

El Paso Electric Company and International Brotherhood of Electrical Workers, Local Union 960, AFL-CIO. Case 28-CA-020136-2¹

January 3, 2012

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS BECKER
AND HAYES

On March 1, 2007, Administrative Law Judge John J. McCarrick issued a decision in this proceeding. The Respondent filed exceptions and a supporting brief. The General Counsel filed limited cross-exceptions, a supporting brief, and an answering brief. The Respondent filed an answering brief to the cross-exceptions. Each party filed a reply brief.

On August 10, 2010, the Board issued a Decision and Order Remanding in this proceeding.² As relevant here, the Board severed and remanded to the judge a single allegation that the Respondent violated Section 8(a)(5) of the Act in 2006 by closing its Chelmont customer service facility and relocating customer service representatives to other facilities, where they continued to be represented by the Union. The Board directed the judge to provide further explanation of the evidentiary basis, including credibility resolutions, for his conclusion that the Respondent failed to prove an affirmative defense under *Dubuque Packing*³ that labor costs were not a factor in the decision to close its Chelmont customer service facility or that, to the extent they were a factor, the Union could not have offered concessions that would have changed the decision.

On March 2, 2011, Judge McCarrick issued the attached supplemental decision. The Respondent filed exceptions and a supporting brief. The Acting General Counsel filed an answering brief.

The Board has considered the supplemental decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Supplemental Decision and Order. Specifically, we reverse the judge and dismiss the sole remaining allegation that the Respondent violated Section 8(a)(5) and (1) of the Act by closing its Chelmont facility and transferring the bargaining unit customer service representatives to other facilities without notice or bargaining with the Union.

¹ We have deleted reference to cases in this previously consolidated complaint proceeding that were resolved and are no longer before us.

² 355 NLRB 428 (2010).

³ 303 NLRB 386 (1991), *enfd.* 1 F.3d 24 (D.C. Cir. 1993), *cert. denied* 511 U.S. 1138 (1994).

I. BACKGROUND

The Respondent's Chelmont facility, located in El Paso, Texas, handled walk-up customer payments and requests for electrical service. Customer service representatives working there were part of a multi-facility unit represented by the Union. The Chelmont office was the busiest of the Respondent's outlying offices. It had not been remodeled since 1995, and it is undisputed that the building was overcrowded and too small to adequately handle the heavy volume of customers. The facility also had operational issues such as poor ventilation, cumbersome and nonergonomic work areas that caused some employees to experience repetitive motion injuries, and a restroom that was not compliant with American with Disabilities Act (ADA) requirements.

From February to December 2005, a committee reviewed the Respondent's options for addressing the problems at the Chelmont office. Vice president for administration Kerry Lore became involved in this process in April 2005 and thereafter met monthly with the committee. Ultimately, the committee considered three options: staying at Chelmont and remodeling, moving to a new location in the same area, or closing the Chelmont office. A final recommendation was not made until a financial analysis was completed in January 2006. This financial analysis revealed that, moved to a new location, the Chelmont office would cost the Respondent an additional \$100,000 a year to operate. Lore, citing the additional operating costs at a new location and the inadequacy of the Chelmont building, even if it were remodeled, recommended that the Chelmont office be closed and its customers sent to independent pay stations to pay bills. After receiving the financial evaluation of options for addressing the facility's shortcomings, the Respondent's officials chose to close the facility, use independent pay stations, and transfer all Chelmont customer service representatives (CSRs) to other facilities where they continued to perform customer service functions. The Respondent refused to bargain with the Union about the decision to close.

II. THE JUDGE'S SUPPLEMENTAL DECISION

In his supplemental decision, the judge found that direct labor costs were a factor considered by the Respondent in making its decision to close Chelmont. The judge relied on written documentation of the Respondent's decision-making process and further noted that the Respondent saved labor costs by transferring two CSRs from Chelmont to vacant positions already budgeted at another facility. The judge also found that indirect labor costs were taken into consideration in the decision to close. Finally, the judge found that the Respondent prof-

ferred no evidence to show that the Union could not have offered labor cost concessions that might have affected Respondent's decision to close Chelmont and thus Respondent failed to carry its burden of proof on this issue.⁴

III. DISCUSSION

Contrary to the judge, we find that the Respondent did not violate Section 8(a)(5) and (1) of the Act by failing to bargain about the decision to close the Chelmont facility. Under *Dubuque Packing*, 303 NLRB 386 (1991), enfd. 1 F.3d 24 (D.C. Cir. 1993), cert. denied 511 U.S. 1138 (1994), an employer may rebut the prima facie case that an employer's decision involving a relocation of unit work unaccompanied by a basic change in the nature of the employer's operation⁵ is a mandatory subject of bargaining by showing, by a preponderance of the evidence, that labor costs (direct and/or indirect) were not a factor in the decision. See *El Paso*, supra at slip op. 3. Additionally, "the Respondent must show that the factors it is raising in its defense were relied on at the time the relocation decision was made." *Dubuque Packing*, supra at 392 fn. 14.

We find that the evidence in the record does not establish that the Respondent's decision to close Chelmont was motivated by labor costs. The evidence in the record indicates that the physical space at the existing Chelmont location was inadequate and would have remained inadequate even if remodeled due to its small size, and moving to a new location would have lead to additional, ongoing operating costs. Although one of the documents relied on by the Respondent in making its decision, the Chelmont Office Situational Analysis & Recommendation, mentioned that one of the factors considered in evaluating the various options was payroll, it further stated that closing Chelmont would create no net reduction in staff costs because those resources, i.e., staff, would be reassigned. The un rebutted testimony of Respondent's Vice president for administration Lore was that payroll expenses would remain the same, whether the Respondent stayed at Chelmont or moved to another location, or whether the Respondent closed Chelmont and reassigned the CSRs. This testimony was supported by the report prepared by the Respondent's financial analyst Clay Doyle, which showed that payroll costs for all of the various options assumed the number of full-time employees would remain constant at seven. Furthermore, Lore testified without contradiction that she recommended that the

Respondent close Chelmont for three reasons: (1) the lease was expiring at Chelmont; (2) there were concerns relating to the facility and its limitations; and (3) the financial analysis supported expanded use of pay stations. In sum, the record demonstrates that while payroll and labor costs were considered during the process leading to the decision to close, they were not a factor in the actual decision to close.

We do not find persuasive the judge's reliance on the fact that the Respondent ultimately reduced labor costs by transferring two CSRs from Chelmont to positions already budgeted at another facility. Lore testified that these two open positions were not part of the discussion and were not factored into the various recommendations. She also testified that, to her knowledge, these positions were not open at the time that Respondent was looking at the financial analysis. We find that the Respondent has established that all evidence presented to its decision-making officials indicated that there would be no change in the number of CSRs and that, therefore, labor cost savings from filling such vacancies through transfers were not a decisional factor.

Finally, contrary to the judge, the record shows that indirect labor costs, properly defined, were not a factor in the Respondent's decision to close Chelmont. As noted above, the inadequacy of the Chelmont facility motivated the Respondent's decision, rather than labor costs. In the Respondent's Situational Analysis & Recommendation, the Respondent listed Chelmont office issues that included ADA and compliance issues (such as lack of adequate lobby space, lack of an ADA accessible restroom, and fire code noncompliance) and employee and customer environmental and safety issues (such as climate control, pedestrian safety concerns, nonergonomic employee work stations, and security conditions and compromises). The judge found that poor ergonomic work stations, a non-ADA compliant bathroom, climate control, and fire code issues were all factors indirectly affecting labor costs, but these factors do not relate to efficiency and productivity, as the Board has defined indirect labor costs giving rise to a bargaining obligation.⁶ The office

⁴ The Respondent did not file an exception to this aspect of the judge's finding and declined to reopen the record to adduce such evidence. Therefore, we adopt the judge's finding that the Respondent failed to meet its burden of proof on labor concessions.

⁵ It is not disputed that the relocation here was unaccompanied by a basic change in the nature of the employer's operation.

⁶ In *Dubuque Packing*, supra at 389 fn. 10, the Board noted that problems with the physical plant, without more, did not constitute labor costs. See also *Metropolitan Teletronics*, 279 NLRB 957, 958 (1986), enfd. 819 F.2d 1130 (2d Cir. 1987) (company was under no statutory obligation to bargain over its decision to close and relocate because its decision was motivated by foreclosure on former facility, the lower mortgage interest rate and more spacious quarters at the new facility, and the prospect of Government assistance through the issuance of tax exempt bond); *Inland Steel Container Co.*, 275 NLRB 929, 935-937 (1985), petition for review denied sub nom. *Steelworkers Local 2179 v. NLRB*, 822 F.2d 559 (5th Cir. 1987) (decision to relocate unit work not subject to mandatory bargaining because decision itself was not predi-

was inadequate in ways that affected customers and employees, but the latter does not turn Respondent's consideration of the inadequate office space into consideration of indirect labor costs.

Accordingly, we reverse the judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain with the Union about the decision to close the Chelmont customer service facility and to transfer those employees to other facilities.

ORDER

The sole remaining allegation in the complaint is dismissed.

Mara Louise Anzalone, Esq., for the General Counsel.
Jarrett R. Andrews, Esq. and Dan C. Dargene, Esq. (Winstead, Sechrest & Minick), of Dallas, Texas.
Sylvia Porter, Esq., of El Paso, Texas, for the Respondent El Paso Electric Company.
Duane R. Nordick, International Rep., I.B.E.W., of Wichita, Kansas, for the Charging Party.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

JOHN J. MCCARRICK, Administrative Law Judge. This case was tried in El Paso, Texas, on August 23 to 25, August 29 to September 1, and September 19 to 21, 2006, upon the order further consolidating cases, second consolidated complaint, as amended and notice of hearing issued on May 31, 2006, and the complaint issued on August 24, 2006, by the Regional Director for Region 28. On March 1, 2007, I issued my Decision in this case and found that Respondent violated Sections 8(a)(1), (3), (4), and (5) of the Act, inter alia, by deciding to close its Chelmont facility and transferring Chelmont employees to other facilities. On August 10, 2010, the Board issued its Decision and Order Remanding¹ case and severing for further explanation of the evidentiary basis, including credibility resolutions, for my decision or to the extent they were a factor or the Union could not have offered concessions that would have changed the Respondent's decision to close the Chelmont facility. Accordingly, on October 26, 2010, I gave the parties until November 5, 2010, to indicate if they wished the record reopened. No party having expressed a desire to reopen the record, on December 2, 2010, I gave the parties until January 7, 2011, to file supplemental briefs on the issue the Board remanded. Both Counsel for the General Counsel and Respondent have filed supplemental briefs.

FINDINGS OF FACT

The second consolidated complaint at paragraph 10(o) alleges that Respondent violated Section 8(a)(5) of the Act by closing its Chelmont facility and transferring its CSR employees.

Respondent's Chelmont office was located in El Paso, Tex-

cated solely or even predominantly on labor costs but motivated by outdated facility, limited space for growth, and flooding in facility).

¹ 355 NLRB 428.

as. The Chelmont office, the busiest of Respondent's outlying offices, handled walk up customer payments and requests for service. It had not been remodeled since 1995. It is acknowledged that the building was overcrowded and too small to adequately handle the heavy volume of customers. There were longstanding complaints of work stations not being ergonomic, a bathroom was not ADA compliant, and customer lines wound outside the front doors. While there was a report of a fight among customers in the lobby at the Chelmont office, there is no evidence that the frequency of security issues at Chelmont exceeded those at other outlying offices. Moreover, Lowe stated that security was not an issue at Chelmont given the bullet proof glass at the teller's stations and the presence of a security guard during working hours.

In February 2005 a committee composed of vice president of customer services Kerry Lore (Lore), director of customer service representatives Judy Kummrow (Kummrow), and Steve Checchia from Respondent's maintenance department began looking at other sites to replace the Chelmont office. Four buildings were considered, the last of which was visited by the committee in December 2005. In April 2005 Lore became involved in the decision to relocate Chelmont since the lease on the building was about to expire in July 2005. From April to December 2005 Lore met monthly with Kummrow, Respondent's customer service representative, Supervisor Rose Lowe (Lowe), and Respondent's financial analyst, Clay Doyle (Doyle), to assess the options concerning Chelmont. The options considered were to stay at Chelmont and remodel the office, move to a new location and close the Chelmont office and create additional pay stations. A final recommendation was not made until Doyle completed the financial analysis in January 2006.² General Counsel's exhibit 19, page 512, reflects that the costs of staying at Chelmont with improvements would increase Respondent's costs by about \$140,187, a one time expenditure for remodeling, leasing a new facility at 6400 Boeing would increase Respondent's costs by about \$1,319,967 per year, and buying the facility at 6400 Boeing would increase Respondent's costs by \$1,059,843 per year.

Lore testified without contradiction that among the factors considered in deciding to close the Chelmont facility was payroll expense, and expenses associated with the lack of an ADA accessible restroom, fire code noncompliance, climate control issues for employees, and nonergonomic employee work stations.³ In late January 2006 Lore met with Chief Operating Officer Frank Bates (Bates) and recommended closing the Chelmont office and using pay stations based on the information in General Counsel Exhibit 18. The financial report Doyle prepared, General Counsel's Exhibit 19, page 513, in the box at the upper right, reflects that use of pay stations in lieu of Chelmont CSRs would save Respondent 33 cents per transaction or \$141,626 based upon Chelmont CSRs spending half their time processing payments. A few days later Bates agreed with Lore's recommendation and said Chelmont would be closed. Six Chelmont CSRs were transferred to other facilities. Four went to the Call Center, one went to Fabens and one to

² GC Exh.19.

³ GC Exh.18 at 518.

Anthony. General Counsel's exhibit 19, the financial report Lore utilized in making her recommended decision, reflects that for 2006 Respondent budgeted \$192,089 for seven Chelmont positions, an average of about \$27,441. Lore stated that if Chelmont was closed and CSR employees transferred to Respondent's other locations where there were empty positions, there would be no change in overall payroll. However, Lore admitted that two of the open positions at the Call Center were already built into Respondent's budget:

JUDGE MCCARRICK: For accounting purposes, the open spaces at the Call Center, were those built into expenses, the open positions that weren't filled?

THE WITNESS: Were they—

JUDGE MCCARRICK: Were they built into your budget?

THE WITNESS: Our budget? Yes. They were already in the budget. That is correct.

Q. BY MS. ANZALONE: Okay. But by filling two—by using two Chelmont CSRs and putting them in open positions in the Call Center, you were down overall two CSR positions, correct?

A. That would be correct.⁴

Later Lore reaffirmed that two budgeted positions were saved in closing Chelmont and moving two Chelmont CSRs into budgeted positions at the Call Center:

Q. Okay. The next bullet point, Chelmont closing assumes no net reduction in staff costs because these resources would be reassigned to the Call Center, home agents, or the Fabens office.

Now that didn't ultimately turn out to be true because you reassigned two Chelmont employees to open positions that you therefore did not have to hire people for. Correct?

A. Two of them, yes.

Q. Okay.

JUDGE MCCARRICK: So you saved more money because you already budgeted the open positions.

THE WITNESS: Correct.

JUDGE MCCARRICK: And you no longer had two positions at Chelmont.

THE WITNESS: Correct.⁵

However, Lore stated Respondent did not know the two Call Center positions were vacant at the time it was considering the numbers, presumably when the recommendations were being assembled:

Okay. So underneath, it's hard to read, but payroll budget 7 FTE, is that full time employees?

A. Right. They would not actually be at those locations. We would retain those seven employees.

Q. Okay. And those were the CSRs at Chelmont?

A. Six CSRs and one lead, team lead.

Q. Oh, okay. Ms. Garcia?

A. Yes.

Q. Okay. So you built into this the cost of retaining the seven employees?

A. Correct.

Q. Even though two of them were being put into open spots at the Call Center?

A. At the time, we didn't factor that in.

Q. Okay.

A. We didn't have those open positions at that time.

Q. And you didn't have the open positions at that time when you were looking at these numbers?

A. No.

Q. Okay.

A. Not to my knowledge, no.

Q. Okay. You're not sure?

A. It wasn't part of the discussion.⁶

However, General Counsel's exhibit 18 at 526 makes it clear that Respondent considered transferring Chelmont CSRs to the Call Center as early as August 2005 before the final decision on Chelmont was made by Bates.

Thus for the six CSRs who were transferred Respondent had budgeted about \$164,647 or six times \$27,441. In addition Respondent had budgeted for two unfilled positions at the Call Center at about \$54,882 or two times \$27,441. Total payroll for the eight positions was about \$219,529. By using the Chelmont CSR's at the Call Center to fill positions already budgeted, Respondent saved about \$54,882.

Lore also admitted that there would be additional expenses associated with making employee work stations more ergonomic and the bathroom ADA compliant. Clearly there would have been additional costs to make climate control more effective.

On February 1, 2006, Lore told Lowe to tell Human Resources Manager Hernandez of the decision to close Chelmont and for Hernandez to notify the Union. Lore also told Lowe that the Chelmont CSRs would be relocated and asked for Lowe's input. Lowe recommended to which offices the CSRs should be transferred and her recommendations were followed. On February 1, 2006, at 8:30 a.m. Hernandez notified Salazar that the Chelmont office was being closed and the CSRs reassigned. When Salazar expressed his shock at the decision to close Chelmont and said there had been no negotiations about the decision, Hernandez replied that the decision was not up for discussion. Hernandez said that the Chelmont CSRs were being sent to the downtown El Paso Call Center, the Fabens, and Anthony offices. According to Hernandez, Salazar raised the issue of three employees who were being transferred. Salazar said he would talk to the employees and get back to Hernandez. There is no dispute that before the decision to close Chelmont and relocate the CSRs no notice was given to the Union about either decision. Later on February 1, 2006, Lore met with the Chelmont CSRs and told them of the decision to close the Chelmont office on March 1, 2006, and send CSRs to the Call Center, Fabens and Anthony.

The Analysis

The Board in *Dubuque Packing*, 303 NLRB 386 (1991), concluded that a decision "to relocate unit work is more closely

⁴ Tr. pp. 505–506.

⁵ Tr. p. 524, LL.10–24.

⁶ Tr. 530–531.

analogous to the subcontracting decision found mandatory in *Fibreboard* than the partial closing decision found nonmandatory in *First National Maintenance*.” Id. at 391. The Board formulated a test for determining whether an employer’s decision is a mandatory subject of bargaining.

Initially, the burden is on the General Counsel to establish that the employer’s decision involved a relocation of unit work unaccompanied by a basic change in the nature of the employer’s operation. If the General Counsel successfully carries his burden in this regard, he will have established prima facie that the employer’s relocation decision is a mandatory subject of bargaining. At this juncture, the employer may produce evidence rebutting the prima facie case by establishing that the work performed at the new location varies significantly from the work performed at the former plant, establishing that the work performed at the former plant is to be discontinued entirely and not moved to the new location, or establishing that the employer’s decision involves a change in the scope and direction of the enterprise. Alternatively, the employer may proffer a defense to show by a preponderance of the evidence: (1) that labor costs (direct and/or indirect) were not a factor in the decision or (2) that even if labor costs were a factor in the decision, the union could not have offered labor cost concessions that could have changed the employer’s decision to relocate. Id.

The record reflects that both direct and indirect labor costs were a factor in Respondent’s decision to close its Chelmont facility. The Situational Analysis and Recommendation dated August 18, 2005, General Counsel’s exhibit 18, establishes that payroll costs were a factor considered by Respondent in making the decision to close Chelmont. Doyle’s financial report, General Counsel’s exhibit 19, is further evidence that Respondent’s labor costs of processing payments by CSR’s versus payment centers was considered in making the decision to close its Chelmont facility. Respondent further saved labor costs by transferring two CSRs from Chelmont to positions already budgeted at the Call Center. Contrary to Respondent’s argument, Lore’s testimony did not establish that when Respondent made the decision to close Chelmont it did not know there were open positions at the Call Center. All Lore stated in this regard was open positions at the Call Center was not part of the discussion when she was looking at the numbers. From the context of her testimony, I find that Lore was referring to the discussions she had with the committee members in formulating the various options regarding Chelmont from April to December 2005, well before a final decision was made regarding Chelmont.

In addition there were indirect labor costs associated with the decision to close Chelmont. Ergonomic work stations, a non-ADA compliant bathroom, climate control, and fire code issues were all indirect factors affecting labor costs that Respondent considered in its decision to close the Chelmont facility. These were one time costs associated with remodeling.

Based upon the above cited factors, I conclude that both direct and indirect labor costs were a factor in Respondent’s decision to close its Chelmont facility. Respondent has failed to establish by a preponderance of the evidence that labor costs were not a factor in its decision to close the Chelmont facility.

Respondent also has the burden to show by a preponderance

of evidence that even if labor costs were a factor in the decision to close its Chelmont facility, the union could not have offered labor cost concessions that could have changed the employer’s decision to relocate.

Respondent proffered no evidence on this issue and thus failed in its burden of proof to show the Union could not have offered labor cost concessions that could have changed the Respondent’s decision to close Chelmont. Whether the Union could have offered labor concessions that would ameliorate the needed modifications to Respondent’s Chelmont facility sufficient to satisfy Respondent’s needs is not beyond the realm of possibility, particularly in view of the fact that the increased costs of remodeling were one time costs that could have been amortized by labor concessions over a period of years. This issue is now moot since the Union was never given such an opportunity but rather was presented with a fait accompli. I find that Respondent violated Section 8(a)(1) and (5) of the Act as alleged in the complaint at paragraph 10(o) by closing its Chelmont facility and transferring its CSR employees.

CONCLUSIONS OF LAW

On the basis of the above findings of fact and the record as a whole and Section 10(c) of the Act, I make the following conclusions of law.

Respondent has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

Respondent violated Section 8(a)(1) and (5) of the Act by deciding to close its Chelmont facility and transfer Chelmont employees to other facilities.

The unfair labor practices described above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

Based upon the above findings of fact and conclusions of law, and on the basis of the entire record herein, I issue the following recommended Order.⁷

ORDER

1. The Respondent El Paso Electric, its officers, agents, successors, and assigns, shall cease and desist from changing the following terms and conditions of employment of employees in the following bargaining unit without notice to or bargaining with the Union by deciding to close its Chelmont facility and transfer bargaining unit employees to other facilities:

Including: The employees of El Paso Electric Company working in the following classifications in the Power Supply Operating Departments: Janitors, Apprentice Operator, Operator, Inside Operator, Senior Operator, and Working Supervisor; the employees of El Paso Electric Company working in the following classifications in the Power Supply Division Maintenance Department: Insulator, Helper, Help-

⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

er/Apprentice, Apprentice Mechanic, Apprentice Electrician, Apprentice Laboratory Technician, Apprentice Instrumentation Technician, Mechanic, Electrician, Laboratory Technician, Instrumentation Technician, Electronic Specialist, Predictive Maintenance Technician, Working Supervisor, Vibration Specialist, Level II, Vibration Specialist, Level III, and Working Supervisor-Vibration Specialist; the employees of El Paso Electric Company working in the following classifications in the Transmission and Distribution Division, Distribution Construction, Distribution Operations, Transmission Design and Maintenance: Helper, Helper/Apprentice, Apprentice Lineman, Apprentice Cable Splicer, Apprentice Equipment Operator, Lineman, Cable Splicer, Equipment Operator, and Working Supervisor; the employees of El Paso Electric Company working in the following classifications in the Transmission and Distribution Division Meter Testing/Service: Helper, Helper/Apprentice, Apprentice Meter Technician, Meter Technician, Meter Laboratory Specialist, Service Worker, Inspector-Wiring and Meter Service Order Worker, and Working Supervisor; the employees of El Paso Electric Company working in the following classifications in the Transmission and Distribution Division Substation and Relay Department: Helper, Helper/Apprentice, Apprentice Electrician, Apprentice Equipment Operator, Apprentice Relay Technician, Equipment Operator, Electrician, Relay Technician, Relay Specialist, and Working Supervisor; the employees of El Paso Electric Company working in the following classifications in the Transmission and Distribution Division Communications Department: Helper, Helper/Apprentice, Apprentice Communication Technician, Communication Technician, and Working Supervisor; the employees of El Paso Electric Company working in the following classifications in the Administrative Division Garage Section: Janitor, Helper, Tool and Material Handler, Senior Tool and Material Handler, Apprentice Mechanic, Mechanic, Technician, and Working Supervisor; the following employees of El Paso Electric Company working in the following classifications in the Treasury Services Warehouse Section: Fuel Handler, Warehouse Helper, Tool and Material Handler, Senior Tool and Material Handler, Material Handler, Senior Material Handler, Material Truck Operator, Working Supervisor, and Working Supervisor-Power Supply; and Miscellaneous: Laborer (Temporary), and Laborer (After 1 Year) employees; all full-time and regular part-time Meter Readers, and Collectors, Technician-Sr. Electrical/Technician-Sr. HVAC/Technician-Jr. Electrical/Technician-Sr. Maintenance/Technician-Maintenance/Clerk-Facilities Services VI; and all full-time and regular part-time Customer Service Representatives I, II, II and Customer Service-Clerk-Telephone Center employees employed by the El Paso Electric Company at the telephone center at 100 N. Stanton, El Paso, Texas, and the outlying offices including Chelmont, Fabens and Van Horn, Texas, and Anthony, Hatch, and Las Cruces, New Mexico.

Excluding: All other employees, office clerical employees, dispatchers, professional employees, guards and supervisors as defined in the Act.

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

(a) Meet and bargain at reasonable times and places with International Brotherhood of Electrical Workers, Local Union 960, AFL-CIO as the exclusive collective bargaining representative of the employees in the above mentioned unit and reduce to writing any agreement reached with the Union concerning the closing of its Chelmont facility and the transfer of CSR employees.

(b) Within 14 days after service by the Region, post at its Texas and New Mexico facilities copies of the attached notice marked "Appendix"⁸ in both the English and Spanish languages. Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since August 3, 2004.

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

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

After a trial at which we appeared, argued, and presented evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and has directed us to post this notice to employees in both English and Spanish and to abide by its terms.

⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Accordingly, we give our employees the following assurances:

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT refuse to meet at reasonable times and places and bargain in good faith with INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 960, AFL-CIO (Union), as your certified collective bargaining representative in the following bargaining unit (unit):

Including: The employees of El Paso Electric Company working in the following classifications in the Power Supply Operating Departments: Janitors, Apprentice Operator, Operator, Inside Operator, Senior Operator, and Working Supervisor; the employees of El Paso Electric Company working in the following classifications in the Power Supply Division Maintenance Department: Insulator, Helper, Helper/Apprentice, Apprentice Mechanic, Apprentice Electrician, Apprentice Laboratory Technician, Apprentice Instrumentation Technician, Mechanic, Electrician, Laboratory Technician, Instrumentation Technician, Electronic Specialist, Predictive Maintenance Technician, Working Supervisor, Vibration Specialist, Level II, Vibration Specialist, Level III, and Working Supervisor-Vibration Specialist; the employees of El Paso Electric Company working in the following classifications in the Transmission and Distribution Division, Distribution Construction, Distribution Operations, Transmission Design and Maintenance: Helper, Helper/Apprentice, Apprentice Lineman, Apprentice Cable Splicer, Apprentice Equipment Operator, Lineman, Cable Splicer, Equipment Operator, and Working Supervisor; the employees of El Paso Electric Company working in the following classifications in the Transmission and Distribution Division Meter Testing/Service: Helper, Helper/Apprentice, Apprentice Meter Technician, Meter Technician, Meter Laboratory Specialist, Service Worker, Inspector-Wiring and Meter Service Order Worker, and Working Supervisor; the employees of El Paso Electric Company working in the following classifications in the Transmission and Distribution Division Substation and Relay Department: Helper, Helper/Apprentice, Apprentice Electrician, Apprentice Equipment Operator, Apprentice Relay Technician, Equipment Operator, Electrician, Relay Technician, Relay Specialist, and Working Supervisor; the employees of El Paso Electric Company working in the following classifications in the Transmission and Distribution

Division Communications Department: Helper, Helper/Apprentice, Apprentice Communication Technician, Communication Technician, and Working Supervisor; the employees of El Paso Electric Company working in the following classifications in the Administrative Division Garage Section: Janitor, Helper, Tool and Material Handler, Senior Tool and Material Handler, Apprentice Mechanic, Mechanic, Technician, and Working Supervisor; the following employees of El Paso Electric Company working in the following classifications in the Treasury Services Warehouse Section: Fuel Handler, Warehouse Helper, Tool and Material Handler, Senior Tool and Material Handler, Material Handler, Senior Material Handler, Material Truck Operator, Working Supervisor, and Working Supervisor-Power Supply; and Miscellaneous: Laborer (Temporary), and Laborer (After 1 Year) employees; all full-time and regular part-time Meter Readers, and Collectors, Technician-Sr. Electrical/Technician-Sr. HVAC/Technician-Jr. Electrical/Technician-Sr. Maintenance/Technician-Maintenance/Clerk-Facilities Services VI; and all full-time and regular part-time Customer Service Representatives I, II, II and Customer Service-Clerk-Telephone Center employees employed by the El Paso Electric Company at the telephone center at 100 N. Stanton, El Paso, Texas, and the outlying offices including Chelmont, Fabens and Van Horn, Texas, and Anthony, Hatch, and Las Cruces, New Mexico.

Excluding: All other employees, office clerical employees, dispatchers, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT make changes to your terms and conditions of employment without prior notice to the Union in order to permit the Union to bargain with us about those changes.

WE WILL NOT decide to close our facilities or transfer our employees without first giving the Union notice or an opportunity to bargain.

WE WILL offer to bargain in good faith with the Union concerning these and other terms and conditions of employment of unit employees.

WE WILL reduce to writing and sign any agreement reached with the Union concerning these and other terms and conditions of your employment.

EL PASO ELECTRIC COMPANY