JD-10-19
Dallas, Texas

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

Dallas Airmotive, Inc.,
Respondent

Case 16-CA-192780

and

International Association of Machinists and Aerospace Workers, AFL-CIO, Aeronautical Industrial District Lodge 776[1]
Charging Party

Linda Reeder and Maxie Gallardo, Esqs.
for General Counsel

Rod Tanner, Esq.
for Charging Party

Bill Finegan, Esq.
for Respondent

DECISION

STATEMENT OF THE CASE

Sharon Levinson Steckler, Administrative Law Judge. This case was tried in Fort Worth, Texas on June 11-13, 2018. Charging Party International Association of Machinists and Aerospace Workers, AFL-CIO, Aeronautical Industrial District Lodge 776 (Lodge 776) filed a charge against Dallas Airmotive, Inc., a subsidiary of BBA Aviation Company, (Respondent) on February 8, 2017. Counsel for the General Counsel (General Counsel) issued a Complaint and Notice of Hearing on December 29, 2017. On January 11, 2018, Respondent filed its Answer in which it denies any violations of the Act.

In late 2016, Respondent relocated bargaining unit employees to a site less than 10 miles away as part of its plan to close a facility. The complaint alleges that the bargaining unit employees make up a majority of the employees at the new facility, but Respondent refused to recognize Lodge 776 as the exclusive bargaining representative. In addition, the complaint alleges a number of unilateral changes after the bargaining unit employees transferred to the new facility. At hearing I granted General Counsel's motion to amend the complaint that Respondent allegedly violated Section 8(a)(2) by establishing a committee of employees that dealt with Respondent.

On the entire record, including my observation of the demeanor of the witnesses, and after carefully considering the briefs filed by the parties, I make the following

[1] Charging Party corrected the Union name at hearing without objection.

FINDINGS OF FACT[2]

I. JURISDICTION

Respondent Dallas Airmotive, Inc., a Texas corporation and a subsidiary of BBA Aviation Company,[3] a Delaware corporation, with offices and locations in the Dallas-Fort Worth, Texas metropolitan area (DFW Metroplex), has been engaged in repair and maintenance of aircraft engines. During the 12-month period ending November 28, 2017, Respondent purchased and received at these facilities goods, materials and services valued in excess of $50,000 from points located outside the State of Texas. Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. RESPONDENT'S FACILITIES AND UNION REPRESENTATION

As of the beginning of 2014, Respondent had several facilities, including one located at Forest Park in Dallas, Texas (Forest Park facility). Two other facilities were located within the DFW Metroplex: Dallas Love Field airport (Love Field, also called Hangar C); and, Heritage Park, in Grapevine. Texas (Heritage Park). Respondent also had a facility in Neosho, Missouri.[4]

Respondent's facilities repair and refurbish aircraft engines. The facilities worked on different brands of engines. Some facilities also perform the testing in the test cell area. The airplane and helicopter engines arrive on Respondent's docks and are then scheduled for disassembly. Once disassembled, the employees clean the motor parts of the engine. The parts are inspected. Based upon inspection, Respondent gives a cost estimate of repairs to the customer. Once the customer approves the repairs, Respondent orders any needed parts or proceeds with repairing parts. Part of the component repair process may include plasma

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[2] Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations, but rather upon my review and consideration of the entire record for this case. My findings of fact encompass the credible testimony, evidence presented, and logical inferences. The credibility analysis may rely upon a variety of factors, including, but not limited to, the context of the witness testimony, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 303–305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings regarding any witness are not likely to be an all-or-nothing determination and I may believe that a witness testified credibly regarding one fact but not on another. *Daikichi Sushi*, 335 NLRB at 622.

When a witness may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. *International Automated Machines*, 285 NLRB 1122, 1123 (1987), enfd. 861 F.2d (6th Cir. 1988). This is particularly true where the witness is the Respondent's agent. *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006). Testimony from current employees tend to be particularly reliable because it goes against their pecuniary interests when testifying against their employer. *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Georgia Rug Mill*, 131 NLRB 1304 fn. 2 (1961); *Gateway Transportation Co.*, 193 NLRB 47, 48 (1971); *Federal Stainless Sink Division*, 197 NLRB 489, 491 (1972).

[3] General Counsel amended the parent name at hearing without objection.

[4] Respondent has more facilities worldwide, but those are not relevant to these proceedings.

treatment to worn metal parts. Parts are sprayed with metal and re-machined for refurbishment. Once all the parts are available in the facility, the reassembly is scheduled and proceeds. When the motor is reassembled, it is tested in the test cell and then shipped back to the customer.

Of the facilities involved here, only Forest Park employees were unionized. The Machinists have represented the Forest Park bargaining unit since 1966. Since that time, the parties have entered into successive collective bargaining agreements, including one in effective from March 23, 2015 through March 23, 2018. The bargaining unit consisted of "all production and maintenance employees employed by [Respondent] at its facilities located at 6114 Forest Park Road, Dallas Texas." (Jt. Exh. 28, Art. I.)[5] Respondent admits, and I find, that the Machinists and Lodge 776 are labor organizations within the meaning of Section 2(5) of the Act.

The Forest Park facility was located near a large medical center that included Parkland Hospital and University of Texas-Southwestern Hospital. The Forest Park facility contained several product lines that refurbished, repaired and/or overhauled aircraft engines. The Forest Park employees also tested the engines after the overhauls and/or repair. The process of testing creates much noise and vibration, which was considered inappropriate for its neighborhood. The Forest Park facility transferred its work to different facilities. In 2014 and 2015, some of the Forest Park employees transferred to Love Field and Heritage Park; others were laid off in 2014. However, in 2016 and 2017, Respondent eventually transferred the remaining Forest Park bargaining unit employees to Respondent's new facility located at DFW Airport (DFW Center). Almost all of the relocated Forest Park employees retained the same job duties as before and with the same supervision. Respondent continued to recognize Lodge 776 for whatever employees remained at the Forest Park facility, but refused to recognize Lodge 776 for the employees at DFW Center.

Doug Meador served as Respondent's president until about 2016. (Tr. 512.) Max Allen served as general manager of the Forest Park facility from October 2014 until March 2015. From March 2015 until his termination on August 2, 2017, Allen served as Vice President of Operations over all the facilities in the United States for repair, overhaul and all operational duties, including safety, quality and training. While Allen was general manager, Nandu Madireddi was chief of operations (COO). Allen last reported to Mark Johnstone, CEO and President of BBA Aviation.

David Daniel is currently Vice President, Human Resources for American, Singapore and Brazilian operations, a position he has held since October 2016. Before that time, he was Human Resources Director for the same facilities.

Paul Black, Jr., president and directing business representative of Lodge 776, supervises 18 staff members, including Doyle Huddleston, a business representative in charge of Respondent's Forest Park bargaining unit. Throughout the events described here, Respondent was aware that only Huddleston, and not employee members of the bargaining committee, had the authority to enter into agreements on behalf of the International Union and Lodge 776 for the Forest Park bargaining unit. (See, e.g., Tr. 509-510.)

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[5] Abbreviations in this decision are: "Tr." for transcript; "GC Exh." for General Counsel exhibit; R. Exh." for Respondent exhibit; "CP Exh." for Lodge 776 exhibit; "Jt. Exh." for joint exhibit; "GC Br." for General Counsel brief; "R. Br." for Respondent brief; and, "CP Br." for Lodge 776 brief.

III. 2014: RESPONDENT ANNOUNCES LAYOFFS AND NEED TO MOVE SOME WORK FROM FOREST PARK

In 2014, Respondent expected to close the Forest Park facility within 2 years. (Tr. 516, 519) At the time, Respondent was committed to transferring work from Forest Park to Heritage Park and Love Field, with plans to improve those facilities to accommodate its production needs. (Tr. 520.)

On January 10, 2014, Respondent and Lodge 776 representative met about rumors regarding the Forest Park facility's future. Respondent was represented by COO Madireddi, General Manager Allen, HR Director Daniel and counsel. Lodge 776 was represented by Business Representative Huddleston, and negotiating committeemen and employees Jimmie LeFlore and Wesley Blaine. Huddleston also was aware that business at the Forest Park facility was slow. COO Madireddi advised the Lodge 776 bargaining team that growth around Forest Park was an issue because of the noise created by the facility and that Respondent was looking for a site for relocation, particularly for the test cell work. Madireddi also stated concerns about a possible injunction because of noise and other environmental issues. Additionally, the property value of the Forest Park facility improved and Respondent had too much "foot print" in the Dallas-Fort Worth Metroplex. (R. Exh. 8.) Huddleston asked for recognition for the bargaining unit at other locations. Madireddi said Respondent was looking at other phases and other lines --- the unionized employees might have a job there and might not, and those with job would be dispersed to sites currently available. At that time, the available sites were Heritage Park and Love Field. (Tr. 156-157.) Respondent presented a slide show discussing a phased approach, but focused on Phase I, which Respondent also called "Sea Change."

Madireddi talked about different times for moving work from Forest Park, but only Phase I was definite. Also indefinite were the number of employees moving from Forest Park to different facilities. Madereddi emphasized that Forest Park employees would be required to apply for jobs and perhaps be hired. When asked for recognition for the test cell unit, Respondent could not say where the test cell work was moving and emphasized that the Forest Park employees might not move to a different location.

HR Director Daniel sent to Huddleston and others an email, dated January 15, 2014, regarding the Phase I transition of Forest Park. With an attached memorandum from COO Madireddi intended for Forest Park employees, the Phase I plan was to move "excess capacity" from Forest Park to other facilities around Dallas-Fort Worth. Phase I's expected completion was June 2014, leaving a work force of 150 bargaining unit employees at the Forest Park facility. At the end of that time, the work left at Forest Park would be the Rolls-Royce Spey/Tay lines, Rolls Royce accessories, much of the component repair work, and all current engine testing. A number of engines and component repair, particularly for the Pratt[6] line, were expected to move to Heritage Park. The PT6 line,[7] except for repair and testing, was expected to transition to Love Field. (GC Exh. 5(a).) The result would be that, after work on the engines was complete at Heritage Park and Love Field, testing would still take place at Forest Park. (Tr. 381-382.)

Lodge 776 and Respondent continued to meet about the planned closure of the Forest Park facility. The parties met on February 11, 2014. Lodge 776's goal was to engage in effects

[6] The Pratt line referred to a turbine-powered engine.

[7] The PT6 is a turboprop Pratt & Whitney engine.

bargaining and ensure as many of its represented employees remained employed. (Tr. 166.) Respondent provided tentative Phase I discussion estimates for layoffs of which job descriptions would suffer losses. (R. Exh. 11.) Although Huddleston maintained he and Lodge 776 had little input into the discussions and none about compensation or benefits, Respondent's summary of notes, dated February 17, 2014 and shared with Huddleston, reflects Lodge 776's discussions. These notes also reflect that Respondent advised that the Forest Park employees transferred would be considered "at will" employees. (R. Exh. 10.)[8] However, during the 2014 negotiations, Respondent's representatives neither told the Lodge 776 representatives that all of the operations at the 3 Dallas-Fort Worth facilities would move to a single facility nor said it would go to a new facility. (Tr. 107, Blaine.)

By February 18, 2014, the parties signed an agreement entitled "Forest Park Closure Agreement" for the Phase I transition. (GC Exh .13.) The Agreement on Phase I gave priority to Forest Park employees applying for jobs elsewhere, but the employees had to meet certain requirements for hiring. The Agreement stated the selection process would be complete by the end of June 2014, unless shifted due to "unforeseen changes and circumstances." If employees transferred to like jobs, with Power Plant licenses and longevity premiums, the base pay would be unchanged. Otherwise, compensation would follow the policies of the receiving facility. Health and welfare benefits, 401(k) and holidays would not change for transferred bargaining unit employees. Sick pay would follow the practice of the receiving facility, but the transferred employees would continue to receive 48 hours of sick time per year. Lodge 776 agreed that: "All other policies, practices, and procedures at the location where the work will move will apply." (GC Exh. 13.) For further development, Respondent expected to announce the county for development by March 7. (GC. Exh. 13, p. 4.) The Phase I agreement also offered a voluntary separation plan and estimated 130 employees could be eligible to apply, which would be awarded in seniority order. Id.

By letter dated February 28, 2014, Respondent, by letter, advised Lodge 776 that approximately 90 Forest Park bargaining unit employees would be permanently laid off. Respondent also offered voluntary separations or transfers to another Respondent facility. Attached to the letter was a list of those employees Respondent expected to lay off. (GC Exh. 2.) On March 7, 2014, Respondent sent Lodge 776 a letter with notification that 3 more employees subject to permanent lay off. (GC Exh. 3.)

During Phase I, not all listed employees were laid off: Approximately 10 to 15 Forest Park employees applied for and obtained positions at Heritage Park. (Tr. 162.) Huddleston stated the Forest Park employees who transferred to Heritage Park or Love Field were no longer union members. (Tr. 210.) With the layoffs and transfers, the number of Forest Park bargaining unit employees dropped from 280 to approximately 190. (Tr. 163.)

On March 7, 2014, Respondent sent to employees an internal memo about finding a new test facility. Respondent narrowed down the possible locations to two, one of which was located at DFW Airport, and anticipated updating information by the end of the month. (GC Exh. 17.)

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[8] Lodge 776 contends that the letter, written by counsel from Daniel's notes, constitutes double-hearsay and was also an ex parte communication with the union. Respondent's counsel also sent a letter summarizing the February 14 negotiations, which drew the same objections from General Counsel and Lodge 776. (R. Exh. 12.) I asked the parties to brief what weight, if any, these documents should receive. Respondent, without any case law, addresses only the ex parte portion and not the hearsay objections. (R. Br. 12)

IV. 2015: RESPONDENT AND LODGE 776 BARGAIN FOR A NEW CBA AND ANOTHER TRANSITION AGREEMENT

By January 2015, Respondent began construction on a new facility located at DFW Airport, called DFW Center. DFW Center construction was delayed due to weather and inability to obtain and/or retain construction workers.

In March 2015, the parties entered into negotiations for a new collective-bargaining agreement and a subsequent agreement regarding the upcoming closures in the Forest Park facility. (R. Exh. 2.) Respondent's negotiating team consisted of HR Director Daniel, General Manager Allen, HR Manager Stephanie Hanes and COO Madireddi. Huddleston and two Forest Park employees, Wesley Blaine and Jimmie LeFlore, represented Lodge 776. During the negotiations in March 2015, Respondent told Lodge 776 representatives that a new facility on 20 acres at DFW Airport would be built: the DFW Center. As for the work performed at DFW Center at the time, none could be performed as Respondent broke ground within the previous few months. (Tr. 79.) At the time of the negotiations, Madireddi did not discuss when the Forest Park facility might close. As became apparent in negotiations, Respondent was not clear on what might happen to the Forest Park employees.

Although Huddleston normally keeps bargaining notes, he testified that he did not keep any regarding this set of negotiations. (Tr. 198-200.) HR Manager Hanes, however, took notes of each meeting, which were finalized after the meeting and distributed to the parties at the subsequent meeting in finalized form without input from Lodge 776. At hearing Respondent did not present all bargaining notes for these sessions. (Tr. 436-438.)

At the first negotiation session on March 2, Madireddi again explained that Forest Park must close because of the neighborhood: Located in the middle of the hospital district with residential and retail development in the area, the Forest Park facility created noise and air pollution that was a problem for surrounding facilities and housing. Huddleston demanded to bargain over the closure as part of the collective bargaining negotiations. (Tr. 177.)

Huddleston asked Madireddi whether Respondent broke ground on the new DFW Center and asked for recognition of the unit and work at that location. During the negotiations, Huddleston would ask for recognition a few times and Respondent would reject the proposal. Madireddi stated the work was not necessarily going to DFW Center, but to other areas; he further stated that Lodge 776 would not be recognized because the work would go to non-union facilities.

Huddleston recalled that Madireddi stated that Heritage Park would not have 50 percent unionized employees. (Tr. 177-178.) Huddleston asked whether the bargaining unit employees would keep their jobs. Madireddi responded that no one would be guaranteed a job and employees would be required to apply and interview, as employees were required to do in 2014 when the previous two product lines left the Forest Park facility. (Tr. 79.)

In the second negotiation session, held on March 3, 2015, Lodge 776 proposed a change to the preamble of the collective-bargaining agreement that would work at DFW Center and any future facilities within a 100-mile radius of DFW Center, but not including Heritage Park or Love Field. Respondent stated it was building a Rotorcraft facility, and "Premier testing" was moving to the facility. Madireddi promised to keep Lodge 776 apprised as events unfolded. Daniel stated that because Respondent was uncomfortable and did not know what would

happen, Respondent was still "trying to figure things out. This language could then be illegal." (R. Exh. 2.)

During negotiations, Respondent represented that the Rotorcraft[9] product lines and all testing work would be the only work moved to DFW Center. (Tr. 78, 288.) Respondent also represented that it did not know what it intended to do with the Rolls Royce lines because Respondent made no decisions yet. (Tr. 288.) Although Huddleston asked if all work would be consolidated at DFW Center, Respondent said it did not know what would happen. As far as Lodge 776 knew, it expected much of the work would move to Love Field and Heritage Park would stay in those locations because Respondent spent millions renovating these locations. (Tr. 108, Blaine.) Indeed, Respondent built a mezzanine at Heritage Park for additional work space.

Regarding the upcoming closure of Forest Park, Lodge 776 determined that it needed to bargain with Respondent about the effects of possible layoffs and maintained a goal of ensuring employment for as many Forest Park employees as possible. Daniel testified that the parties spent approximately a day plus another portion of day discussing closure. During these negotiations, HR Manager Hanes presented two lists to Lodge 776 representatives: One contained the 17 job classifications listed in the collective-bargaining agreement for the Forest Park facility; the second list of 8 job classifications, which Hanes said were necessary to match the non-bargaining unit job titles at the other facilities. (Tr. 85; GC Exh. 10; Jt. Exh. 21.) Blaine testified without contradiction that the duties between the bargaining and non-bargaining job titles were not different.

During bargaining Respondent advised Lodge 776 that the test cell work would move from Forest Park, but Respondent did not know where it would move. (Tr. 395.) Respondent also was uncertain what would happen with the Rolls Royce line and had no plans to consolidate operations at DFW Center from the three Dallas-Fort Worth Metroplex facilities. (Tr. 245-246.) At the time, Respondent in fact did not know where the product lines would be located in the future. (Tr. 395.)

On March 9, 2015, Lodge 776 left the preamble language proposal on the table. (R. Exh. 3.) The minutes reflect no discussion about Respondent's plans for the Forest Park closure on March 10 either. (R. Exh. 4.)

At the March 17, 2015 session, Madireddi informed the union representatives that "if not all the jobs move, mostly likely the most senior would move." The parties then had further discussions about severance pay and COBRA provisions for closure of Forest Park. (R. Exh. 6.) This discussions shifted to the collective bargaining agreement, including economic and non-economic proposals. Huddleston withdrew Lodge 776's proposal for changes in the preamble language of the collective bargaining agreement. Regarding collapsing the job titles, Madireddi told Lodge 776 that everyone would be grandfathered in and the changes would apply only to new employees. Madireddi also stated that Respondent would offer its last, best and final offer for the collective bargaining agreement the following day. (R. Exh. 6.)

As promised, on March 18, Respondent presented Lodge 776 representatives with an agreement about closure and placement of employees with its "final and best" offer. (Tr. 178,

[9] Rotorcrafts are turbine engines used in helicopters. Rotorcraft work was performed in the Neosho, Missouri facility, landed at Heritage Park and did not move to DFW Center. The Rotorcraft work was never performed at the Forest Park facility.

195; GC Exh. 18.) The minutes reflect little discussion of the Forest Park closure agreement. (R. Exh. 7.) Huddleston testified Respondent never provided a date for closing Forest Park. (Tr. 178-179.) The parties did not discuss a number of issues regarding movement to DFW Center, including rules of conduct, discipline, seniority, hours and shifts, reporting, temporary assignments, or health and safety for the closure agreement. (Tr. 179-180.) Dues checkoff, appointment of union officials and access of union representatives were not discussed.

In March 2015, while the parties were negotiating a new agreement, the parties took a break. The Lodge 776 bargaining committee visited the DFW Center site, approximately 10 to 11 miles away from the Forest Park facility. Blaine observed that the site had some raised support beams, a hole in the ground and a small parking lot. (Tr. 107-108.) After the parties completed discussions of the closure agreement, they returned to bargaining for a successor collective-bargaining agreement.

About spring 2015,[10] Allen held employee meetings at the Forest Park facility in which he announced Respondent found a new site at DFW Airport. He told the employees that this location would house the test cell work and Rotorcraft Center of Excellence.[11] Allen could not recall whether he told Forest Park employees when the test cell line would move to DFW Center. He also told employees that the PT6 line would go to Love Field and other lines would go to Heritage Park. He said the Rolls Royce line would stay at Forest Park. (Tr. 360.) Allen advised that the employees would have to apply for their jobs within the product lines that were moving. (Tr. 359.)[12]

Lodge 776 held a ratification meeting for the collective bargaining agreement. Respondent and possibly one of the employees on the Lodge 776 bargaining team prepared a written summary for Lodge 776 to distribute to the employees. The last page of the summary discussed the "Forest Park Facility Closure Agreement":

> During the course of these negotiations the parties took a break from contract renewal bargaining to discuss a Facility Closure Agreement. It has been the Company's position through negotiations and that position has been repeatedly shared with the union that the facility closing subjects would best be addressed at a later time because of a number of unknown factors including the timing and location of the movement of work out of the Forest Park facility. At the union urging, however, the parties have since discussed the issues surrounding a closing and reached tentative agreement on the terms of a new Facility Closure agreement. In line with the parties' bargaining ground rules discussed at the opening of these collective bargaining sessions, the tentative agreement on the facility closure is subject to and contingent upon the parties reaching agreement on the terms of a renewal collective bargaining agreement.

(Tr. 182, 201-202; GC Exh. 18.) Although Huddleston believed this paragraph contained certain inaccuracies, he did not attempt to contact Respondent to make changes; he testified that he instead explained the contents to Lodge 776 membership at the ratification meeting.

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[10] Testimony reflects the date may have been March, April or May, 2015.

[11] Respondent never established the Rotorcraft Center of Excellence.

[12] Andrews testified that Allen said if employees wanted the union, "you could take it with you." (Tr. 362.)

On August 3, 2015,[13] Respondent and Lodge 776 representatives signed the "Forest Park Facility Closure Agreement." (Jt. Exh. 25.) The delay in signing the Facility Closure Agreement was due to the parties proofing and clarifying the language in the collective bargaining agreement. Daniel, General Manager Allen and HR Manager Stephanie Hanes signed the agreement on behalf of Respondent. The agreement provided that Forest Park employees would have to bid on their positions. The stated purpose of the agreement was transitioning the bargaining unit work from the Forest Park facility until it completely closed. (Jt. Exh. 25.) In the agreement, Respondent made representations about the closure, including:

> Based on present forecasts and business models, [Respondent] commits that currently active Forest Park bargaining unit employees impacted by the shutdown of the Forest Park facility shall be given priority consideration for positions associated with work transferred out of the facility to other facilities in the [Dallas-Fort Worth] Metroplex.

(Jt. Exh. 25.)

The parties agreed wages and compensation would "follow the practice at the location where the work will move . . . ." For a number of benefits, such as sick pay, holidays and vacation, the parties agreed that they would remain the same but subject to the practices at the location of the moved work. The agreement also stated, "All other policies, practices and procedures at the location where the work will move will apply." (Jt. Exh. 25.)

Respondent's witnesses testified that the 2015 Closure Agreement would be in effect until the Forest Park facility closed. Respondent's intent with the 2015 was not to discuss with Lodge 776 every determination it made regarding moving employees. (Tr. 397.) Daniel testified that this closure agreement provided the guidelines for moving bargaining unit employees from the Forest Park facility and required no further notice to Lodge 776; it also did not contain dates for the transfers. (Tr. 445-446.) Respondent admittedly did not know what facility or facilities would be the future site(s) for Forest Park work and product lines when it negotiated the 2015 Closure Agreement. (Tr. 464.) Despite this representation, Allen specifically denied that the final shutdown for Forest Park was negotiated with the Union during contract renewal negotiations. (Tr. 302.)

The negotiated collective bargaining agreement was effective March 23, 2015 for the following 3 years, until March 23, 2018.

V. 2016: RESPONDENT STARTS MOVING EMPLOYEES INTO DFW CENTER

Respondent did not know where the Forest Park work would move until the earlier portion of 2016. Respondent then decided to move all Forest Park work to DFW Center. (Tr. 302, 464.) Because of more rain delays, DFW Center was not ready for occupancy until that summer. Allen testified that the movement of work to DFW Center also was managed through moving product lines; when each product line could move was determined by the workload at each location and the vendors' supply. (Tr. 304.)

About mid-2016, Respondent also determined that it would no longer need to recognize Lodge 776 at DFW Center. (Tr. 521-522.) Daniel denied that, in 2014 and 2015 negotiations,

[13] The parties agree that the six-month delay in signing the final agreements was due to reviewing of language before the agreements could be printed.

Respondent told Lodge 776 that it would not recognize the bargaining representative when the work moved. He instead recalled telling Huddleston in the 2014 and 2015 discussions that Respondent would not know where the work was moving, "what the number would be, and that we wanted to be compliant with the law."

Vice President Allen held all-hands meetings, to communicate its decision to the employees. (Tr. 304, 328.) Allen advised all facilities (Forest Park, Love Field and Heritage Park) would move into DFW Center. (Tr. 327-328.) Employee and local president Jackson notified Huddleston about the meeting. (Tr. 326-327.) Huddleston responded that Respondent kept changing things and apparently said the union was not apprised. (Tr. 330.)

Daniel directed HR Manager Hanes to meet with the Forest Park shop bargaining committee about the transfers instead of making the bargaining unit employees go through an application process. (Tr. 464-465.) At no time Respondent did not notify Lodge 776 officials Huddleston or Black about the change in plans; Respondent assumed the parties' 2015 Forest Park Closure Agreement applied, despite the incomplete information on which the 2015 agreement was based. (Tr. 398-399, 401, 413.)

The first employees to move into DFW Center were a test cell employee from Neosho and five test cell employees from Heritage Park to work on Rotorcraft test cells. (Tr. 248-249.)[14] About July or August 2016, Respondent moved 30 component repair employees from Heritage Park into DFW Center. (Tr. 253.)[15] Also in July or August, Respondent moved 35 Honeywell TFE employees from Heritage Park to DFW Center.

In the meantime, in June 2016, Respondent opened jobs and then offered transfers to DFW Center to 175 Forest Park bargaining unit employees. On June 6, Respondent had a job posting that instructed employees of its application process for component repair technicians at DFW Center, which were known at Forest Park in different job categories. Aviation maintenance technician was similarly posted. This process involved Human Resources personnel meeting with each team between June 6 and 10, 2016 and at the meeting the bargaining unit employees would have to accept or decline the job at DFW Center. (Jt. Exh. 6.)

Respondent required employees to place their names on a sheet for an intent to transfer. HR Manager Hanes sent to Forest Park employees letters, dated June 20, 2016, regarding the terms of the transfer and required employees to sign and date the letter. Respondent's transfer letter to Forest Park employees included the following language:

> *Once you officially transfer to the DFW Center*, your hourly base rate will be $_____. Please note that this rate may be adjusted at a later date to properly reflect any applicable automatic step increases, longevity differential increases or for obtaining a power plant differential, all in accordance with the collective bargaining agreement.
>
> This letter is not a contract of employment, expressed or implied, or a promise of employment for any specific term, and does not alter the "at will" nature of your employment with Dallas Airmotive.

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[14] Allen's testimony on these points were answers of "sounds correct" and "approximately correct." (Tr. 248.)

[15] Allen could not recall how many of the Heritage Park component repair employees formerly worked at Forest Park. (Tr. 254.)

(Jt. Exh. 29, *emphasis in the original*.) The letters also included anticipated dates of transfer, which were subject to change,[16] and that the employee would continue to report to the same supervisor. The job offers reflected the titles in use at the non-unionized facilities.

Between June 1 and July 1, 2016, 187 Forest Park bargaining unit employees signed letters agreeing to transfer to DFW Center. (Jt. Exh. 29.) HR Vice President Daniel stated it did not follow the 2015 closure agreement because Lodge 776 expressed concerns about employees applying for jobs and "we made the decision to not have them go through that application process." (Tr. 390-391.)

On July 8, 2016, Respondent met with the shop committee, but Huddleston was not among the attendees. Respondent presented no evidence that Huddleston was notified about the meeting or its content. Respondent listed five items for discussion. Regarding the transfer letters, Respondent's notes reflected, in relevant part:

> . . . .
>
> 2. Transfer letters distributed to all bargaining unit employees. Copies of letters with final transfer dates will be provided to the committee.
> 3. DFW Center tour and mixers scheduled to begin next week, ending in August. . . .

(R Exh. 1.)[17] Based upon these notes and the listed participants, I infer that Respondent still had not notified Huddleston about the transfers and the committee was merely informed of what Respondent had already done, which was to issue and collect transfer letters to the bargaining unit employees.

During the week of July 11, 2016, Vice President Allen conducted an all-hands meeting at the Forest Park facility in which he announced that all Forest Park product lines, e.g., Rolls Royce and component repair, plus the lines at Heritage and Love Field, would be consolidated at the new DFW Center. When an employee asked whether the Forest Park employees would continue to be represented by the union, Allen stated DFW Center would be an "at will" shop. Jackson stated this was the first time anyone was notified that Respondent intended to consolidate all facilities at the DFW Center. (Tr. 348.) In the same month, Jackson, who attended the meeting, notified Business Representative Huddleston about Respondent's plan to transfer all employees to DFW Center. Huddleston responded that Respondent was changing things again, without keeping anyone, including the union, informed. (Tr. 330.)

After the Forest Park all hands meeting, Respondent sent Forest Park employees to tour the DFW Center construction site, which was in process of completion. Employees were provided directions and a DFW Center site map. (Tr. 472-473; GC Exh. 24.) The map

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[16] Respondent initially anticipated dates of transfer from August through December 2016. (Jt. Exh. 29.)

[17] According to Respondent's notes, the meeting lasted 2 hours. However, these sentences contained the only information about these topics. Daniel maintained that the parties reached an agreement not to proceed through the application process. The bargaining notes were extremely brief for a 2-hour meeting and do not support his testimony as the minutes occur after the offers were made to employees.

reflected specific areas for the Rolls Royce line (marked Spey/Tay) and different areas for the Pratt Whitney jets, the Honeywell TFE731, Rotorcraft and component repair. The map marked locations for the warehouse, PW 100 and APU as "to be determined." (GC Exh. 24.)

When Forest Park employees toured DFW Center, employees from other facilities also attended. Respondent's employee "ambassadors" hosted the tours of the new facility, which was delineated with tape to show the different areas in the plant where each line would be placed. Employee and bargaining committee member Jimmie LeFleur noted that most of lines showed departments from Forest Park; however, an area was marked for the 15D line. LeFleur thought it was strange because the 15D line previously moved from Forest Park to Heritage Park, but asked no questions. At the end of the tour, Respondent hosted pizza luncheons, at which HR Manager Daniel introduced employees by facility and asked the Heritage Park and Love Field employees to talk about the working environment and conditions at their respective facilities. Daniel then left the luncheons. (Tr. 351, 474.)

Daniel testified undisputedly that he and Huddleston discussed the closure of Forest Park after a grievance meeting on August 9, 2016 and followed up with an email to Huddleston. The email confirms that Lodge 776's officers and committeemen remain Forest Park employees until the Forest Park facility closed. However, if transferred "to another facility" the union official would still be permitted to conduct union business. Additionally, the email reflected discussions of moving some backlogged work at "another DFW based facility" but returning to Forest Park for completion of work. Daniel did not testify that he discussed with Huddleston the Forest Park transfers to DFW Center specifically, nor does the email reflect Respondent's decisions regarding moving all Forest Park employees to DFW Center. (R. Exh. 14.)

Respondent communicated plans for the plans and subsequent delays to employees through all-hands meetings and its internal electronic communication system, Yammer. (Tr. 305.) Non-employees had no access to Yammer.

In October 2016, the Lodge 776 bargaining committee, consisting of employees Blaine, Kenny Jackson, J.D. Gonzalez and Darren Johnson, met with HR Manager Hanes at the Forest Park facility. Hanes discussed Respondent's planned transfers from the Forest Park facility to DFW Center and engaged in further discussions.

Respondent still had not notified Huddleston about the Forest Park transfers to DFW Center. Allen testified HR Director Daniel or the stewards should have notified Huddleston. (Tr. 247.) Allen and Daniel were aware that the employee union representatives did not have final say on decision making for the union. Huddleston testified that he would have not agreed to the Forest Park closure agreements had he known Respondent intended to move approximately 90 percent of the Forest Park bargaining unit to another location that was only a few miles away. (Tr. 188.)

At some point in 2016, Respondent moved some of its test cell operations, other than those at Forest Park, to DFW Center. (Tr. 244.) The test cell testing for Rotorcraft was moved to DFW Center, but the remainder of the line was sent to Heritage Park. (Tr. 245.)

About December 12, 2016, approximately 55 Forest Park employees who worked on the Rolls Royce engines transferred to DFW Center. Their work and supervisor did not change when they went to DFW Center. (Tr. 97.) After transfer, Frederick Andrews, a Rolls Royce quality control inspector, continued to work on the Rolls Royce line, performing the same

functions, and regularly interacted with the Rolls Royce line employees. Other than pleasantries, he did not interact with the transferees from Heritage Park. Andrews observed that 2 or 3 Heritage Park mechanics cross-trained with the Rolls Royce line, and 2 of the 3 left after about 3 weeks; 1 mechanic stayed with the Rolls Royce line. The employees on the Rolls Royce line at DFW Center remained as constituted at Forest Park with the exception of that one additional mechanic. (Tr. 366-367.)

Andrews received an employee handbook from Respondent at the DFW Center.[18] Kenny Jackson, a 20-year employee working in quality control, moved from Forest Park to DFW Center in October 2016, then worked a 6-month stint in Heritage Park before moving back to DFW Center. While at Forest Park, he held positions of stewards and immediately before he left, local lodge president. He received no cross-training for his position and performed the same duties.

After about a week and a half in DFW Center, Respondent's HR Generalist Zara Baker provided orientation for Jackson and 12 other employees. Baker discussed a number of policies that differed from those in place at Forest Park. Differences were in attendance, sick time, vacation time, overtime, breaks and pay. Times for beginning and ending shifts also changed. Although Respondent had provided handbooks to some employees, Respondent no longer had any available by the time Jackson was in orientation and by the hearing, still had not provided him with a handbook. Seniority no longer existed, so employees had no layoff or callback rights or seniority for changing shifts. When he ultimately was sent to a permanent assignment to DFW Center, Jackson had the same job in quality control that he had at Forest Park. He operated the same equipment but worked with employees from all three facilities.

In October 2016, employee Wesley Blaine, who worked in the Forest Park facility as a material specialist team leader in the warehouse, accepted a transfer to DFW Center. He worked between the two facilities for a number of months, spending approximately 4 to 5 hours per week in the Forest Park facility. He continued to earn the same hourly base rate of $23.86. Everyone from his department, shipping and receiving, moved to DFW Center. Per Blaine, until September 3, 2017, he worked under the collective bargaining agreement because Huddleston requested that the shop committee members to remain bargaining unit employees until the agreement expired. During that period approximately those employees plus 8 maintenance employees worked at Forest Park pursuant to the collective-bargaining agreement. (Tr. 92-93.)

VI. LODGE 776'S PETITIONS AND RESPONDENT'S ACTIONS

Blaine noticed that almost all the Forest Park employees now worked at DFW Center and notified Huddleston. (Tr. 98.) On December 29, 2016, Lodge 776 filed a representation petition with the Board for a bargaining unit of all production and maintenance employees, including lead persons, but excluding supervisors. The address for the facility was the same as the DFW Center but still included Forest Park. (R. Exh. 15.) However, because it discovered the DFW facility employed a majority of its bargaining unit employees, Lodge 776 withdrew the representation petition as it believed it already had a collective-bargaining agreement in place and a contract bar. (Tr. 52.) Lodge 776 then filed a unit clarification petition, which also was withdrawn.

After Lodge 776 withdrew its representation petition, Allen held an all-hands meeting at Heritage Park, which Jackson attended. During the meeting, Allen said Lodge 776 had

[18] The handbook also included "at will" language.

withdrawn its petition and "he was going to fight to do everything that he could to still get everybody to vote." (Tr. 346.) He said he had taken the Forest Park facility out of the "Stone Age" and removed the chains off the doors. Allen said he gave the employees a better work opportunity and took away the break buffer. Jackson asked if the union came in, whether Allen would put the chains back on the doors. Allen denied that he would do so, then introduced Jackson as the local lodge president. At some point Allen called Lodge 776 "immoral, unethical and un-American."

In January 2017, Blaine attended a different all-hands meeting that Allen conducted. Blaine testified that Allen read a statement in which he stated Lodge 776 withdrew its representation petition and filed Board charges. Allen further stated he did not understand where the Union got the number for recognition from; he then said the Union's actions were immoral, unethical and un-American. He also stated, "[T]he company would do anything in [its] power to stop it from happening." (Tr. 99.)

By certified letter dated January 9, 2017, Lodge 776 President Black sent Daniel notice that it believed Respondent repudiated its bargaining relationship by moving most of the Forest Park facility's operations to the DFW Center, which continued the same operations. The Union demanded to meet and bargain about the transfer of operation and alleged unilateral changes. (GC Exh. 4.)

On January 13, 2017, Daniel sent Black a letter stating that the parties already negotiated over the Forest Park facility's closure in 2015 and had further discussions in 2016 about Forest Park. Daniel stated Respondent received Lodge 776's unit clarification petition on January 10 and would use the Board processes to address Lodge 776's issues. (GC Exh. 5.) Contrary to Respondent's reasons during negotiations that it could not recognize the union because of possible legalities and numbers, Daniel now claimed the 2016 "local union leadership at Forest Park" was told it would have no representational rights at DFW Center with Forest Park employees transferring to that location. (GC Exh. 5.)

VII. 2017: After Delays, Respondent Completes Relocating Employees from Forest Park to DFW Center

Respondent encountered delays in transferring employees from Forest Park to DFW. It moved by product lines. (Tr. 304.) Respondent's January 4, 2017 seniority list reflected that approximately 53 bargaining unit employees remained at Forest Park. (GC Exh. 23.) By late March 2017, 30 bargaining unit employees, who primarily worked in test cell, remained at Forest Park. (Tr. 466.)

Employees from Heritage Park and Forest Park were assigned to 13 departments. Some of the departments reflected the product line and engine: Pratt Whitney and Honeywell TFE from Heritage Park; and Rolls Royce Spey/Tay from Forest Park. The other areas remaining are: accessory; cleaning; component repair; maintenance; NDI; preservation; production; quality control; scheduling; test cell; and the warehouse.

When Blaine moved to DFW Center in 2017, he noted that much of the old equipment from the Forest Park facility moved but some new equipment was present too. The shipping and receiving department in DFW Center had newer workstations, shelving and electric power jacks. Around January 2017, Blaine's Forest Park supervisor, Ed Muccioli, moved into the facilities maintenance and support role and Shannon Kancir became manager over the shipping and receiving department. (Tr. 87-88.) Blaine stated the component repair and

engine employees were a combination of employees from the Forest Park and Heritage Park facilities. Blaine also noted that the plasma spray area had a new boost, which was an updated version of the machines found in the Forest Park facility. Also updated were machine shop equipment such as lathes and mills.

Respondent's list, dated January 27, 2017, shows that 204 employees were working at DFW Center. Of those on the list, none were listed as transferrees from Neosho or Love Field. The split between Forest Park and Heritage Park transferees was approximately 147 to 47 employees respectively, or 72 percent of the total DFW Center employees relocated to from Forest Park. (Jt. Exh. 23.) The shift in timing and movement of employees may be viewed in a table, with the number of employees listed for each facility on specific dates:

	September 2016	**December 2016**	**January 2017**
Forest Park	223	87 (-136)	78 (-9)
Love Field	34	38	38
Heritage Park	334	302 (-32)	287 (-15)
DFW Center	34	190 (+156)	198 (+8)

(Jt. Exh. 24.)[19] In February 2017, Respondent relocated approximately 40 more Forest Park employees to DFW Center, with the relocation completed in fall 2017.

By January 2017, in addition to the Rolls Royce Spey/Tay production line, the employees relocated from Forest Park included accessory, cleaning, component repair, maintenance, NDI, quality control, scheduling, test cell, warehouse, preservation and production control. Respondent further listed what position each employee held by his new title, not reflecting the variety of titles held at Forest Park. Excluding the component repair tech II and inspector quality control positions in January 2017, Forest Park bargaining unit employees held well over 50% of each of the positions. Heritage Park employees occupied the only 3 component tech II positions at DFW Center. Forest Park transferees held a significant number of the approximately 60 component repair tech III, component repair tech, and component repair lead positions. (Jt. Exh. 2.)[20] Respondent's witnesses and documents admitted that these employees worked the same job functions in DFW Center as their previous locations. (Tr. 291-292; Jt. Exh. 2.) In quality control, the supervisor was from Forest Park.

In January 2017, the maintenance department at DFW Center was comprised of approximately 10 employees for Forest Park, 1 from Heritage Park and one without a listed pre-existing location. (Jt. Exh. 2.) Some maintenance employees worked between the Forest Park facility and DFW Center until at least March 2017. The Forest Park maintenance employees now work at DFW Center. Of approximately 14 employees in DFW Center's accessory department, 11 came from Forest Park. Of approximately 8 employees in DFW Center's cleaning department, 6 came from Forest Park. Component Repair had 48 employees from Forest Park and approximately 18 from Heritage Park. Of the approximately 6 employees in DFW Center's NDI, 5 were from Forest Park. By January 2017, Forest Park had moved approximately 17 test cell employees into DFW Center and Heritage Park had not sent any more, leaving it at approximately 3. Overall, in the departments other than the actual

[19] Respondent generated both Jt. Exhs. 23 and 24. Respondent did not explain discrepancies.

[20] Jt. Exh. 2 was prepared by Respondent; however, some of its entries are incorrect. For example, Jackson is listed as a Heritage Park employee from, but continued to serve as Lodge 776 president and apparently continued to have dues removed while he temporarily assisted there.

production lines, Forest Park employees greatly outnumbered the relocated Heritage Park employees in DFW Center.

When employee Jackson, the lodge president, returned to DFW Center, he worked in the same job in quality control. Since working at DFW Center, he worked with quality control employees from the other facilities. Frederick Andrews,[21] a quality control inspector, transferred on December 12, 2016 from Forest Park to DFW Center. He reviews logbooks and inspects the Rolls Royce line, which he previously performed at Forest Park. He kept the same supervisor after transfer. (Tr. 357.)

Jimmie LeFleur, a test cell technician, moved from Forest Park to DFW Center in September 2017. (Tr. 128-129.) His supervisor first notified him about the transfer to DFW Center about June 22, 2016. Although LeFleur's transfer letter indicated he would move in September 2016, LeFleur, a shop steward, did not move from Forest Park to DFW Center until a year later. In about July or August 2017, before the transfer, LeFleur also was advised he might be required to make other changes upon transfer.

When LeFleur transferred to DFW Center in December 2017, Respondent reassigned him to a different shift. He continued to hold his lead position for two months at DFW Center, then was advised that he would no longer be working as the lead. He continued to work in the test cell department and worked with the same people on his shift. Heritage Park transferees also worked in the test cell department. Blaine never received a handbook for policies at DFW and asked how an employee could be disciplined for attendance if the employees had no knowledge of what the policies were.

By the time of the hearing in June 2018, the Pratt lines, inventory support, K2 support and some component repair moved into DFW Center from Heritage Park. (Tr. 105.) Respondent advised that it intended to move the remaining Heritage Park work to DFW Center, but still had not done so. The mezzanine, previously built at Heritage Center, was supposed to be moved to DFW Center.

On November 20, 2017, Huddleston filed a grievance regarding an alleged unjust termination with Respondent. (GC Exh. 20.) A week later, Daniel sent to Huddleston an email stating that it would not process the grievance until the issues with the Board were resolved. (GC Exh. 21.)

Respondent's plans for transferring from different facilities to DFW Center changed so many times that Allen could not recall how many versions Respondent had. One of Respondent's plans was to move all remaining Love Field and Heritage Park employees to DFW Center by the end of 2017. Allen, who was no longer employed by Respondent but allowed access approximately 2 months before the hearing (April 2018), testified that these plans had not come to fruition. (Tr. 258.) The Rotorcraft, APU and PW100 lines remained at Heritage Park.

At the time of hearing, in June 2018, Respondent intended to move employees from Heritage Park to DFW Center. In reviewing CP Exh. 1, a biweekly time record beginning May 28, 2018 and ending June 10, 2018, a document that Respondent provided, Blaine noted that a number of the employees listed on his group leader report included Rotorcraft employees who still worked at Heritage Park, not DFW Center. No Respondent witness contradicted Blaine's

[21] Andrews also served as recording secretary for Lodge 776.

review. Thus, Daniel's claim that in early June 2018, the percentage of employees at DFW Center from Forest Park was between 50 to 51 percent was not correct. The Heritage Park product lines Respondent planned to be move were the PW100 engines, Rotorcraft, and auxiliary power units, which would decrease the percentage of Forest Park employees at DFW Center. (Tr. 478.) Daniel also testified that the product lines operate independently.

VIII. ALLEGED UNILATERAL CHANGES FOR THE FOREST PARK EMPLOYEES

In the process of moving Forest Park employees to DFW Center, Respondent changed a number of the terms and conditions. Some, but not all, employees were provided with an employee handbook with an effective date of 2011-2012. (Jt. Exh. 8.) These changes included differences in discipline and discharge procedures, rules of conduct, job security, hours of work, shift schedules, reporting and call-back pay, temporary assignment, job selection and posting of positions, transfers and promotions, health and safety, and union dues check off.

Lodge 776 discovered the change in check off when it no longer received dues payments. Blaine found that his dues stopped upon transfer, on September 4, 2017. The dues reports confirm Respondent stopped dues deductions for all employees, except the employees continuing to work at least some time at Forest Park.

Lodge 776, previously permitted access at the Forest Park facility, was deprived of access to DFW Center. The collective-bargaining agreement provided overtime for any time exceeding 8 hours per day, double-time for Sunday or any hours worked exceeding 12 hours, time and a half for Saturdays. The DFW Center rules paid overtime for over 40 hours per week and double time for over 60 hours per week, and sick leave and jury duty will not count towards the amount needed to incur overtime. (Tr. 93-94, 271.) Vacation pay changed, as well as how employees were awarded their raises. (Tr. 279.) Seniority no longer applied.[22] DFW Center has a health safety committee that differs from the contractual provisions, which required an equal number of management and union representatives on the committee. (Tr. 345.) Employees no longer had access to the contractual grievance procedure at DFW Center and Respondent instead instituted an open door policy. Respondent did not notify or bargain with Lodge 776 about these changes.

IX. RESPONDENT ESTABLISHES THE "AMBASSADORS"

In spring 2016, Allen and HR Manager Hanes created positions called "ambassadors." Ambassadors were located at all Dallas-Fort Worth Metroplex locations, including Forest Park. Starting in September 2016, the ambassadors for the facilities held telephone conferences to discuss issues. Respondent also allowed employees to select among employee volunteers for positions called "ambassadors." The ambassador committees were never presented to Lodge 776.

Allen later testified that employees were asked to volunteer based upon whether they demonstrated leadership abilities and had shown a desire to participate, and both managers and other employees identified potential ambassadors.

Jackson, who served as an ambassador while continuing to work at Forest Park in 2016, testified that the duties of the ambassadors were to "be leader leaders for the people, to

[22] Respondent regularly provided seniority lists to Lodge 776 representatives, in accordance with the provisions of the collective-bargaining agreement. See, e.g., GC Exh. 23 and Tr. 378.

get information back to them, let them be aware of what's going on every step of the way through the process." (Tr. 339.) If the team had questions about an area, the ambassadors obtained answers and advised the employees in the shop. Jackson understood that his role as ambassador was not one as a "union." (Tr. 341.)

Respondent conducted ambassador meetings once or twice per month per teleconference with the various locations. The ambassadors sat on committees with managers. Meeting topics included safety issues and break times. Allen sat in for approximately 75 percent of the meetings to delegate work to the ambassadors. (Tr. 273-274.) Allen maintained the meetings were for communication, corporate and social responsibility and provided some leadership training "to partner with the workforce."

During one conference call in 2016, a Heritage Park employee said no one wanted a union at that location and he was speaking for everyone. Jackson was on that call. After some further heated exchanges with the Heritage Park employee, Jackson answered that every person was able to make up his or her own mind. HR Manager Hanes, who was sitting with Jackson, eventually was able to redirect the conversation back to other topics. Later, Allen told the ambassadors, including Jackson, that the union would not be discussed in the ambassador meetings. (Tr. 342.)

By the time of the hearing, Respondent no longer held ambassador meetings. However, it was soliciting employees by email to become new ambassadors. (Tr. 352.)

CREDIBILITY

Of the Respondent witnesses who testified, only Daniel remained currently employed. Daniel's testimony as an adverse witness was vague. However, Respondent recalled him for its case in chief. Much of this testimony was driven by contemporaneous communications and bargaining notes, which were usually more credible than the other testimony provided. I find that he is partially credited, particularly where contemporaneous documents supported his testimony.

Allen's recall regarding the all-hands meetings was vague and he frequently could not recall when certain statements were made or when product lines were moved from one location to another. He also testified contradictorily about how busy the Rolls Royce line was: He first testified that the business waxed and waned and was likely to decrease because of the age of the engines, yet his affidavit contradicted him. (Tr. 263.) Regarding the percentage of former Forest Park employees who were supervised by the same supervisor, he tried to generalize to the manager, then was impeached with his affidavit that over 60 percent had the same supervisor.

Nandu Madireddi was called twice in General Counsel's case in chief, and returned for Respondent's case in chief. During Respondent's case, he engaged in several lengthy narratives alternately with leading questions. He frequently couched testimony about the 2014 negotiations with warnings of how long ago it was and that he did not have access to any documents before testifying. He was not sure of when he left Respondent's employ, but most of the testimony supports that he left in 2015, after the Closure Agreement was negotiated. He remains disturbed about leaving Respondent's employ and alluded to the time after his dismissal as a dark period, which seemed to affect his memory. I find that information he provided about movements in the product lines after he left Respondent's employ relied upon

others Respondent employees who shared information with him is hearsay; I therefore do not credit that testimony.

Regarding Black, Lodge 776 used a number of leading questions on direct examination, which limits the credibility of those answers. I credit that Respondent failed to notify him about the en masse relocation of the bargaining unit. Huddleston had first-hand knowledge of the negotiations, but did not have available any bargaining notes. He admitted he may not have participated in all of the discussions and that the discussions were "foggy." Some of Huddleston's discussions of negotiations were fleshed out with the bargaining team and Respondent's bargaining notes.

Jackson, despite some leading questions and some possible discrepancies on when all hands meetings were held in 2016, demonstrated his knowledge of the events and is generally credited. However, I do not rely upon Jackson's testimony that Respondent notified "union officials" of the upcoming Forest Park transfers in the summer of 2016; he did not identify who the union officials were, and the overwhelming evidence shows that Respondent did not notify Huddleston or Black.

ANALYSIS

I. SECTION 8(A)(5) ALLEGED WITHDRAWAL OF RECOGNITION OF THE FOREST PARK BARGAINING UNIT

In examining whether Respondent unlawfully withdrew recognition and the alleged unilateral changes, I first deal with the Forest Park bargaining unit. Because I find that Respondent was required to recognize and bargain with Lodge 776 for the Forest Park bargaining unit and Lodge 776 did not waive its rights for representation, the following section will deal with accretion of the other employees who transferred from the other locations.

A. Applicable Law

The question is whether Respondent must recognize and bargain with Lodge 776 when it relocated the majority of the Forest Park bargaining unit and product lines to DFW Center. A long-held two-prong test determines whether the employer must recognize and apply the collective bargaining agreement at the site where the represented employees were transferred:

1. The operations at the new facility are substantially the same as those at the old facility; and,

2. The transferres from the old plant constitute a substantial percentage, usually 40 percent or greater, of the new plant employees.

Harte & Co., 278 NLRB 947, 948-949 (1986), citing: *Westwood Import Co*., 251 NLRB 1213, 1214 (1980), enfd. 681 F.2d 664 (9th Cir. 1982); *General Extrusion Co*., 121 NLRB 1165, 1167-1168 (1958); *Marine Optical*, 255 NLRB 1241, 1245 (1981), enfd. 671 F.2d 11 (1st Cir. 1982). The test is applied on the date when the transfer process is "substantially completed." *Harte*, 278 at 949.

B. The Parties' Positions

1. General Counsel and Lodge 776

Neither party contests Respondent's need to relocate employees from Forest Park. General Counsel contends that Lodge 776 retained its right to represent the employees at DFW Center.

Lodge 776 suggests that, despite having a legitimate reason for the transfers, Respondent seized upon it to withdraw recognition. Lodge 776 contends that it would have never agreed to the 2014 or 2015 Forest Park Agreements if it knew Respondent intended to transfer all Forest Park employees to one location. It further notes Respondent never notified Black or Huddleston about the transfers to Forest Park. It claims that Respondent officially withdrew recognition through Daniel's January 13, 2017 letter in response to the demand for recognition. As of January 13, 2017, the former Forest Park employees constituted a majority of the employees at DFW Center and their work was unchanged. Accordingly, Respondent had an obligation to recognize the union and apply the collective bargaining agreement, which was still in effect. Further, the existence of a valid collective bargaining agreement created a contract bar at that time, meaning that Lodge 776 presumptively was the majority representative of the bargaining unit employees. (CP Br. at 35-36.)

2. Respondent

Respondent contends that the 2016 and 2017 Forest Park bargaining unit employee transfers to DFW Center are controlled by the 2015 Closure Agreement, which was in effect until the Forest Park facility closed completely. It relies upon the language that employees would be relocated to "a facility in the DFW Metroplex." Although Respondent was not sure of the future location of the Forest Park product lines during 2015 negotiations, DFW Center was within the DFW Metroplex; Respondent was within its rights to move employees to that site without further negotiation. Respondent did not make unilateral changes to wages, hours and terms and conditions of employment because Respondent followed the conditions set forth in the 2015 Closure Agreement. This Closure Agreement did not require any further notice to Lodge 776 to consolidate at DFW Center, and Lodge 776 officers had notice. Respondent stated, "That the Union was not given formal notice is not relevant to the issues in this matter." (R. Br. at 16.) The length of the closure process also is not controlling because of the complexity and safety issues to overhaul the engines.

Respondent distinguished the matter at hand with other cases that also sought Section 8(a)(3) violations. However, Respondent notes it met with Lodge 776 regarding the closure of Forest Park and transfer and/or layoff of the bargaining unit employees. Respondent suggests that Lodge 776's demand for recognition, taking place in mid-January 2017, was premature; if anything, the complement of employees now at DFW Center is the correct measure of the number of employees in the facility, and now the Forest Park employees are not the majority. The Forest Park bargaining unit was relocated 10 miles away to DFW Center and Respondent does not contend that the distance is an issue.

C. Application of *Harte* and *Central Soya*

At this point, I examine whether the moves into DFW Center were relocation only, or relocation and consolidation. See *Central Soya Co.*, 281 NLRB 1308, 1309-1309 (1986), affd. 867 F.2d 1245 (10th Cir. 1988) (Board finds relocation and consolidation). Although *Central Soya*, supra, differentiates *Harte* as only a relocation, *Harte*'s basic test is important to determine whether the Forest Park employees directly transferred to DFW remain a valid unit.

1. Using *Harte*, the Forest Park bargaining unit remains intact and must be recognized

   a. The operations at the new facility are substantially the same as those at the old facility

The first issue, continuity, focuses on whether the retained employees understand that their job situations are essentially unaltered. *Leach Corp. v. NLRB*, 54 F.3d 802 809 (D.C. Cir. 1995), enfg. 312 NLRB 990 (1993). The analysis examines whether Respondent kept same operational methods, managers, customers and services or products. It also examines "changes in size, makeup or the identity of the employees complement." *King Soopers, Inc. v. NLRB*, 254 F.3d 738, 743 (8th Cir. 2001), enfg. 332 NLRB 32 (2000). Also see *NLRB v. Gaylord Chemical Co, LLC*, 824 F.3d 1318, 1325 (11th Cir. 2016), enfg. 361 NLRB 771 (2014), adopting as modified 358 NLRB 525 (2012).[23]

Allen admitted that the jobs functions were primarily the same as Forest Park. The functions performed by the Forest Park employees at DFW Center were identical in every way, including the type of aircraft engines on which they worked and the customers they served. Despite some updates of the equipment, most of the equipment was the same and the tasks did not change. *NLRB v. Gaylord Chemical Co., LLC*, 824 F.3d 1318, 1326 (11th Cir. 2016), enfg. 361 NLRB 771 fn. 1 (2014), incorp. by reference 358 NLRB 771 (2014). Other than orientation to the facility, employees apparently had no new instruction on their tasks and no change in processes of refurbishment of the engines. The Forest Park employees were advised on their transfer letters that their managers would remain the same. Respondent further admitted that at least 60 percent of the transferred Forest Park employees retained the same manager.[24] Because the functions are the same and operations essentially had no changes, the Forest Park jobs were relocated to DFW Center. *Central Soya*, 281 NLRB at 1309. Thus, the first prong of *Harte* is proven.

   b. The transferees from the old plant constitute a substantial percentage, usually 40 percent or greater, of the new plant employees

Regarding the second prong of *Harte*, the Forest Park employees represented a substantial percentage of the employees working at DFW by January 2017. Although the standard only requires 40 percent or greater, here the number was 72 percent, significantly more than the requirement. This high percentage further demonstrates continuity in the workforce. *NLRB v. Gaylord Chemical*, 824 F.3d at 1316. The date of substantial completion determines when Respondent should have recognized and bargained with Lodge 776.[25] That time is January 13, 2017 and no later.[26]

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[23] *Gaylord*, 361 NLRB 771 adopted the ALJ's findings from 358 NLRB 525 and issued a new Order.

[24] Respondent contends that the record shows no proof of consistent management after Forest Park relocation. However, testimony and documents show otherwise.

[25] Although Respondent does not contend that Lodge 776 lost majority support, the record also reflects that well over a majority of the Forest Park employees were union members before transfer.

[26] For the numerous reasons stated, I find it unnecessary to rely upon the contract bar argument. However, should I be found incorrect about Lodge 776 waiving its rights to set terms and conditions of employment upon moving, the contract bar would apply as stated in *NLRB v. Rock Bottom Stores, Inc.*, 51 F.3d at 370:

> . . . Under the Board's long-standing contract bar rule, "if an employer and a union have entered into a collective bargaining agreement, the agreement constitutes a bar to the holding of a representation election for the life of the agreement, up to a maximum of

Respondent incorrectly contends that Lodge 776's mid-January 2017 demand for recognition was premature as Respondent had more employees from all facilities to move to DFW Center. Respondent contends that *Harte* and other cases emphasize the "existence and ongoing applicability of a collective bargaining agreement related to the represented facility whose workforce has been relocated." (R. Br. at 19.) Relying on *Gitano Distribution Center*, 308 NLRB 1172 (1992), Respondent contends that these employees had no collective bargaining agreement and therefore this matter is distinguished from *Harte*, supra, *Westwood,* supra, and *Rock Bottom Stores*, 312 NLRB 400 (1993), enfd. 51 F.3d 366 (2nd Cir. 1995). and *Rock Bottom Stores,* supra. However, the Board found *Gitano*, in which only a partial transfer of the bargaining unit occurred, did not apply when an employer relocates an entire bargaining unit to a new facility. *Rock Bottom Stores,* 312 NLRB at 402. In 2016, Respondent moved almost the entire Forest Park workforce in stages to DFW Center. By early January 2017, the relocated Forest Park bargaining unit became the majority of the employees at DFW Center and has remained that way. Indeed, Respondent moved the entire Forest Park workforce to DFW Center. As discussed in *Rock Bottom*, Respondent's reliance upon *Gitano* for this portion of the analysis is not applicable.

D. The Bargaining Unit Consisting of Forest Park Employees Remained an Appropriate Unit

I find that the entire Forest Park bargaining unit, whether located at DFW Center or Forest Park, remains appropriate. The relocated bargaining unit remains an appropriate bargaining unit and the union, here Lodge 776, retains its representative status. *United Steelworkers of America AFL-CIO-CLC, Local #7912*, 338 NLRB 29 (2002) (respondent union violated §8(b)(3) when it refused to bargain with employer about transferred unit), citing *Gitano*, 308 NLRB at 1175. An employer cannot duck its obligations on effects bargaining, like the transfer of employees, "by waiting until after the change has taken place and then claiming that the bargaining unit is no longer viable." *Dodge of Naperville, Inc. v.* NLRB, 796 F.3d 31, 37, reh'g en banc denied (D.C. Cir. 2015), enfg. 357 NLRB 2252 (2012). Respondent has the burden of proof to show this unit is no longer appropriate by showing compelling circumstances overriding a lengthy bargaining history. *ADT Security Service Inc.*, 355 NLRB 1388, 1396 (2010), enfd. 689 F.3d 628 (6th Cir. 2012).

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three years." *NLRB v. Arthur Sarnow Candy Co.*, 40 F.3d 552, 557 (2d Cir.1994); see also *Westwood*, 681 F.2d at 666; *NLRB v. Marine Optical, Inc.*, 671 F.2d 11, 16 (1st Cir.1982). The rule applies in the absence of unusual circumstances, *Westwood*, 681 F.2d at 666, and is intended to promote industrial peace by stabilizing, for a reasonable term, a contractual relationship between employer and union. *Arthur Sarnow Candy*, 40 F.3d at 557; *Corallo v. Merrick Cent. Carburetor, Inc.*, 733 F.2d 248, 252 (2d Cir. 1984). Thus, the rule applies even when a union has lost majority support. See *Harbor Carriers v. NLRB*, 306 F.2d 89, 92 (2d Cir.1962), cert. denied sub nom. *Deck Scow Captains Local 335 v. Harbor Carriers*, 372 U.S. 917 (1963); *NLRB v. Marcus Trucking Co.*, 286 F.2d 583, 593 (2d Cir.1961). The rule prohibits employers from petitioning the Board for decertification of a union and from repudiating the contract or withdrawing recognition from and refusing to bargain with a union during the term of the collective bargaining agreement. *Marine Optical*, 671 F.2d at 16.

A workplace relocation is not the kind of "unusual circumstance" that prevents application of the contract bar rule. . . .

For the bargaining unit transferring from Forest Park, the collective bargaining agreement did not expire until March 2018, well over a year after a majority of the transfers occurred.

Beyond the relocation of the unit Respondent does not prove circumstances that demonstrate a significant change for the Forest Park employees. Respondent admits the production workers, who are the majority of the transferees, remained segregated from other production areas. The parties also had bargaining history of about 50 years.

The closure of one facility does not make the unit repugnant under Board policy. *ADT Security Service,* 355 NLRB at 1388. Nor does Respondent state any circumstances that overcome the significant length of bargaining history. The integrity of the Forest Park bargaining unit remained intact. *In re Comar*, 339 NLRB at 903 fn. 2.

Because the unit remained intact, Respondent had an obligation to recognize and bargain with Lodge 776. Instead, Respondent refused to recognize the transferred unit and unlawfully withdrew recognition from an established bargaining unit at the relocation site. The date on which Respondent officially withdrew recognition is the date on which it ultimately stated such to Lodge 776 --- Daniel's letter of January 13, 2017. I therefore find that Respondent relocated the Forest Park bargaining unit as a whole with the same duties and at the same time found an opportunity to "rid itself of the Union" and its obligations under the collective bargaining agreement with an unlawful withdrawal of recognition. *In re Comar*, 339 NLRB at 911. Also see *Central Soya*, 281 NLRB at 1310 ("In these circumstances, the Respondent should not be allowed to capitalize on the relocation . . . to justify terminating its long-term bargaining relationship with the majority representative.")[27]

E. Lodge 776 Did Not Waive Its Right to Represent the Bargaining Unit

Transferred employees' rights to continued representation by their bargaining agent is a statutory right and any waiver of such right must be clear and unmistakable. *King Soopers, Inc. v. NLRB*, 254 F.3d at 743. Nothing in the bargaining records or testimony reflects that the 2015 Closure Agreement, which superceded the 2014 agreement, included an agreement by Lodge 776 to waive its rights to recognition at a single facility. When the parties entered the agreement, Respondent had no knowledge of where most Forest Park employees would be moved, much less to a single facility. Huddleston did not pursue Lodge 776's demand for recognition for movement of employees does not constitute a waiver, particularly in light of Respondent's contention that it did not know whether the bargaining unit would exist at any given facility. See generally *Randolph Children's Home*, 309 NLRB 341, 343 (1992).

Where an employer either misleads a union or purposefully keeps it uninformed about relocation, it cannot conclude that the union waived its rights to represent the bargaining unit. *Waymouth Farms, Inc.*, 324 NLRB 960, 963 (1997), enf. in rel. part 172 F.3d 598, 600 (8th Cir. 2001). To make transfer bargaining meaningful, the employer should notify the union of the "when and where." *Waymouth Farms*, 324 NLRB at 963. Respondent did not do so.

Respondent failed to notify Huddleston when it made its decision in 2016 to move Forest Park employees to a single facility. A change in location of work, particularly one of this magnitude, is material and significant. Respondent contends it had no reason to notify Huddleston about consolidating all facilities at DFW Center because the 2015 Closure Agreement said the Forest Park employees would be moved to a facility within the DFW Metroplex. However, Respondent did not actually follow the 2015 Closure Agreement, which required posting of positions, and instead determined to transfer the entire Forest Park

[27] Respondent's refusal to meet regarding grievances is a refusal to bargain.

employees to DFW Center. Respondent's change in the terms of the 2015 Closure Agreement constitutes a unilateral change as Respondent did not contact Huddleston. *McGraw-Hill Broadcasting Co., Inc.*, 355 NLRB 1283, 1285-1286 (2010).

At the time of negotiations in 2015, Respondent admittedly did not know where the Forest Park employees were going. Respondent's witnesses admitted they did not know how many different plans were put forth for transfers; Respondent admits and I find that the plans were fluid and changed frequently. In the 2015 negotiations, Huddleston did not push his demands for recognition at the new facility to impasse; Respondent stated its reasons for not agreeing to recognition at the time were its uncertainty in where Forest Park employees would be moved in the future and did not want to risk an unlawful agreement. This does not a waiver make as it is not clear or unmistakable and Respondent's position about transfers changed so frequently.

In mid-2016, when Respondent made its decision to move the entire Forest Park functions to DFW Center, the situation constituted changed circumstances and required Respondent to notify and, upon request, bargain. See generally *Redway Carriers*, 301 NLRB 1113, 1121 (1991). Notification to employees in the bargaining unit, such as Jackson, does not constitute sufficient notice, particularly when Respondent knew that the employees on the bargaining team could not bind the union. See, e.g., *Palm Beach Metro Transportation, LLC*, 357 NLRB 180, 183 (2011), enfd. 459 Fed. Appx. 874 (11th Cir. 2012) (respondent employer notified employees of layoff but not certified bargaining representative insufficient).

Instead, by mid-2016, Respondent had meaningful information about the relocation. Respondent admittedly did not notify Huddleston because it did not want to be bothered after 2015 and additionally determined in mid-2016 it would not recognize Lodge 776 upon transfer to DFW Center. It did not inform Huddleston, the Local 776 official with binding authority, and the evidence points to Respondent purposefully avoiding any obligation to advise Huddleston of the transfer's "when and where." Even Respondent's 2016 email communication to Huddleston was couched in terms of Forest Park closure only and said nothing of the relocation. In doing so, Respondent precluded meaningful bargaining about the effects of transferring all bargaining unit employees to a single location, DFW Center, instead of dispersing employees between Heritage Park and Love Field. *Waymouth*, supra.

Lodge 776 also did not waive recognition due to the collective bargaining agreement unit description, which contains the specific location of the Forest Park facility. This situation is analogous to *Comar, Inc.*, 339 NLRB 903, 912 (2003), enfd. 111 Fed.Appx. 1 (D.C. Cir. 2004): The unit was described by jobs in a specific company division and no other employees without geographic limitation. The administrative law judge determined that the unit was intact and the division only relocated, so the recognition clause was not a valid defense to the alleged violations. As Lodge 776 did not include specific language to limit the Forest Park bargaining unit to only that location, it is not a waiver of its representational rights for the Forest Park unit at DFW Center. Id.

Lastly, Lodge 776 did not waive its rights through Respondent's transfer letters, which Respondent required Forest Park employees to sign to be able to move to DFW Center. Respondent did not discuss the terms in these letters with Huddleston. Respondent's agreement to effectuate the transfer for the individual Forest Park employees included "at will" language. The official bargaining representative, Huddleston and Lodge 776, had no say in agreeing to "at will" language and Respondent admittedly did not notify Huddleston. Respondent's 2016 transfer letters, which were not negotiated with Huddleston, conditions

employee acceptance of transfer to DFW Center upon an "at will" employment relationship----in other words, the represented transferee from Forest Park must decline union representation for acceptance at DFW Center. This language creates a "yellow dog" contract. The "yellow dog" contract is "a private agreement between an employee and employer, where the employee promises not to join, become or remain a member of any labor organization." *M&M Affordable Plumbing, Inc.*, 362 NLRB No. 159, slip op. at 6 fn. 10 (2015), citing *First Legal Support Services*, 342 NLRB 350, 362 (2004). Also see *Carlisle Lumber Co.*, 2 NLRB 248, 263-268 (1937), enfd. as modified, 94 F.2d 138 (9th Cir. 1937), cert. denied 304 U.S. 575 (1938). Such terminology reinforces Respondent's admission that it did not want to deal with Lodge 776 after the 2015 Closure Agreement and does not prove Lodge 776 unmistakably waived its rights to represent the Forest Park bargaining unit when it transferred to DFW Center.

II. ARE EMPLOYEES FROM OTHER FACILITIES ACCRETED INTO THE BARGAINING UNIT AT DFW CENTER?

As I have determined that the Forest Park bargaining unit continues to exist at DFW Center, I must address whether the other employees at DFW Center belong in that unit as well as a consolidation, stated in *Central Soya*, supra.

A. Applicable Law for Accretion

Accretion is defined as "the addition of a relatively small group of employees to an existing unit where these additional employees share a community of interest with the unit and employees and have no separate identity." *Safety Carrier, Inc.*, 306 NLRB 960, 969 (1992). Accretion may be examined when facing a "merged workforce" and a possible community of interest. *International Longshore & Warehouse Union v. NLRB*, 890 F.3d 1100, 1111 (D.C. Cir. 2018). New employees who enter employment within the bargaining unit are presumptively within the bargaining unit because they have little or no separate group identify and would not be an appropriate unit. *Sara Lee Bakery Group, Inc. v. NLRB*, 296 F.3d 292, 297 (4th Cir. 2002), citing *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 786 (1996) and *Baltimore Sun Co. v. NLRB*, 257 F.3d 419, 427 (4th Cir. 2001).

Accretion may occur when a new group of employees, beyond the existing bargaining unit, develops after recognition or during the term of a collective bargaining agreement. *Kaiser Foundation Hospitals*, 343 NLRB 57, 64 (2004). To wait to make a determination when all employees transferred, Respondent must prove that, at the time of withdrawal of recognition, Respondent had a well-defined plan or timetable to achieve fuller functional integrations. *In re Comar, Inc.*, 339 NLRB 903, 910 (2003), enfd. 111 Fed. Appx. 1 (D.C. Cir. 2004).

The accretion policy is applied restrictively because accreted employees are deprived of the choice of whether they wish to be represented by a labor organization, balanced against maintaining industrial peace. *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1271 (2005), enfd. 181 Fed. Appx. 85 (2d Cir. 2006). Doubts about whether the additional employees share an overwhelming community of interest with an existing unit are resolved in favor of the election process. *NLRB v. Superior Protection, Inc.*, 401 F.3d 282, 288 (5th Cir. 2005), cert. denied 546 U.S. 874 (2005). Accretion should not be forced when the employees sought may constitute an appropriate unit themselves. *In re Comar*, 339 NLRB at 910. Further, if the number of employees in the "group to be accreted overshadows the number of employees in the existing unit," accretion is not the answer. *NLRB v. Superior Protection*, 401 F.3d at 288-289. These restrictions on accretion preclude cutting off employees' rights. *Comar*, supra.

In a situation such as *Harte*, supra, the Board emphasized it analyzed that it must balance the interests of any newly hired employees against the transferees' interests in retaining representation. *Harte*, 278 NLRB at 950. These interests were: no one contended that any delay in the transfer was designed to frustrate the representational interests of the new employees in the new facility; the period to complete transfers was not unreasonable given the size and complexity of the employer's operations and an unexpected surge of orders; acquisition of the new facility was a pre-condition before any transfers could occur and the employer was not planning on continuing operations at the old facility while operating the new facility; and, no other union competed for claims in the new facility. *Harte*, 278 NLRB at 950. Lastly, "national labor policy favors industrial stability achieved through the collective-bargaining process." *Harte*, 278 NLRB at 950, citing *Steelworkers v. Warrior & Gulf Co*., 363 U.S. 574, 578 (1960).

For the non-bargaining unit employees to be accreted into the bargaining unit, the additional employees must have little or no separate group identity and share an overwhelming community of interest with the pre-existing unit. *Sara Lee Bakery Group, Inc. v. NLRB*, 296 F.3d 292, 297 (4th Cir. 2002). The traditional community of interest factors applied include: "functional integration, level of management control, similarity of working conditions, bargaining history, employee interchange, job skills and functions, and physical proximity." *In re Comar*, supra, citing *NLRB v. Food Employers Council, In*c., 399 F.2d 501 (9th Cir. 1968). Employee interchange and common day-to-day supervision receive particular emphasis. *Gitano*, 308 NLRB at 1174.

3. Discussion

I have already determined that the Forest Park unit, as transferred to DFW Center, remains appropriate. *Coca-Cola Bottling Co. of Buffalo*, 325 NLRB at 313. I now discuss whether Respondent had a well-defined plan to move the employees from the other facilities. If Respondent had a definite plan, I would use the date of the transfers into DFW Center, which Respondent claims was later in 2018. This determination fixes the date on which the accretion analysis should take place.

As part of the accretion analysis, I revisit the employee numbers for departments to determine whether the Forest Park bargaining unit employees comprised majorities in certain departments. I then turn to whether the employees from the other facilities have little or no separate group identity and whether the groups share an overwhelming community of interest. See, e.g., *Baltimore Sun Co. v. NLRB*, 257 F.3d at 427-428.[28]

a. Did Respondent have a well-defined plan to move the other employees from other facilities?

I first consider whether Respondent had a well-defined plan to move in the remaining employees from Heritage Park and Love Field. See *Comar*, supra. If so, the remainder of the discussion would be moot. In examining whether Respondent presented objective factors to show it had a well-defined plan or timeable to achieve full integration, I find none. *Northland Hub, Inc.*, 304 NLRB 665, 677 (1991), enfd. mem. 29 F.3d 633 (9th Cir. 1994).

[28] The Board has not overruled the "overwhelming community of interest" standard for accretions. Compare *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017).

Respondent admits it required a number of delays to complete transfers into DFW Center. (R.Br. at 16-17.) Given the number of iterations, Respondent's plans have always been fluid. Allen could not recall all the different phases or the number of plans. Even by the time of hearing, approximately 1 ½ years after Respondent withdrew recognition of the majority of the Forest Park bargaining unit located at DFW Center, Respondent still had not moved all employees from Heritage Park. Respondent admitted difficulties in moving the different product lines and obtaining FAA certifications. The majority of the Forest Park bargaining unit was in place at DFW Center for over 1 ½ years by the time of hearing and was still the majority of employees. I therefore must find that Respondent did not have well-defined plans regarding moving employees from other locations when Respondent unlawfully withdrew recognition in January 2017. The remainder of the accretion analysis therefore takes place in January 2017, when Respondent refused to bargain with Lodge 776.

b. Do the proposed accretions have little or no separate group identity and thus cannot be considered a separate appropriate unit? If so, do the subject employees share an overwhelming community of interest with the bargaining unit to which they would be accreted?

As previously noted, a significant majority of the employees at DFW Center were relocated from Forest Park. The table above shows that, between October 2016 and January 2017, Forest Park's employee complement decreased by 145. In addition to the Rolls Royce Spey/Tay production line, the employees relocated from Forest Park included accessory, cleaning, component repair, maintenance, NDI, quality control, scheduling, test cell, warehouse, scheduling, preservation and production control. By January 2017, Heritage Park had transferred 35 Honeywell TFE employees, plus 35 employees for test cell and component repair. Relying on Respondent's documentation at the end of January 2017, those employees were significantly outnumbered by the Forest Park relocated employees.

The former Forest Park employees were now in the same job descriptions as the Heritage Park employees, so except for the work performed in the separate product lines, the other departments should not be considered separately. They were required to have the same skills and job qualifications. The maps shown during the DFW Center tours of summer 2016 also reflect that each department had its own specific location within the new facility. Anecdotal evidence shows these employees shared working areas. Nothing reflects that within these departments the individuals were located according to previous working site. As I have decided that Respondent was permitted to apply the terms and conditions already in place at DFW when the Forest Park employees were relocated, they shared the same working conditions and terms of employment. Logically, the former Heritage Park employees had to share supervision with the former Forest Park employees because Respondent admitted that 60 percent of the Forest Park supervisors were still in position. I therefore find that, in addition to the production and maintenance employees relocated from Forest Park, the employees in the following departments shared an overwhelming community of interest and are accreted into the bargaining unit: accessory, cleaning, component repair, maintenance, NDI, quality control, scheduling, test cell, warehouse, scheduling, preservation and production control.

For the product lines, such as Honeywell TFE and Rolls Royce Spey/Tay, which relocated respectively from Heritage Park and Forest Park, the evidence reflects that all production workers evince similar skill requirements, as noted by the common job descriptions for employees adopted by Respondent for all locations. Factors favoring accretion include that the lines are within the same building and therefore close geographically; the human resources and management functions are centralized at the DFW Center location; and, terms and

condition of employment are dictated for all by the handbook. The group identity, however, remains tied to the product line. For the production workers on the different lines, I find that interchange between the specific product lines is limited to those employees that transferred from Forest Park to Heritage Park and Love Field in 2014 and 2015. The employees assigned to each production line primarily remains assigned to that production line. Although General Counsel and Lodge 776 prove the employees possibly could be moved and the work is similar, each line has its own schematics and requires familiarization with the process. Anecdotal testimony reflects that 3 employees from a different line came for about 3 weeks to the Rolls Royce line and only one stayed. This evidence is insufficient to prove an overwhelming community of interest for the engine product lines. I therefore find that the Honeywell product line employees and Pratt and Whitney product line employees do not share an overwhelming community of interest with the relocated Forest Park employees and are therefore excluded from the bargaining unit.

Therefore, the appropriate unit is:

All production, maintenance and warehouse employees located at Respondent's Forest Park and DFW Center facilities, excluding production employees in the Honeywell TFE line, all other employees, guards and supervisors as defined in the Act.

III. UNILATERAL CHANGES: DOES THE FOREST PARK COLLECTIVE BARGAINING AGREEMENT APPLY TO THE 2016-2017 RELOCATED EMPLOYEES

In most circumstances, the Forest Park collective bargaining agreement would apply to the Forest Park bargaining unit when transferred. However, Respondent contends that it was privileged to make changes because of the plain language in the 2015 Closure Agreement, which it negotiated in good faith with Lodge 776.

A. Case Law Usually Directs Application of the CBA When the Bargaining Unit Relocates

When an employer relocates an entire bargaining unit to a different facility, the employer must apply the existing collective-bargaining agreement. *Rock Bottom Stores*, supra; see generally *In re Comar*, 339 NLRB at 912. Any waiver of such rights must be clear and unmistakable. Here, the matter is more complicated as the parties had negotiated an agreement covering Respondent's exit from Forest Park and terms to apply to the affected bargaining unit employees.

B. Issue of Waiver

Section 8(a)(5) and Section 8(d) define the duty to bargain collectively, which requires an employer "to meet . . . and confer in good faith with respect to wages, hours, and other terms and conditions of employment." *NLRB v. Katz*, 369 U.S. 736, 742–743 (1962). A violation of Section 8(a)(5) does not require a finding of bad faith. Id. at 743 and 747. A unilateral change acts no differently than a "flat refusal" to bargain by skipping out on a union's input when the union has so requested to do so. Id. at 743. An unlawful unilateral change "frustrates the objectives of Section 8(a)(5)," because such a change "'minimizes the influence of organized bargaining' and emphasizes to the employees 'that there is no necessity for a collective bargaining agent.'" *Pleasantview Nursing Home v. NLRB*, 351 F.3d 747, 755 (6th Cir. 2003) (quoting *Katz*, supra at 744, and *Loral Defense Systems-Akron v. NLRB*, 200 F.3d 436, 449 (6th Cir. 1999)); *Mercy Hospital of Buffalo*, 311 NLRB 869, 873 (1993).

A defense to a unilateral change is waiver. A waiver of a union's statutory rights, including the right to bargain about wages, must be clear and unmistakable and cannot be inferred lightly. *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983); *Timken Roller Bearing Co*., 138 NLRB 15, 16 (1962). "A clear and unmistakable waiver may be found in the express language and structure of the collective-bargaining agreement or by the course of conduct of the parties. The burden is on the party asserting waiver to establish that such a waiver was intended." *Leland Stanford Junior University*, 307 NLRB 75, 81 (1992) (information request case). See also: *NLRB v. New York Telephone Co*., 930 F.2d 1009 (2d Cir. 1991), enfg. 299 NLRB 44 (1990); *Finley Hospital*, 362 NLRB No. 102, slip op. at 3 (2015), affd. in rel. part 827 F.3d 720, reh'g and reh'g en banc denied (8th Cir. 2016) (assent to change must reflect mutual intent to allow the change in spite of a duty to bargain). Silence in a bargaining agreement does not demonstrate a clear and unmistakable waiver. *S-B Mfg. Co., Ltd*., 270 NLRB 485, 490 (1984), citing *Timken Roller Bearing Co v. NLRB*, 325 F.2d 746, 751 (6th Cir. 1963).

Respondent relies upon the language in the 2015 Closure Agreement that the terms and conditions of the location to which the Forest Park employees transfer will apply. The language of this agreement also applies until the closure of the Forest Park facility. Respondent also notes that it continued to apply the collective bargaining agreement to those employees who remained at Forest Park until the facility. The 2015 Closure Agreement specifically discusses pay, vacation etc. and the catch-all "all others" will apply as well.

Here, I agree that Respondent was within its rights to apply its terms and conditions of employment, already established at DFW Center, when the Forest Park bargaining unit relocated. The 2015 Closure Agreement was drafted with Lodge 776's consent and input. The documents reflect that the parties knew a number of contingencies, known and unknown, existed in 2015. The plain language of this agreement waives Lodge's 776's rights to apply the terms and conditions of the collective bargaining agreement. I therefore recommend dismissal of the unilateral change allegations. But see *In re Comar,* supra*,* at 911 (respondent should not benefit from its unlawful conduct).

IV. AMBASSADORS AS AN ALLEGED SECTION 8(A)(2) VIOLATION

To determine whether Respondent violated Section 8(a)(2), I first examine whether the Ambassador program was a labor organization under Section 2(5). If I find that Respondent operated the Ambassadors as a labor organization, I then examine whether Respondent dominated the Ambassador program. *Electromation, Inc*., 309 NLRB 990, 994 (1992), enfd. 35 F.3d 1148 (7th Cir. 1994); *EFCO Corp. v. NLRB*, 215 F.3d 1318 (4th Cir. 2000), enfg. 317 NLRB 372 (1998). Respondent's intent in formation of the Ambassador program is irrelevant to the analysis of a possible 8(a)(2) violation: The statute applies whether intent is "benevolent or malevolent." *Alta Bates Hospital*, 266 NLRB 485, 491 (1976).

"Labor organization" is defined in Section 2(5) of the Act as:

> . . . [A]ny organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The definition of labor organization is broadly construed and is a question of fact. *NLRB v. Peninsula General Hospital Med. Center*, 36 F.3d 1262, 1269 (4th Cir. 1994); *Electromation*, supra. The organization is not required to have a formal structure, elected officers, constitution

or bylaws, nor is it required to meet regularly. Id. at 994. Even without this formal framework or regular meetings, the group may meet the definition of Section 2(5). Id.

In examining whether the definition of labor organization applies to a group, the Board applies a four-part test: (1) employee participation; (2) purpose to "deal with" employers; (3) the dealing concerns conditions of employment or other statutory subjects; and (4) for employee representation committees, evidence that the committee has some representation of employees. *Electromation*, 309 NLRB at 996.

I find that General Counsel did not demonstrate sufficiently that the purpose of the ambassadors was to deal with the employers on statutory subjects. Most of the evidence reflects various versions of meetings and do not demonstrate sufficient evidence that the employees made decisions on behalf of the other employees. For example, the discussions on safety were vaguely presented. Safety is indeed a statutory issue, but the evidence does not show the ambassadors dealt with the employers or the committee members represented other employees. I therefore dismiss this allegation as the ambassadors did not act as a labor organization.

CONCLUSIONS OF LAW

1. Respondent Dallas Airmotive, Inc., a subsidiary of BBA Aviation Co., (Respondent) is an employer within the meaning of Section 2(2), (6) and (7) of the Act.

2. Charging Party International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 776 is a labor organization within the meaning of Section 2(5) of the Act.

3. The following are supervisors within the meaning of Section 2(11) of the Act and/or agents within the meaning of Section 2(13) of the Act:

    a. Stephanie Hanes
    b. Terry Hooker
    c. Zara Baker
    d. Bill Bell
    e. Tracy Myers
    f. David Higgins
    g. Max Allen
    h. Nandu Madireddi
    i. David Daniel

4. As of January 13, 2017, the following unit was an appropriate bargaining unit pursuant to Section 9(a) of the Act:

    > All production, maintenance and warehouse employees located at Respondent's Forest Park and DFW Center facilities, excluding production employees in the Honeywell TFE line, all other employees, guards and supervisors as defined in the Act.

5. On January 13, 2017, Respondent unlawfully withdrew recognition and since then, has refused to bargain with District Lodge 776.

6. The above unfair labor practices affect commerce as stated in the Act.

7. The Act has not been violated in any other way.

REMEDY

Because Respondent unlawfully withdrew recognition of the Forest Park bargaining unit, it must bargain in good faith with Lodge 776. In doing so, an affirmative bargaining order is necessary to ensure Respondent will bargain for a reasonable time with Lodge 776 to give the bargaining relationship a chance to succeed before Respondent can question Lodge 776's representative status. *Waymouth Farms*, 314 NLRB at 963-964.

Respondent will also be ordered to post an appropriate information notice, as described in the attached appendix. This notice shall be posted in Respondent's DFW Center facility or wherever notices to employees are regularly posted for 60 days without anything obscuring or defacing its contents. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or internet site, and/or other electronic means (including, but not limited to, Yammer if still in use), if Respondent customarily communicates with its employees in such a manner. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved herein, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since January 9, 2017.

On the findings of fact and conclusions of law and on the entire record, I issue the following recommended[29]

ORDER

Respondent, Dallas Airmotive, Inc., a subsidiary of BBA Aviation Company, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

   a. Withdrawing recognition from International Association of Machinists and Aerospace Workers, AFL-CIO, Aeronautical Industrial District Lodge 776 (Lodge 776) and failing and refusing to bargain with Lodge 776 as the exclusive collective-bargaining representative in the following appropriate unit:

      All production, maintenance and warehouse employees located at Respondent's Forest Park and DFW Center facilities, excluding production employees in the Honeywell TFE line, all other employees, guards and supervisors as defined in the Act.

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

[29] 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.

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

   a. Recognize and, on request, bargain in good faith the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

      All production, maintenance and warehouse employees located at Respondent's Forest Park and DFW Center facilities, excluding production employees in the Honeywell TFE line, all other employees, guards and supervisors as defined in the Act.

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

   c. Within 14 days after service the Region, post at its DFW Center facilities copies of the attached notice marked "Appendix."[30] Copies of this notice, on forms provided by the Regional Director for Region 16, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by Yammer, email, posting on intranet or an internet site, and/or other means of electronic communication, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent at any time since January 13, 2017.

   d. Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certificate of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, DC January 25, 2019

Sharon Levinson Steckler
Administrative Law Judge

[30] 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 Stated Court of Appeals enforcing an Order of the National Labor Relations Board."

APPENDIX

Notice to Employees
Posted By Order of the National Labor Relations Board
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT withdraw recognition from the International Association of Machinists and Aerospace Workers, AFL-CIO, Aeronautical Industrial District Lodge 776 (Lodge 776), and fail and refuse to bargain with Lodge 776 as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

> All production, warehouse, maintenance employees located at Respondent's Forest Park and DFW Center facilities, excluding production employees in the Honeywell TFE line, all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL recognize, and on request, bargain with Lodge 776 as the exclusive collective-bargaining representative of our bargaining unit employees concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed collective-bargaining agreement.

DALLAS AIRMOTIVE, INC., A SUBSIDIARY OF BBA AVIATION COMPANY
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

819 TAYLOR STREET, ROOM 8A24, FORT WORTH, TX 76102-6178
(817) 978-2921, HOURS: 8:15 A.M. TO 4:45 P.M.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/16-CA-192780 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (682) 703-7489.