer process to East Hartford. With regard to the decision, Bouchard expressed the view that bargaining had already begun at that session. Further, he agreed to bargain with regard to the effects of the move on the Mahwah employees. With regard to bargaining over the transfer process, Bouchard asserted that, insofar as it involves the selection of individuals and compensation, these matters are "[Respondent's] decisions to make." (G.C. Exh. 3A, p. 14.)

The parties convened again on April 27. Jack Williams, Respondent's director of industrial relations, opened the meeting by apologizing for Bouchard's absence and explained that there were circumstances that required his presence at United's headquarters in Farmington, Connecticut. (G.C. Exh. 3B.) Williams then expressed a willingness to pass on to the Union some of the "background information" (Booz-Allen study and President Cole's report to the board of directors) relative to its "decision" as well as other data which the Union had previously requested. While Williams conceded that he was unprepared to discuss the basis for Respondent's de-

[4] Counsel for Respondent in his brief noted that *Newell* questioned *Cronin* concerning the Company's negotiating posture, when *Jack Williams*, Respondent's director of industrial relations, was assertedly designated "as the proper contact" for such purposes. *Williams*, however, testified that the Union was told that both "[he] and/or *Cronin* would be available to meet" for further negotiations.

[5] Bouchard's letter of February 28 is silent with regard to Respondent's position concerning bargaining *vis-a-vis* the "Company's decision" and "recognition." Kushnir's letter of March 6, in response thereto, does not allude to these omissions. Rather, Kushnir in his letter simply listed these items as well as "the impact" as matters to be discussed "with the intent to reach an agreement." Thus it does not appear that the exchange of letters reflect a meeting of the minds with regard to the agenda at the next bargaining session.

[6] See Respondent's minutes (G.C. Exh. 3A).

cision to relocate, he represented that Dr. Foley would be available to answer the Union's questions in about 4 to 5 weeks. Williams refused to provide the Union a copy of the Booz-Allen report stating that the report is "an internal Company official document." (*Id.* at 3.) However he read to the Union certain sections from the "document" but again noted that it would be more appropriate for the Union to question Dr. Foley at the next meeting on matters pertaining to "the decision."

Williams supplied the Union for the first time at this April 27 meeting, *inter alia*, a list of employees who were invited to transfer to East Hartford the previous January and the parties engaged in some discussion thereon including the selection criteria. With regard to their job assignments and job descriptions in East Hartford, Williams again deferred to Dr. Foley. He also left for Dr. Foley to respond to the Union's questions regarding the status of lab mechanics and technicians although he asserted that no layoff was planned.

Dr. Foley appeard at the next meeting which was held on May 24. He advised the Union, *inter alia*, that the chemistry laboratory would close by June 15 and that four employees (two technicians, one chemist, and one machine operator) would be laid off. Further, he announced for the first time that an additional group of approximately 15 engineers would be asked in the next 2 days to transfer to Connecticut. In this connection, Dr. Foley provided the Union with a list of names of the selected engineers, the salaries that would be offered, and the names of the supervisors they would be reporting to in Connecticut. At the next session which was held the following day, Respondent reiterated its position that it would not permit union representatives to attend the interviews unless the individuals invited to transfer expressly requested union representation. The parties then expressed disagreement as to whether the Union was denied any real input regarding the changes and whether Respondent was negotiating in good faith.

The parties again disagreed at the next session held on June 29[7] as to whether the Union was afforded appropriate and necessary data regarding the relocation and other changes. Thus the Union again requested and was denied access to the Booz-Allen study and President Cole's report. Further, the parties continued to disagree as to whether the Union was entitled to participate in the screening process and interviews of employees invited to transfer to Connecticut. It appears however that the Company began to ask employees whether they wanted union representation at the interviews and the employees declined this offer. This was not done with the first wave of engineers who were invited to transfer to Connecticut. There was also some discussion regarding a third wave of engineers transferring to Connecticut but in this regard the Company stated that its plans were uncertain and under review and it had nothing further to report on it. (G.C. Exh. 3E, pp. 8–12.) The Company also reported that no technicians would be asked to transfer. (*Id.* at p. 15.)

The Union submitted its list of demands (G.C. Exh. 8) at a meeting held on September 15. Newell testified that Respondent asked the Union to further clarify certain of the Union's demands but did not offer any counterproposals at that time. According to Newell, the Company's counterproposals which it submitted at subsequent meetings related only to items 13-A and B and 24 of the Union's list of 26 items (demands).[8] With regard to the other items, many of them were modified or eliminated by the Union but all of them were discussed. While Respondent discussed the aforenoted items which all related to "effects" or "impact" there was no bargaining over the decision itself, which the Union continued to press. Further, Respondent continued to resist the Union's efforts for copies of the Booz-Allen study and President Cole's report.

As noted previously the last two sessions were held on January 30 and 31, 1979, approximately 1 week before the instant hearing. The Union was informed that Respondent intended to layoff another four technicians (unit employees) by September 1, 1979. Further, Respondent advised that within the next 2 days a third wave of engineers would be contacted, about 20 in all for about 16 jobs in Connecticut, but, if all 20 accepted, they would all be permitted to transfer. Respondent cautioned that if it were unable to attract a sufficient number of engineers to transfer it might have to layoff 16 of them. Respondent supplied the Union, *inter alia*, a list of the employees it selected to be contacted, and their grade, salary, department, and supervisor in Connecticut. (G.C. Exh. 10.) The Union requested that Respondent rescind their names and bargain over the employees to be selected and their salaries. This Respondent refused to do stating that it would go ahead with its plans.

B. *Discussion and Conclusions*

1. The decision

Respondent concedes that it did not bargain collectively with the Union concerning its decision to temporarily relocate certain engineering operations (unit work) first

[7] The underlying unfair labor practice charges were filed on June 7. 31The parties conducted approximately another seven negotiating sessions, the last two of which were held on January 30 and 31, 1979, without any substantial change from their respective positions in the key areas of dispute set forth previously. At a meeting held on August 8, Cronin advised the Union that in a few days William Attridge, a technician, would be offered a transfer opportunity in Otis' research center in Connecticut. He provided the Union with the job description, grade, salary range, and increase that Attridge would be offered (G.C. Exh. 3G). Cronin reiterated Respondent's position that it would not permit a union representative at the interview stating that Attridge had already declined the Company's offer to permit union representation. The Union asserted that it was misled because, *inter alia*, the Company had previously represented that no technicians would transfer. Further the Union complained that such changes made it difficult to structure its demands. The Union then asked about draftsmen and designers to which Cronin responded, "I don't know." However Cronin asserted that the Company was not contemplating at that time asking other technicians to transfer and he could not therefore understand why the change involving Attridge would cause the Union to delay submitting its demands.

[8] Respondent's counterproposal dealing with item 13 was to pay a $60 monthly allowance for 1 year for those employees who had to drive 1-1/2 hours to work at the new location. With regard to item 24 involving voluntary layoffs, Respondent agreed in principle but included certain language dealing with notice to the Company which was unacceptable to the Union.

from Mahwah, New Jersey, to East Hartford, Connecticut, and then later for eventual housing at a new facility in nearby Farmington, Connecticut. However it contends that the aforenoted decision was "essentially managerial in nature, far removed from being a 'term or condition of employment,' and thus outside the scope of the bargaining obligation."[9] The General Counsel on the other hand citing *American Needle and Novelty Company*[10] contends that ever since the Supreme Court's landmark decision in *Fibreboard*[11] "A basic tenet of Board law [is] that an employer has an obligation to bargain with the collective bargaining representative of its employees concerning any decision it makes to remove work from the bargaining unit and relocate it elsewhere." He contends further citing *Stone & Thomas*[12] that this is true even if the employer's unilateral transfer of unit work was motivated solely by business considerations.

The question posed by *Fibreboard* was whether the employer's unilateral decision to subcontract (for legitimate business reasons) plant maintenance work (unit work)—work which the unit employees were capable of continuing to perform—involved a mandatory subject of bargaining within the meaning of Section 8(d) thereby violating Section 8(a)(5) of the Act. The Court concluded, *inter alia*, that the subject matter was "well within the literal meaning of the phrase 'terms and conditions of employment'" within the meaning of Section 8(d).[13] It was also noted that the decision to subcontract did not alter the company's basic operation. The work still had to be performed in the plant, and the company merely replaced existing employees with those of an independent contractor under similar conditions of employment. Further, it was noted that no capital investment was contemplated. In these circumstances Chief Justice Warren who delivered the opinion wrote "[T]o require the employer to bargain about the matter would not significantly abridge his freedom to manage the business."[14] In order to reduce its high maintenance costs, the company was persuaded by independent contractors that certain economies could be realized in a subcontracting arrangement by reducing the work force, decreasing fringe benefits, and eliminating overtime benefits. To this, the Chief Justice wrote, "These have long been regarded as matters peculiarly suitable for resolution within the collective bargaining framework, and industrial experience demonstrates that collective negotiation has been highly successful in achieving peaceful accommodation of the conflicting interests."[15]

While counsel for Respondent in his brief acknowledges that an analysis of *Fibreboard* is in order, he maintains for reasons stated below that the instant case is "clearly distinguishable from and outside the scope of the holding in *Fibreboard*." Thus he asserted that the decision to transfer unit work and further consolidate Otis' engineering operations altered the basic direction of the enterprise. Otis was to enjoy *inter alia* increased cost savings and a technological boost by virtue of its proximity to facilities of the parent company (United), already concentrated in Connecticut. Respondent further contends that the instant case is distinguishable from *Fibreboard* in that the company in *Fibreboard* contemplated no capital investment. Conversely Respondent argues that the decision in the case at bar involves the construction of a new research center building in Connecticut which was expected to have been operational by September 1979 with a capital investment of some $2.5 million. Further a new test tower in conjunction with the research center was planned at the additional cost of $1.5 million. Finally, Respondent points out that (unlike the situation in *Fibreboard*) no employees at Mahwah are being replaced. They are being transferred with their work to a new operation assertedly as part of a major corporate reorganization.

In sum, Respondent relying largely on *General Motors*[16] and other post-*Fibreboard* decisions[17] contends that "[its] decision to transfer some unit work from Mahwah to East Hartford went to the core of entrepreneurial control" for the reasons set forth previously and was therefore not a mandatory subject of bargaining under Section 8(a)(5).

While Respondent's presentation at a glance has some appeal, on the basis of a careful examination of the entire record I find that its contentions are largely conclusionary and not supported by probative evidence. For example, Respondent asserts that standing alone, the anticipated captial investment of some $4 million in construction is sufficient to place the instant case clearly outside the scope of *Fibreboard*.

First, I am not persuaded that the captial investment relied on by Respondent to construct the new research facility is attributable to its decision to transfer employees and unit work from Mahwah to the Hartford area. In this regard the record discloses, that in the summer of 1977, Respondent moved Otis' Parsippany research and development operation with a staff of approximately 50 employees to United's extensive research facilities in Connecticut where it employed approximately 1,000 employees. While the former Parsippany employees were physically situated at a United location, organizationally Otis continued to maintain its separate identity. These employees are expected to move to the new research and development building when it is completed.

It is noted that the decision to concentrate Otis' Parsippany operations was made and implemented before

[9] In pertinent part, collective bargaining under Sec. 8(d) of the Act is defined as "the mutual obligation of the employer and [the Union] to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . ."

[10] *Bruce E. Kronenberger and Herbert Schoenbrod d/b/a American Needle & Novelty Company, Kentucky Manufacturing Company and Harrisburg, Manufacturing Company*, 206 NLRB 534 (1973).

[11] *Fibreboard Paper Products Corp.* v. *N.L.R.B.*, 379 U.S. 203 (1964).

[12] 221 NLRB 573, 576 (1975).

[13] *Fibreboard Paper Products Corp.* v. *N.L.R.B.*, *supra* at 210.

[14] *Id.* at 213-214.

[15] *Id.*

[16] *General Motors Corporation, GMC Truck & Coach Division*, 191 NLRB 951 (1971), affd. *sub nom. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and its Local 864, UAW* v. *N.L.R.B.*, 470 F.2d 422 (D.C. Cir. 1972) (sale of dealership).

[17] *N.L.R.B.* v. *Adams Dairy, Inc.*, 350 F.2d 108 (8th Cir. 1965), cert. denied 382 U.S. 1011 (1966) (termination of milk delivery operation); *N.L.R.B.* v. *Royal Plating and Polishing Co., Inc.*, 350 F.2d 191 (3d Cir. 1965) (plant closed down).

Dr. Foley joined Otis and before he made his decision to further consolidate and transfer unit work from Mahwah to the Connecticut area. In these circumstances it appears that the commitment of capital costs for construction may have related largely to the Parsippany operation. In any event Respondent has not demonstrated by credible evidence that the capital investment was predicated principally on the changes involving the Mahwah engineering operations.[18]

Another factor tending to militate against the significance of the capital investment herein is the involvement by United, the parent corporation. The construction is being undertaken by United, a huge enterprise with annual sales of over $2 billion, which overall ranks "sixth in its spending of [c]orporate monies for research and development within the United States (G.C. Exh. 2, p. 5). Many of these expenditures are for United's other major divisions in the Hartford, Connecticut, area such as Pratt & Whitney, Sikorsky, Hamilton Standard, and Norden. These companies not only draw on each other's research and development resources, but also would be expected to have access to the new research and development building which will also house Otis' employees.

Though the size of the capital investment ($4 million) is not inconsequential, there is some question as to its accuracy. The amount is based on Dr. Foley's testimony, unsupported by documentary or other evidence. Dr. Foley first testified that the capital cost of the building and laboratory facilities would exceed $2 million. A moment later he testified, "I don't remember the exact number, its probably close to two and a half million."Additionally, it is noted that $1-1/2 million of the $4 million assertedly committed was for a new test tower, the final architectural designs for which had not yet been approved at the time of the hearing. For all of the foregoing reasons, I reject Respondent's contention that the capital investment is significant in the circumstances of this case.

I find that Respondent's further contention that the instant case is distinguishable from *Fibreboard*, based on Dr. Foley's decision to transfer and consolidate Otis' research functions altering the basic direction of the Company, is also without merit. The record discloses that Respondent employed approximately 75 engineers in December 1977 and most of these employees were still performing substantially the same work at the time of the hearing. The Mahwah facility continues to be referred to as the "Engineering Center." Significantly the decision was *not* made to relocate and consolidate the entire Mahwah engineering division but, principally, only a segment thereof, to wit, "The Product Improvement Group."

The record discloses that of the approximately 47 nonsupervisory unit employees employed in both the "Product Improvement" and "Product Development" departments in December 1977 only some 11 of them had transferred to Connecticut by the time of the hearing, some 14 months later. (G.C. Exhs. 12 and 16.) The decision in December 1977, *inter alia*, resulted in the immediate transfer of the product improvement group to Connecticut "organizationally" (on paper). The actual physical changes, including the transfer of employees, were expected to be "prolonged." (G.C. Exh. 2, p. 5.) With regard to that portion of the product improvement group which remained in Mahwah, it was renamed the "Product Support Group." In these circumstances the changes appear more cosmetic or organizational than significant in terms of impact on the basic scope of the enterprise.

Respondent, with record support, also points out that the instant case does not involve "a mere replacement of one type of worker (a represented employee) with another (a nonrepresented contractor) as was the case in *Fibreboard*." However, contrary to Respondent, I find on the basis of the overall record, noting particularly that no significant capital investment or basic change in the scope of the enterprise is involved (for reasons set forth previously), that there are also critical similarities. The transferred employees perform essentially the same or similar work (G.C. Exh. 3B, p. 10) under some of the same supervisors with much of the same equipment. Further, the record discloses that as much of the related or support work will continue to be performed at Mahwah and that close and frequent contacts are planned in conjuction with the operations of the new facility including the possibility of a video linkup. (*Id.* at C, pp. 5–6, and M, p. 1.) Therefore, I am not persuaded that, because some of Respondent's employees are doing the same or similar work elsewhere in a separate organizational grouping, these reasons serve as a basis for setting apart the instant case from the scope of *Fibreboard* considerations. There is no evidence tending to show that secrecy or some other competitive consideration was required for Respondent to act quickly and decisively. On the contrary, Dr. Foley advised the Union in December 1977 that the physical changes resulting from the decision would be "prolonged." In these circumstances it appears that "to require the employer to bargain about the matter would not significantly abridge his freedom to manage the business."[19] To require the Employer to so bargain does not include compelling him to agree but only to engage in full and frank discussions with the Union in bona fide efforts to achieve an accommodation satisfactory to both parties. If such bona fide efforts fail, the employer is free to make and effectuate his decision.[20]

The post-*Fibreboard* decisions relied on by Respondent are also misplaced as they involve "more elemental management decisions, such as plant closing and plant removals."[21] I find that the Board's more recent determi-

[18] Dr. Foley testified that he tried to get the board of directors to approve the building of the new research and development center on the basis of a large study (presumably Booz-Allen) of Otis' engineering facilities including the Mahwah location. However, in the absence of "the study" or any other documents or corroborative evidence, I find that this by itself is insufficient to establish that the capital investment was related principally to transferring unit work from Mahwah rather than Respondent's finding of an adequate facility to house the former Parsippany employees and other engineers to be recruited from the Connecticut area. See G.C. Exh. 3E, p. 11.

[19] *Fibreboard Paper Products Corp.* v. *N.L.R.B.*, *supra* at 210.

[20] *Stone & Thomas*, *supra* at 576.

[21] *General Motors Corporation, GMC Truck & Coach Division*, *supra*, and cases cited at fn. 7; cf. *Royal Typewriter Company, A Division of*

Continued

nations, holding that the decision to transfer unit work is a mandatory subject of bargaining within the scope of *Fibreboard*, are controlling in this matter.[22] Accordingly, I find that Respondent's failure to bargain with the Union concerning its decision to transfer unit work violated Section 8(a)(5) and (1) of the Act.

2. Requested information

Respondent's decision to consolidate part of the Mahwah operation into a new research center in the Hartford area was predicated largely on (1) a report by the consultant firm of Booz-Allen & Hamilton (herein called the Booz-Allen report), and (2) a report by President Cole to the board of directors (herein called the Cole report). The Respondent conceded that these two reports were relevant to its decision. However, as Respondent contends that the decision does not relate to a term or condition of employment, it argues that these two reports were not relevant to the Union's proper exercise of its bargaining functions. Respondent, therefore, refused to make these reports available to the Union. Having previously rejected Respondent's contention that the decision did not involve a mandatory subject of bargaining, I find that the Union is entitled to access to the reports in the legitimate exercise of its responsibilities as the exclusive collective-bargaining representative for the unit employees.[23] Accordingly, I find Respondent's failure to make these reports available to the Union further violated Section 8(a)(5) and (1) of the Act.

3. Effects

The Board, the courts, and the parties agree that an employer has an obligation under the Act to bargain over the "effects" resulting from a decision which impacts significantly on unit work. Respondent admits that the case at bar is such a situation but it denies the allegation that it refused to bargain in good faith over this issue. The dispute however is not merely factual.

It is undisputed that Respondent unilaterally determined both the criteria for selecting employees for transfer to Connecticut and the employees who were offered such job opportunities. The Union by letter dated January 17, 1978 (G.C. Exh. 5), threatened Respondent with filing unfair labor practice charges if the Company proceeded with its plans to bypass the Union and deal directly with the unit employees regarding the transfer opportunities. Notwithstanding the Union's warning, Respondent conducted its first series of interviews approximately 1 week later without revealing the names of the employees and without giving the Union the opportunity to attend those interviews. It was not until a bargaining session held on April 27 that Respondent officially supplied the Union with a list of names of the employees who were interviewed the previous January.

According to Respondent the Union was not permitted to attend the first series of interviews because none of the employees expressly requested union representation. Subsequently, it appears that the Company took the initiative and began asking potential transferees whether they wanted union representation and all of them assertedly refused this invitation. Respondent defended its position whereby it excluded the Union from the selection process on the basis that the transfers related to employment outside the unit.

By denying the Union any input in the selection process the Union was foreclosed from effectively representing unit employees as a whole.[24] Administrative Law Judge Nancy M. Sherman noted the broader unit considerations as follows:

> [T]he unit employees as a whole, speaking through their exclusive statutory bargaining representative, might well have thought that different unit employees should be given the first opportunity to move, on the basis of considerations thought to have been ignored or given improper weight by Respondent. . . .[25]

Further, Respondent by perceiving the issue in the aforenoted limited manner ignores some significant truths. The most fundamental of these is that unit jobs were lost as a result of the transfers.[26] Another, is that under Section 9(a) of the Act[27] the Union as the exclusive collective-bargaining representative for certain of Respondent's employees employed at Mahwah including engineers must be accorded the opportunity to be present at interviews which involve the loss of unit jobs. While the first proviso to Section 9(a) provides an option generally for unit employees either individually or collectively to adjust grievances without the intervention of the Union, the second proviso protects the Union's exclusivity *vis-a-vis* unit work by expressly providing that it be given "the opportunity to be present at such adjustment[s]." The Board has interpreted grievances

Litton Business Systems, Inc., a Subsidiary of Litton Industries, Inc., and Litton Industries, Inc., 209 NLRB 1006, 1012 (1974).

[22] See, e.g., *Stone & Thomas, supra; American Needle & Novelty Company, supra.*

[23] See, e.g., *N.L.R.B.* v. *Truit Mfg. Co.*, 351 U.S. 149 (1956); *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432 (1967); *Teleprompter Corp., et al.* v. *N.L.R.B.*, 570 F.2d 4, 8 (1st Cir. 1977); *Royal Typewriter Co., supra* at 1013.

[24] See *Cooper Thermometer Company* v. *N.L.R.B.*, 376 F.2d 684, 688 (2d Cir. 1967).

[25] *Westinghouse Electric Corporation*, 206 NLRB 812, 822 (1973).

[26] As noted previously the lost jobs included the work performed by the engineers in the product improvement group who transferred to Connecticut. While the collective-bargaining agreement contains a relatively broad management-rights clause which includes, *inter alia*, the right to transfer employees (Resp. Exh. 1, pp. 25-26), this by itself does not constitute a waiver by the Union of its right to bargain over unit work. Such a waiver to be effective would have to be clear and unequivocal and the record is devoid of evidence tending to show that this was done. See *Weltronic Company*, 173 NLRB 235, 237 (1968).

[27] Sec. 9(a) in its entirety reads as follows:

> Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

broadly to include classic examples of mandatory subjects of bargaining.[28] Respondent's reliance on Section 9(a) to exclude the Union from the interviews, if not requested by the employees, is misplaced. On the contrary, the Union's right to be present to protect the integrity of the unit as a whole is unqualified.[29] "[T]he whole purpose of the proviso is to bar 'under-the-table' deals between management and individuals acting directly or through another union."[30]

In these circumstances I find that Respondent unlawfully bypassed the Union in derogation of its exclusive bargaining status by unilaterally determining the selection criteria and identity of the transferees and then dealing directly with the employees thereby violating Section 8(a)(5) and (1) of the Act.[31]

As for the actual bargaining over the "effects" the record discloses that the parties met on approximately 15 occasions over a period commencing on December 2, 1977, at which time the "decision" was announced to January 31, 1979, 1 week before the instant hearing. Union Vice President Newell testified credibly without contradiction that Respondent's manager of industrial relations, J. J. Cronin, refused to bargain over the "effects" during the months of January and February 1978. An exchange of letters between Newell and Respondent's vice president, Bouchard, culminated in a meeting on April 13 whereby Respondent at least expressed a willingness to bargain over the "effects." From April 3 to December 1, the parties conducted 11 bargaining sessions with little movement on any of the major issues. This was due principally to the parties' disagreement as to whether the "decision" and the "selection program" were bargainable issues. Moreover the record discloses (as reflected by the bargaining minutes) that the company officials conveyed a good deal of uncertainty in terms of numbers and categories of employees who were expected to transfer and/or be laid off. There was also considerable confusion as to the time frame for the changes resulting from the decision to be implemented. With this backdrop, the Union finally submitted its own list of demands (26 items) on September 15. Respondent discussed all these items with the Union although only marginal agreement was achieved. Respondent continued to resist the Union's efforts to discuss the "decision" or provide the Union with the Booz-Allen and Cole reports which were admittedly relevant to its decision.

The critical question posed relative to "effects" is whether any meaningful negotiations could be achieved given Respondent's failure to bargain over the decision and provide documents admittedly relevant thereto. In resolving this question I find that the Board's remarks in *Ozark Trailers*[32] are particularly fitting to the case at bar. There the Board stated as follows:[33]

> Finally, while meaningful bargaining over the *effects* of a decision to close one plant may in the circumstances of a particular case be all that the employees' representative can actually achieve, especially where the economic factor guiding the management decision to close or to move or to subcontract are so compelling that employee concessions cannot possibly alter the cost situation, nevertheless *in other cases the effects are so inextricably interwoven with the decision itself that bargaining limited to effects will not be meaningful if it must be carried on within a framework of a decision which cannot be revised.* An interpretation of the law which carries the obligation to "*effects*," therefore, cannot well stop short of the decision itself which directly affects "terms and conditions of employment." [Emphasis supplied.]

In *Stone & Thomas, supra* at 576, the Board cited the above-noted remarks in *Ozark* and concluded "it is our opinion that meaningful bargaining over effects can only occur *prior* to the employer's making and acting upon its decision." (Emphasis supplied.)

Having previously determined that Respondent unlawfully refused to bargain over the decision and consistent with the Board's opinion in *Stone & Thomas*, I further find that Respondent failed to bargain in any meaningful fashion concerning the "effects" and thereby additionally violated Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. Respondent, Otis Elevator Company, a wholly owned subsidiary of United Technologies Corporation, is an employer within the meaning of Section 2(6) and (7) of the Act.

2. Local 989, United Automobile, Aerospace and Agricultural Implement Workers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All classifications of employees employed in Respondent's Engineering Division located in Mahwah and Harrison, New Jersey, and Yonkers, New York, in the classifications described in Appendix A of the collective-bargaining agreement effective April 1, 1977, to March 31, 1980, but excluding nontechnical, secretarial, clerical employees not described in Appendix A, maintenance employees, guards and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. Since some time prior to June 1, 1950, the above-named labor organization (herein also called the Union) has been and is now the exclusive representative of all the employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act by:

(a) Failing or refusing to bargain with the Union as the statutory bargaining representative of the employees described above in paragraph 3 over its decision to transfer

[28] See *The Dow Chemical Company*, 227 NLRB 1005 (1977).

[29] See *Valencia Baxt Express, Inc.*, 143 NLRB 211, 218 (1963).

[30] *Id.*

[31] See *Royal Typewriter Company, supra* at 1014. See also *Coated Products Inc.*, 237 NLRB 159 (1978).

[32] *Ozark Trailers, Incorporated and/or Hutco Equipment Company and/or Mobilefreeze Company, Inc.*, 161 NLRB 561 (1966).

[33] *Id.* at 570.

and consolidate certain unit work from its Mahwah, New Jersey, facility to other facilities in Connecticut.

(b) Failing and refusing, upon request, to provide the Union with relevant information such as the Booz-Allen and Cole reports to enable the Union to bargain.

(c) Failing and refusing, upon request, to engage in any meaningful good-faith negotiations with the Union concerning the effects of its decision on the employees in the Union described above in paragraph 3.

(d) Failing and refusing, upon request, to permit the Union an opportunity to bargain about the basis on which employees were to be given the opportunity to transfer from its Mahwah, New Jersey, facility to other of its facilities in Connecticut and on the identity of the employees selected for transfer interviews.

(e) Dealing directly with employees and failing and refusing to permit the Union the opportunity to be present at employee interviews which involve the loss of unit work and the transfer of employees from Respondent's Mahwah, New Jersey, facility to Respondent's unrepresented facilities in Connecticut unless requested by the employees interviewed.

THE REMEDY

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

Having found that Respondent refused to bargain in good faith concerning its decision to transfer and consolidate certain unit work from its Mahwah, New Jersey, facility to its facilities in Connecticut and the effects of such decision and further refused to furnish the Union relevant data such as the Booz-Allen and Cole reports needed to bargain intelligently about such decisions, I shall recommend that Respondent forthwith furnish such information to the Union and forthwith offer to bargain in good faith with the Union on both the decision to transfer and consolidate and about the effects of such decision on unit employees. I shall also recommend that Respondent cease and desist from bypassing the Union in derogation of its exclusive bargaining status by dealing directly with employees concerning the transfer of unit jobs.

The General Counsel has requested that Respondent be required "to return the transferred work to the Mahwah facility . . . and to halt any further implementation of its relocation decision." In addition he requested that those employees laid off or transferred out of the unit be made whole by reinstating them to their former positions with backpay. In short, the General Counsel is requesting a remedy restoring the *status quo ante.*

While I agree with the General Counsel that a simple bargaining order will not provide an adequate remedy in the circumstances of this case, it is also noted that the record is devoid of any evidence tending to show union animus or that the changes made by Respondent were not economically motivated.[34] In these circumstances I shall recommend that Respondent cease and desist from further transferring any employees without first bargaining in good faith over the decision and effects resulting therefrom on unit employees as set forth in this section. As for the employees who have already transferred to Connecticut, I shall recommend that they not be compelled to return to Mahwah so long as Respondent complies with all other aspects of this remedial order.

The record discloses that approximately 12 unit engineers have already been transferred as a result of the changes but none have been laid off. As the Mahwah and Connecticut facilities are approximately 100 miles apart, it is not unreasonable to presume that some if not most of these individuals have acquired new residences. Given the backdrop that this case is free from antiunion or discriminatory considerations, and that no engineers have been laid off, I do not deem it essential that Respondent be compelled to return these employees to the Mahwah facility in advance of bargaining.[35]

The record also discloses that a chemist and approximately four other nonengineer unit employees were laid off as a result of Respondent's "decision." Further, Respondent announced on or about January 30, 1979, approximately 1 week before the instant hearing opened, that another four technicians faced layoffs. It appears that the chemistry laboratory and machine shop where these employees were employed has shut down. Noting the Board's reluctance to order the resumption of operations where the closing is for nondiscriminatory reasons, I shall not recommend that these operations be resumed in advance of bargaining.[36] On the other hand I shall recommend backpay with interest for the aforenoted employees who were laid off and any other employees who were laid off as a result of Respondent's "decision." Respondent shall pay the employees backpay, at the rate of their normal wages when last in Respondent's employ, until the occurence of the earliest of the following conditions: (1) the date Respondent bargains to agreement with the Union on those subjects pertaining to the decision to transfer and consolidate unit work and the effects of that decision on unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision, or to commence negotiations within 5 days of Respondent's notice of their desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith.[37] I shall also recommend that Respondent be required to establish a preferential hiring list for laidoff employees and, if these operations are resumed at Mahwah or anywhere in the Mahwah area, at that time offer reinstatement to those employees and bargain with the Union on request.[38] Where backpay is required, it will be paid with interest on the amounts owing and computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231

[34] See, e.g., *Production Molded Plastics, Inc. and Detroit Plastic Molding Co.*, 227 NLRB 776, 778 (1977), enfd. 604 F. 2d 451 (6th Cir. 1979).

[35] See, e.g., *Weltronic Company, supra* at fn. 1.

[36] See *Thompson Transport Company, Inc.*, 165 NLRB 746, 747 (1967); *Production Molded Plastics, supra* at 778.

[37] *Production Molded Plastics, supra* at 778.

[38] *Thompson Transport Co., supra.*

NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

On the basis of the above findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[39]

The Respondent, Otis Elevator Company, a wholly owned subsidiary of United Technologies, Mahwah, New Jersey, and East Hartford, Connecticut, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing or refusing to bargain with Local 989, United Automobile, Aerospace and Agricultural Implement Workers of America, herein called the Union, as the exclusive bargaining representative of the employees in the unit found appropriate herein over its decision to transfer and consolidate certain unit work from its Mahwah, New Jersey, facility to other of its facilities in Connecticut and the effects on unit employees as a result of said Decision.

(b) Further transferring and consolidating unit jobs and transferring unit employees in conjunction therewith without first bargaining with the Union in the manner set forth in the section above entitled "The Remedy."

(c) Failing and refusing, upon request, to provide the Union with relevant information such as the Booz-Allen and Cole reports to enable the Union to bargain.

(d) Failing and refusing, upon request, to permit the Union an opportunity to bargain about the basis on which employees are to be given the opportunity to transfer from its Mahwah, New Jersey, facility to other of its facilities in Connecticut and on the identity of the employees selected for transfer interviews.

(e) Dealing directly with employees and failing and refusing to permit the Union a full opportunity to be present at employee interviews which involve loss of unit work and the transfer of said employees from Respondent's Mahwah, New Jersey, facility to its unrepresented facilities in Connecticut.

(f) In any like or related manner interfering with the Union's exercise of its rights to bargain collectively, or interfering with, restraining, or coercing employees in the exercise of their statutory rights.

2. Take the following affirmative action, which is necessary to effectuate the policies of the Act:

(a) Upon the Union's request bargain collectively with the Union as the exclusive bargaining representative of Respondent's employees in the appropriate unit with respect to wages, hours, and other terms and conditions of employment.

(b) Upon the Union's request, bargain with the Union concerning its decision to transfer and consolidate unit work from Mahwah, New Jersey, to other of its facilities in Connecticut and the effects on unit employees resulting therefrom.

(c) Upon the Union's request, furnish it relevant information such as the Booz-Allen and Cole reports needed to enable the Union to bargain.

(d) Upon the Union's request, bargain with the Union about the basis on which employees in the appropriate unit are to be given the opportunity or required to transfer to its facilities in Connecticut and on the identity of these employees.

(e) Give the transferred employees an opportunity to continue to perform their unit work in Connecticut pending bargaining, but all other unit work is to be returned to the Mahwah facility.

(f) Establish a preferential hiring list for laid-off employees and if operations are resumed at Mahwah or anywhere in the Mahwah area at that time offer reinstatement to those employees and bargain with the Union upon request.

(g) Pay the laid-off employees their normal wages in the manner set forth in the section above entitled "The Remedy."

(h) Preserve and, upon 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 or useful to an analysis of the amount of backpay due under the terms of this Order.

(i) Post at its Mahwah, New Jersey, facility and those facilities in Connecticut wherein unit work from Mahwah has been transferred the attached notice marked "Appendix."[40] Copies of said notice, on forms to be provided by the Regional Director for Region 22, shall be posted by Respondent, after being duly signed by its representative, immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(j) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[39] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[40] In the event that 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."