

GATX Logistics, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 507.
Case 8-CA-27101

March 9, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On June 30, 1997, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The Charging Party Union filed exceptions and a supporting brief and the Respondent filed a reply brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings¹, and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹In his analysis and conclusions, the judge referred to "Respondent's August 8 internal memorandum from Moore to Conley and Alman." The memorandum was dated August 6, 1994. We correct the judge's inadvertent error.

Catherine A. Modic, Esq., for the General Counsel.
Andrew Martone, Esq., of St. Louis, Missouri, for the Respondent.
Richard G. Ross, Esq., of Independence, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried in Cleveland, Ohio, on February 24-26, 1997. The charge in Case 8-CA-27101 was filed on February 2, 1995, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 507 (the Union or Local 507). A charge in Case 8-CA-27247 was filed on March 24, 1995, by Truck Drivers Union, Local 407 a/w International Brotherhood of Teamsters (the Charging Party or Local 407). On April 30, 1996, the Regional Director for Region 8 of the National Labor Relations Board (the Board) issued a consolidated complaint and notice of hearing (the complaint).¹ The complaint alleges

¹On the last day of the hearing, GATX and Local 407 entered into a non-Board settlement agreement which was submitted to me in Washington D.C., after the close of the hearing for approval under Sec. 101.9(3)(d)(1) of the Board's Rules and Regulations. On June 20, 1997, I issued an order approving the settlement agreement, Local 407's motion to withdraw the unfair labor practice charge in Case 8-CA-27247 and the motion for dismissal of the complaint. I further ordered that Case 8-CA-27247 be severed from the consoli-

that GATX Logistics, Inc. (the Respondent or GATX) violated Section 8(a)(1) and (5) of the Act by bargaining with an intention of not reaching a contract, unlawfully declaring impasse, and implementing its final proposal on December 5, 1994.² On February 19, 1997, Respondent filed an amended answer denying the commission of any unfair labor practices.

At the hearing, the parties were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs of the General Counsel and the Respondent submitted after the conclusion of the hearing, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Cleveland, Ohio, has been engaged in the business of providing warehousing and related services to various commercial enterprises, where it has purchased and received at its Cleveland, Ohio facility goods valued in excess of \$50,000 directly from points outside the State of Ohio. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

In 1992, Respondent purchased the business of Itel Corporation and since that time has continued to operate the business in basically unchanged form. The purchase included six facilities throughout the central region and employed approximately 500 people. Unfortunately, as a result of their high labor cost structures, the facilities purchased from Itel fared poorly. By the beginning of 1994, GATX had closed five of the six facilities, and 95 percent of the 500 employees were laid off. As a condition of the purchase, Respondent agreed to be the successor to all of Itel's collective-bargaining agreements. The most recent agreement with Local 507 was scheduled to expire by its terms on July 1.

On May 12, the Union served Respondent with a proposed new collective-bargaining agreement and a request to negotiate.

At all material times, James Conley is Respondent's regional vice president, Robert L. Alman is director of human resources and chief negotiator, and John Moore is the local manager of the remaining GATX Cleveland facility on Holland Road.

Throughout the collective-bargaining negotiations in this matter, Union Secretary-Treasurer Terry Freeman is the principal spokesperson for Local 507.

dated complaint and notice of hearing. Thus, the hearing regarding Case 8-CA-27247 is closed and the subject decision only involves Case 8-CA-27101.

²All dates are in 1994 unless otherwise indicated.

1. July 6: negotiation session 1

On July 6, the parties held their first negotiating session, during which Local 507's proposal was discussed as the Respondent did not submit a contract proposal. The Union was represented by Terry Freeman and a local negotiating committee. Respondent was represented by Robert L. Alman and John Moore. A brief summary of the Union's contract proposals is in order as a backdrop to their further negotiations.

Briefly, the Union proposed a 3-year agreement with a \$1-an-hour wage increase in each successive year. Additionally, the Union sought an increase in Respondent's weekly contributions to the health and welfare and pension funds. The Union also proposed sick leave revisions, an additional paid holiday, and an increase in vacation benefits based on the number of years worked by each employee. Lastly, the Union sought an increase in severance pay on the basis of 45 hours of severance pay at the employees straight time hourly rate for each year of employment.

Alman told the Union that GATX was not doing well and it would prefer an extension of the current contract as is for 2 years and then after 2 years the Respondent would evaluate where it stood. Additionally, the parties discussed the status of the Ohio Liquor account, which was the largest customer at the facility, and employed 75 percent of the work force. The account was handled at the facility for the past 7 years and during July 1994, GATX was engaged in the competitive bidding process with other companies to retain the business.

2. July 20: negotiation session 2

When the same representatives held the second meeting on July 20, additional discussions took place on the substance of the Union's initial contract proposal. The Respondent did not submit a proposal during this meeting.

The primary focus of the meeting was to address the direction the Respondent was headed. Alman told the Union that GATX needed some relief for a period of 2 years and after a couple of years, it would be in a position to make a determination whether the Cleveland market was one GATX wanted to be in. Alman also told the Union that the Ohio Liquor account was in jeopardy and it did not look good for GATX to retain the account.

Events Between July 20 and the Next Negotiation Session on September 20

On July 26, the Union mailed a revised contract proposal to Respondent. In particular, the Union proposed a 4-year versus a 3-year contract and added language that would permit the Respondent to hire new employees for 30 percent less for 12 months, and 20 percent less for a second 12-month period before going to the regular contract rate. Additionally, the Union reduced its proposal for a wage increase from \$1 an hour each year to 35 cents an hour for each year of the 4-year contract. The Union withdrew its proposal for an additional paid holiday and an additional week of vacation. Likewise, the Union reduced the Respondent's proposed contribution to the health and welfare and pension funds and proposed leaving the contributions at 1992 levels for the first 2 years of the contract. Lastly, the Union reduced its severance pay proposal from 45 hours to 40 hours of straight time pay for each year that an employee worked at GATX.

Respondent officially became aware in late July 1994 that it was not the successful bidder for the Ohio Liquor account. Records from the bidding process showed that the successful bidder had labor costs of \$4.30 per hour less than GATX. Accordingly, due to the loss of this major account, GATX decided to change its bargaining strategy to reduce its costs in order to competitively compete in the Cleveland market and to address the direction the business was heading. First, Respondent held an all employee meeting to apprise everyone that the Ohio Liquor account was lost and that GATX would be downsizing the operation due to the loss of this business and an increase in rent from .06 to .18 cents a square foot. By confidential memorandum dated August 8, from Holland Road Manager Moore to Regional Vice President Conley and Director of Human Resources Alman, a plan to downsize the Cleveland operation and reduce the staff was proposed. In particular, the plan suggested a reduction in the warehouse staff (employees represented by Local 507) from 24 to 10 employees, accomplished in a two phase layoff over the next 60 to 90 days. Lastly, the memorandum pointed out the impact that severance pay would have on the proposed plan to reduce union labor.

3. September 20: negotiation session 3

The third negotiation session began by Respondent providing the Union with a contract proposal consisting of 11 items. In attendance at this session, in addition to the same complement of negotiators in the two previous meetings, was Regional Vice President Conley.

The parties went over each of the items that Respondent listed in its contract proposal. Briefly, the Respondent proposed to eliminate contract language in article I of the current contract to limit recognition to the Holland Road facility, delete any reference to trucking operations, and to change the date of the contract to July 1. In article II, the Respondent proposed to eliminate the current exclusive hiring hall arrangement and to delete language in the current contract that if GATX opens a new facility within 175 miles of Holland Road, it would recognize Local 507 as the bargaining agent for those employees. In its third proposal, the Respondent wanted to delete language in article III of the current contract guaranteeing overtime after working 8 hours per day, reduce the number of stewards, eliminate the continuation of wage rates if an employee transfers to another classification, and to delete the provision that all existing benefits enjoyed by employees will continue with the execution of any new agreement. Proposal four of Respondent's contract offer provided for a 2-year contract agreement, a reduction of \$1 per hour in wages, and the elimination of the ratification bonus. Respondent's proposal five, deleted provisions in article XIII of the current contract that concerned subcontracting issues. Proposal six called for the deletion of current contract provisions in article XV dealing with liability of the Union for unauthorized conduct. Respondent's proposals seven and eight called for the elimination of the Union's health and welfare and pension funds found in articles XVI and XVII of the current contract to be replaced with independent GATX health insurance and 401(k) plans. In proposals 9 and 10, the Respondent sought to eliminate the charitable, educational, and recreational fund and the severance pay provisions found in articles XVIII and XX of the current contract. Lastly, the Respondent proposed that the

contract should remain in full force from July 1 to June 30, 1996, and reserved the right to add to, delete, and modify its proposals during the course of negotiations.

During the September 20 negotiation session, the parties had extensive discussions concerning Respondent's proposal to eliminate the current health and welfare and pension fund plans set forth in the parties' collective-bargaining agreement. Freeman testified that he told Respondent's negotiators that these benefits are what employees are entitled to get for the rest of their life having worked and sacrificed for many years to obtain. He said, "And now they did all that to get to this point that you're saying you're going to take it away, and that's a problem." This session lasted approximately 2 hours and ended with the parties scheduling the next meeting for October 5.

Events Between September 20 and the Next Negotiation Session on October 5

On October 5, Local 507 members and employees of GATX sent a letter to Union Secretary-Treasurer Freeman. The letter stated in pertinent part that the signatories absolutely refused to consider and asked Freeman to refuse to consider replacing the existing health and welfare package with any version proposed by GATX, to refuse to consider replacing the existing union pension benefits with the GATX proposal of a 401(k) plan, to refuse to consider the GATX proposal to eliminate the payment of severance pay, and to refuse to consider the GATX proposal for a \$1-an-hour reduction in wages. The letter concluded by stating, "regardless of the outcome, we absolutely refuse to surrender our pride and dignity to those who treat us with such contempt."

4. October 5 and 6: negotiation sessions 4 and 5

In the fourth negotiation session on October 5, Freeman gave the above-noted letter to Respondent and said "that the men had given him marching orders and he was not going to fuck with their benefits." Thereafter, the parties continued to discuss individual items contained in Respondent's September 20 contract proposal. For example, Freeman questioned why the Respondent wanted to eliminate severance pay since it only costs money if you have intentions of getting rid of people. Freeman told Respondent that the main issue is how to get you through these 2 years with either no cost or little cost.

With regard to health and welfare and the pension funds, Alman said that GATX needed some relief for 2 years and they wanted to get it through these funds. Freeman said that "if a guy takes a cut in his pay and then has to turn around and pay into the health and welfare and then put money into the 401(k), that would be something very, very difficult to do." Alman told the union negotiators that all GATX non-union facilities and the four union facilities in the region in which Cleveland operates are under the same health insurance and 401(k) plans that is being offered to the Union under Respondent's contract proposal. Likewise, the severance pay package for nonunion and union facilities in the region is the same as is being offered to the Union.

Freeman testified that during the October 5 session, the Respondent dropped proposal one (limiting recognition to the Holland Road facility and the date of the contract-art. I and preamble of the current contract), proposal two (deleting the

union hiring hall and following the work to a new location within 175 miles-art. II of the current contract) and a portion of proposal four (dealing with classifications-art. IV of the current contract) from its September 20 contract offer.

In the negotiation session on October 6, the parties continued their dialogue concerning the health and welfare and pension plans contained in the current contract and the reasons the Respondent preferred to transfer the Local 507 employees into the companywide GATX health insurance and 401(k) plans.

5. October 12: negotiation session 6

The parties met at the union hall on October 12, with Attorney Andrew Martone and Conley appearing with Alman and Moore on behalf of GATX and Terry Freeman principally representing the Union.

Discussions continued to take place concerning the health and welfare and the pension plans presently enjoyed by Local 507 employees. Respondent told the Union that it has 3000 employees and it wanted consistency with all its employees in the same health insurance and 401(k) plans. The Union said it was willing to reduce the Respondent's contribution to the health and welfare and pension plans but was unwilling to abandon these entitlements and move into the more costly health insurance and 401(k) plans sponsored by GATX.

With respect to severance, the Union told GATX negotiators that there is no way that it could ask people to take reduced severance, since the whole idea of severance is to get employees money if GATX closes.

Concerning a decrease in wages of \$1 an hour, the Union told Respondent negotiators that it was willing to hold the line on operating costs and would reduce the amount GATX contributes to the health and welfare and pension plans but it could not agree to a decrease of \$1 an hour in wages.

During this negotiation session, Respondent told the Union that it was withdrawing its proposal five (union jurisdiction and subcontracting-art. XIII of the current contract) and proposal nine (charitable, educational, and recreational fund-art. XVIII of the current contract) from its September 20 contract offer.

6. October 27: negotiation session 7

The seventh negotiation session occurred on October 27, with the same parties who attended the October 12 meeting.

Freeman testified that there were four open issues that still had to be resolved as the Respondent had now withdrawn all other proposals from its September 20 offer. Those open issues included the Union's health and welfare and pension plans, the Union's proposed wage increase in each year of the 4-year contract and the issue concerning severance pay. The Respondent agreed with this assessment and stated during this session that in order to remain competitive it preferred that all GATX employees transfer into its health insurance and 401(k) plans. Concerning the wage increase, the Respondent stood on its prior proposal to reduce labor costs \$1 an hour during the life of the contract. Lastly, the Respondent took the position that severance pay should be capped at a maximum of 4 weeks rather than the payment of 40 hours of pay at straight time hourly rates for each year that an employee is employed by GATX.

During the course of the October 27 negotiation session, the Union offered a number of plans to reduce the Respondent's health and welfare and pension contributions in an effort to secure a contract. The Union also reduced the yearly increase in wages by 10 cents each year during its proposed 4-year contract. Respondent was unwilling to accept these proposals and firmly maintained, in order to remain competitive in the Cleveland market, that it needed substantial relief in wage reduction and freedom to get out of the Union's health and welfare and pension plans.

At the conclusion of the October 27 negotiation session, Freeman testified that the parties continued to be apart on four significant issues. First, the Union took the position that no cap should be placed on the payment of severance benefits while the Respondent stood firm on a cap of 4 weeks. Second, in regard to wages, the Union wanted spread increases in each year of the proposed 4-year contract while the Respondent sought a \$1-an-hour decrease. Lastly, the Union stood firm on retaining the health and welfare and pension plans presently in the current contract while the Respondent wanted Local 507 employees to move into the GATX health insurance and 401(k) plans.

7. November 1: negotiation session 8

During this meeting, the Respondent informed the Union that it was officially dropping all of its proposals made on September 20, with the exception of its insistence of a \$1-an-hour reduction in wages, moving the employees to the GATX health insurance and 401(k) plans, and to limit severance pay to a 4-week maximum.

In an effort to meet some of Respondent's economic needs, the Union continued to propose a reduction in pension contributions required from GATX under the parties' contract.

During the meeting, Freeman requested Alman to provide the Union with a written document of where Respondent was headed and its position on the remaining issues outstanding between the parties.

Events Between November 1 and the Next Negotiation Session on November 17

On November 1, Respondent's chief negotiator, Alman, sent a letter to Freeman that states as follows:

This letter is to summarize the parties' positions on the remaining open issues.

1. Wages. While the Company has been insisting on a \$1.00 per hour wage concession to assist it in bidding against non-union competition and the Union, at a minimum, wants a wage increase of \$.25/\$.25/\$.25/\$.25 over the next four years, you have told me in no uncertain terms that the Union would never accept or agree to a wage concession because the employees are not willing to "subsidize" the Company.

2. Health Insurance. The Company wants to switch the employees to its health insurance plan, which will both save the Company money and allow the Company to maintain uniform coverage at its locations. The Union's position is that under no circumstances will the Union either allow the Company to stay in the Union's plan at the same premium cost as the Company's plan or change from the Union plan to the Company plan.

3. Retirement. The Union refuses to move to the Company's 401(k) plan which the Company has proposed in order to maintain a uniform plan for its facilities, cut its costs to allow it to successfully bid against non-union competition and avoid potential future withdrawal liability. The Union demands that the Company stay in the Union's multi-employer plan with a payment structure ranging from \$65.00 to \$85.00 per month.

4. Severance. The Company proposes to change its severance structure to limit severance to a four-week maximum. Because the Union feels that severance is a benefit that the employees will need in the event that the Company closes its doors, the Union absolutely refuses to agree to any change in the current severance structure. I believe the above summarizes all remaining open issues. Terry, if I have inaccurately stated your final position or the Company's final position or if you believe there are any other open items, please contact me immediately. While you have repeatedly told me that your offer represents all you can give, I again ask that you allow your members to vote on the Company's proposal and contact me with the (hopefully successful) results of the vote.

Freeman testified that he did not prepare a specific letter in response to Alman's November 1 letter summarizing the parties' positions on the remaining open issues. Rather, on November 2, he mailed Alman a new revised proposal.

In particular, the Union reduced its wage increase in each year of its proposed 4-year contract from 35 to 25 cents, permitted new employees to be paid 30 percent less per hour for the first year of the contract and 20 percent less per hour in the second year of the contract and set GATX's pension contribution at \$60 contract ratification, which is a reduction of \$15 for 1 year and after the first year set the contribution at \$65, which is \$10 less than the prior contract proposal and after 2 years of the contract set the contribution at \$70, which is \$5 less the Respondent's current pension contribution.

On November 14, GATX Holland road manager, Moore, sent the following letter to all remaining 63 customers of the facility except for the B.F. Goodrich account:

We at GATX Logistics-Cleveland Operations have experienced a significant change in our business climate which is forcing us to make some correspondingly significant changes to our services in this area. As a result we must regretfully inform you that we will no longer be able to service your company at our Brook Park, Ohio location.

Your business has been greatly appreciated over the years and we wish you the very best. To help you move forward, we have identified LTI Enterprises as a professional public warehouse company in the area that you may want to consider. LTI has offered to provide comparable warehousing services at the same rates currently in place with us. LTI is located at 16845 Granite Road, Cleveland, Ohio 44137-4398 and can be reached by phone at (216) 475-7400.

Again, we regret having to lose your business. Please accept this letter as 30 days notification, per our contract, of the cancellation of that contract. All outstand-

ing charges must be paid in full and product removed from our building by Friday, December 16, 1994.

Please do not hesitate to call me if I can be of assistance during this transition.

8. November 17: negotiation session 9

During this negotiation session the parties discussed their respective positions and the Union's revised proposal that had been sent to Respondent on November 2. At the conclusion of this meeting, there was a general understanding of each others position but no new proposals were exchanged by the parties.

Events Between November 17 and the Next Negotiation Session on December 6

On November 22, Alman sent a letter to Freeman which states as follows:

At our last meeting, you made it clear, while the union is unwilling to move from its final offer (which you made at our prior meeting on October 27, and reduced to writing on November 2) you wanted a written summary of the Company's final offer. This offer was initially made at our meeting of October 27, 1994, subsequently submitted in writing to you on November 2, 1994 and reaffirmed at our negotiations meeting last week, November 17, 1994.

Other than the changes listed below, all terms and conditions of the prior agreement would remain in force and effect. Those changes are:

1. Wage Rates—a \$1.00 per hour across-the board wage reduction;

2. Health and Welfare—switch from the current health and welfare plan outlined in Article XVI of the expired Agreement to the Company's health insurance plan with employee contributions. The current contributions rates, employee benefits overview and description of the Plan are enclosed.

3. Retirement—the Company would cease contributing to the current pension (listed in Article XVII of the expired Agreement) and allow the covered employees to participate in its 401(k) plan. The Summary Plan Description is enclosed.

4. Severance Pay—the Company would change Article XX by amending the second sentence to read, "An eligible employee's compensation for his displacement shall be on the basis of forty (40) hours of severance pay (at his straight-time hourly rate of pay) for each year of employment, with a maximum of four (4) weeks severance pay being awarded to any employee under this policy."

While I understand it is your position that your members would likely reject the Company's offer, I still request that you put it to a vote.

On November 29, Freeman went to the Holland Road facility and presented the Respondent's final offer to the employees. The membership unanimously voted to turn down the Respondent's contract offer. At the conclusion of the vote, Freeman went to see Holland Road Manager Moore. He told Moore that the membership turned down the Respondent's contract offer and said, "Get hold of Alman or

whoever you need to get hold of and tell him that we're ready to negotiate some more." Moore replied, "that he would pass on the information to Robert Alman."

On December 1, Alman sent a letter to Freeman which states:

This is to notify you that since the Union has rejected the Company's final contract proposal, we intend to implement our final proposal on Monday, December 5, 1994.

On December 5, a memorandum to all Local 507 employees was posted at the Holland Road facility which states:

The Union recently rejected the Company's final offer for a negotiated labor agreement. Therefore, effective today, Monday, December 5, 1994, the following proposed contract changes will be implemented.

Wages—Reduction of \$1.00/hour from existing wage rate.

Health Insurance—The Company will cease contributing to the Union's plan. All employees will have medical coverage as established in the attached plan.

Retirement—The Company will cease contributing to the Union plan. All employee's will be eligible to join the 401(k) plan. A copy of the plan is attached.

Severance—The new severance plan will pay one (1) weeks pay for each year of service with a maximum of four (4) weeks severance pay.

Other than these changes, the other portions of the prior contract remains in effect.

Freeman was given the December 5 memorandum by GATX employees and immediately telephoned Alman. He said to Alman, "How could you do this if we're not at impasse?" Alman agreed to schedule a meeting for December 6 in Cleveland at the union hall.

9. December 6: negotiation session 10

On the day after implementation of the Respondent's final offer, the parties met on December 6, for their last negotiation session. Respondent was represented by Alman, Conley, Moore, and Attorney Martone while the Union was represented by Freeman and the local committee.

At the commencement of the meeting, Freeman gave a new revised contract proposal to Respondent. While it did not dramatically differ from prior union contract proposals, it made several changes. In this regard, it held the line on Respondent contributions to the pension plan only requiring a \$5 increase during the last year of the proposed 4-year contract. The proposal did not include a 25-cent wage increase in the first year of the contract but did include such an increase in the remaining 3 years of the contract. Lastly, the Union's proposal permitted the Respondent to hire new or seasonal employees for less than \$8 an hour during the first 2 years of the contract.

During the meeting, the Union told Respondent that they disagreed that impasse had been reached, that throughout negotiations the Union made numerous concessions and considerable movement had been undertaken and they were ready to continue to negotiate in order to achieve an agreement. Respondent told the Union that since it would not permit GATX employees to move out of the present health and wel-

fare and pension plans or agree to a \$1-an-hour decrease in wages and to cap severance payments, that the parties had legitimately reached impasse and Respondent was privileged to implement its last best offer.

The meeting ended without any meaningful resolution and in February 1995, the Union filed the subject unfair labor practice charge.

Events after the December 6 Negotiation Session

Between December 6 and 16, the layoff of six Local 507 employees took place at the Holland Road facility.³ A second layoff occurred in February 1995 and reduced the Local 507 contingent to six employees.

B. Analysis and Conclusions

Counsel for the General Counsel argues that throughout negotiations, Respondent negotiated in bad faith and with no intention of entering into a final or binding collective-bargaining agreement with the Union and that Respondent unilaterally and unlawfully implemented its contract proposals following an unlawfully declared impasse.

The Union argues that Respondent tailored its proposals with a predesigned effort to frustrate agreement, that Respondent violated the Act by unilaterally implementing its proposals in the absence of a bargaining impasse and used the cover of reaching impasse to layoff the majority of Local 507's work force at the Holland Road facility.

Respondent contends that at all material times it engaged in good-faith bargaining, it made substantial concessions by withdrawing a majority of its proposals previously submitted on September 20, and by December 5, it was evident that the Union steadfastly refused to permit employees to be taken out of the existing health and welfare and pension plans nor would it agree to a wage reduction of \$1 an hour or to cap severance pay. Accordingly, the parties legitimately reached impasse and the Respondent was privileged to implement its last best offer.

The Board has defined impasse as the point in time of negotiations when the parties are warranted in assuming that further bargaining would be futile. *Pillowtex Corp.*, 241 NLRB 40, 46 (1979). "Both parties must believe that they are at the end of their rope." *PRC Recording Co.*, 280 NLRB 615, 635 (1986), *enfd.* 836 F.2d 289 (7th Cir. 1987).

From the inception of negotiations, Respondent told the Union that its sole concerns were economic and that GATX could be more profitable being a landlord than being in the public warehousing business.⁴ Indeed, when Respondent became aware in late July 1994 that it lost the Ohio Liquor account and shared this information with the Union, it was common knowledge that 75 percent of the Holland Road employees worked on this account. It was at this time that Re-

spondent changed its bargaining position, having gained information from the bidding process that the successful bidder for the liquor account had labor costs of \$4.30 per hour less than GATX. Likewise, Respondent's August 8 internal memorandum from Moore to Conley and Alman, dealing with staff reductions, is consistent with this strategy.

The evidence establishes that the Respondent did not submit any contract proposals during the first two negotiation sessions on July 6 and 20. It was not until the third negotiation session on September 20, that the Respondent submitted its first contract proposal for a 2-year period. Regional Vice President Conley credibly testified that Respondent's 2-year contract proposal was made because it ran synonymous with the Holland Road lease in addition to financial commitments within the Cleveland market and if there was viability in that market, GATX needed a couple of years to validate that. The majority of Respondent's September 20 proposals including limiting overtime and premium pay for union shop stewards, the removal of the ratification bonus, and restrictions on the ability to cross picket lines in addition to the four proposals that ultimately went to impasse were economic issues submitted to the Union in order to permit GATX to competitively compete in the Cleveland market. As a continuing part of this strategy, and consistent with GATX's decision to remove itself from the public warehousing sector of the market because it lost its lease on the Holland Road facility and faced a 300-percent rent increase, Respondent sent the November 14 letter to the remaining 63 warehouse customers, except the B.F. Goodrich account, that it would no longer be able to service their accounts.

At the conclusion of the October 27 negotiation session, Alman prepared and sent on November 1, a letter to the Union that summarized the parties' positions on the remaining open issues. By October 27, the Respondent had withdrawn all proposals from its September 20 submission, except for the remaining open issues described in the November 1 letter of wages, health insurance, retirement and severance. Alman specifically stated, "Terry [Freeman] if I have inaccurately stated your final position or the Company's final position or if you believe there are any other open items, please contact me immediately." Freeman testified that he did not contact Alman or specifically respond to the content of the November 1 letter. Rather, on November 2, the Union submitted a new revised proposal which basically tracked the position Alman ascribed to the Union in the November 1 letter.⁵

By letter dated November 22, from Alman to Freeman, the Respondent again provided a written summary of its final offer to the Union. It stated that all terms and conditions of the prior agreement would remain in full force and effect. The changes to the agreement called for a \$1-per-hour across-the-board wage reduction, switching from the current health and welfare plan outlined in article XVI of the agreement to the Respondent's health insurance plan with employee contributions, ceasing to contribute to the current pension fund listed in article XVII of the agreement, and allow-

³Records introduced in evidence at the hearing show that between January 29 and September 20, the layoff of seven employees took place at the Holland Road facility. On the date of the hearing, February 24, 1997, there were seven Local 507 employees working at the Holland Road facility.

⁴In contract warehousing, the provider has a long-term storage contract rather than a month-to-month agreement, and it is much more stable and cost effective than public warehousing. The Holland Road Income Statement for 1994 shows that GATX lost money in each successive month between August and December 1994 for a total of \$187,300.

⁵I find that Alman's November 1 letter and the Unions November 2 revised contract proposal crossed in the mail. Accordingly, Freeman did not prepare the November 2 revised proposal (the majority of which was discussed at the October 27 negotiation session), having the benefit of Alman's November 1 letter.

ing the covered employees to participate in Respondent's 401(k) plan, and limiting the maximum amount of severance pay for a covered employee to a period of 4 weeks. The November 22 letter concluded with a request to take the Respondent's offer to the employees for a vote.

On November 29, the Local 507 employees unanimously rejected the Respondent's final contract offer and by letter dated December 1, Alman notified Freeman that since the Union rejected the Respondent's final contract proposal, it intended to implement its final proposal on Monday, December 5. By memorandum dated December 5, to all Local 507 employees at the Holland Road facility, the Respondent's final contract proposal was implemented.

On these facts and evaluating the Respondent's overall conduct, I am not persuaded that the Respondent has demonstrated the kind of intransigence and insistence on its own proposals which evidences bad faith. After the parties completed their seventh negotiation session on October 27, the Respondent made a number of significant concessions and withdrew proposals previously made on September 20 dealing with the use of the hiring hall, payment of overtime, classification and wage rates, the duration of the contract, provisions dealing with union picket lines, and contributions to the charitable, educational, and recreational fund.

When negotiations finally broke down following the Respondent's submissions on November 1 and 22 of its final contract offer, only four of the major items designated by the Union remained unresolved: wages, health and welfare, pension, and severance. While the Union was willing to reduce the amount of Respondent's contributions to the health and welfare and pension funds, and continued to make revised proposals to this effect up to and including December 6, it steadfastly refused to consider moving into any other health insurance plan or pension fund and stated that it would only consider the funds set forth in the parties' agreement. Likewise, the Union was unwilling to move from its proposed wage increases during the life of the 4-year contract and would not agree to a cap on severance pay. This position is consistent with the written marching orders Freeman received on October 5 from the Holland Road Local 507 employees, and it permeated the discussions between the parties throughout negotiations. Indeed, on cross-examination, Freeman admitted that during negotiations he refused to consider moving into the Respondent's 401(k) plan, refused to consider moving to the Respondent's health insurance program, refused to consider reducing his demands with respect to severance pay and would not give the Respondent a reduction of wages in the amount of \$1 an hour. Although the Respondent was unwilling to agree to the Union's demands on these four subjects, its failure to do so does not constitute a manifestation

to avoid agreement. As stated in *Challenge-Cook Bros.*, 288 NLRB 387, 389 (1988), "a party may stand firm by a bargaining proposal legitimately proffered." Here, the record shows that the parties took firm positions regarding wages, health insurance, pensions, and severance pay from which neither was willing to budge. Under these circumstances, I cannot conclude that by maintaining and adhering to its position on these subjects, the Respondent violated the Act. *Chevron Chemical Co.*, 261 NLRB 44 (1982).

I further find that the parties were at impasse on December 5, when the Respondent implemented its final offer. As stated above, the Respondent submitted its final offer on November 1 and 22, but the Union rejected it on November 29 because it sought a wage reduction, a cap on severance pay and the Union wanted to maintain its existing health and welfare and pension plans. The Respondent made clear from the outset of negotiations that economic relief, due primarily to the loss of the Ohio liquor account, was of an immediate, central and overriding concern to it. However, equally clear throughout negotiations was the fact that the concessions sought by Respondent were totally unacceptable to the Union. Between the Respondent's submission to the Union of its final offer and its implementation, neither party made any substantive movement in the critical areas set forth above, suggesting that the parties were deadlocked and that further bargaining would have been futile. Therefore, I find that on December 5, when the Respondent implemented its final offer a valid impasse existed and that the implementation of the final offer was lawful. *Bloomsburg Craftsmen*, 276 NLRB 400, 404 (1985).

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, by implementing its final contract proposal on December 5, 1994, did not violate Section 8(a)(1) and (5) of the Act because a valid impasse existed privileging the implementation of the final offer.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

The complaint is dismissed.

⁶If 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.