

10-0702-cv  
District Lodge 26 v. United Technologies Corp.

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3 August Term, 2009

4  
5 (Argued: June 9, 2010

Decided: July 8, 2010)

6 Docket No. 10-0702-cv

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8 DISTRICT LODGE 26, INTERNATIONAL ASSOCIATION OF MACHINISTS &  
9 AEROSPACE WORKERS, AFL-CIO,

10 Plaintiff-Appellee,

11 - v. -

12 UNITED TECHNOLOGIES CORPORATION, PRATT & WHITNEY,

13 Defendant-Appellant.

14 -----  
15 Before: MINER, SACK, and HALL, Circuit Judges.

16 Appeal from a judgment of the United States District  
17 Court for the District of Connecticut (Janet C. Hall, Judge).  
18 Following a bench trial, the district court issued a declaratory  
19 judgment to the effect that the defendant's announced plans to  
20 close two facilities in Connecticut and move the work performed  
21 at those facilities outside the State violated the collective  
22 bargaining agreement between the company and the plaintiff union.  
23 The district court issued a permanent injunction prohibiting the  
24 company from implementing the plans during the term of the  
25 collective bargaining agreement, which ends later this year.

26 Affirmed.

1 ALLAN B. TAYLOR (Steven M. Greenspan and  
2 Douglas W. Bartinik, on the brief), Day  
3 Pitney LLP, Hartford, CT, for Defendant-  
4 Appellant.

5 GREGG D. ADLER (Mary E. Kelly, on the  
6 brief), Livingston, Adler, Pulda,  
7 Meiklejohn & Kelly, P.C., Hartford, CT,  
8 for Plaintiff-Appellee.

9 RICHARD BLUMENTHAL, Attorney General of  
10 Connecticut, Hartford, CT, for amicus  
11 curiae State of Connecticut.

12 SACK, Circuit Judge:

13  
14 The defendant-appellant United Technologies  
15 Corporation, Pratt & Whitney Division ("Pratt"), appeals from a  
16 February 18, 2010, declaratory judgment issued by the United  
17 States District Court for the District of Connecticut (Janet C.  
18 Hall, Judge) following a five-day bench trial. The court held  
19 that Pratt's announced plans to close two of its airplane engine  
20 overhaul and repair facilities in Connecticut and move the work  
21 performed at those facilities out of the State violated its  
22 currently-in-force collective bargaining agreement (the "CBA")  
23 with the plaintiff-appellee, District Lodge 26 of the  
24 International Association of Machinists and Aerospace Workers,  
25 AFL-CIO ("District Lodge" or the "Union"). The court enjoined  
26 the implementation of those plans during the remaining term of  
27 the CBA. The court concluded that the plans fail to comply with  
28 one of the thirty-four "Letters of Agreement" incorporated by  
29 reference in the CBA, "Letter 22," which requires Pratt to "make  
30 every reasonable effort to preserve" work performed by members of  
31 the Union, and which defines "every reasonable effort" to include

1 "pursuing actively and in good faith the goal of preserving the  
2 work" and assigning "extra value" in its decision-making to  
3 choices that would preserve the work. Letter 22, at Section 2.

4 The district court based its conclusion that in  
5 developing and seeking to implement the closure plans, Pratt was  
6 not pursuing, in good faith, the goal of preserving work within  
7 the bargaining unit on a wide variety of factual findings, many  
8 of which are not challenged on appeal and none of which, we  
9 conclude, were clearly erroneous. These findings include: that  
10 Pratt exhibited an unwillingness to consider alternative plans  
11 that would not generate annual recurring savings through 2013;  
12 that it refused to measure savings under any metric other than  
13 earnings before interest and tax ("EBIT"); that it abandoned  
14 negotiations with the State of Connecticut, which hoped to  
15 persuade Pratt not to remove work from the State;<sup>1</sup> and that it  
16 failed to accord "extra value" to options that would avoid  
17 closing the Connecticut facilities in question before developing  
18 and proposing plans to do so.

19 The district court concluded that Pratt had not made,  
20 and was not making, "every reasonable effort" to preserve  
21 bargaining unit work as required by the CBA. We find no error in  
22 the district court's application of the fact-intensive inquiry  
23 bargained for by the parties in Letter 22 or in the district  
24 court's determination that Pratt failed to pursue the goal of

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<sup>1</sup> The State participates in this appeal as amicus curiae.

1 preserving bargaining unit work in good faith. We therefore  
2 affirm the judgment.

3 **BACKGROUND**

4 Pratt, a division of United Technologies Corporation  
5 ("UTC"), engages in the design, manufacture, and sale of  
6 commercial and military aircraft engines. It also performs  
7 maintenance, repair, and overhaul of such equipment. It  
8 maintains several facilities in Connecticut, two of which are the  
9 focus of the present controversy: the Cheshire Engine Center  
10 ("Cheshire"), a site for overhaul and repair work, and the  
11 Connecticut Airfoils Repair Operations ("CARO"), a site for  
12 turbine airfoil repairs. District Lodge is the exclusive  
13 bargaining agent for employees at the two Connecticut facilities.  
14 It also represents other Pratt employees at other installations.

15 On December 3, 2007, Pratt and District Lodge entered  
16 into the CBA, which is effective, by its terms, until December 5,  
17 2010. Pursuant to the CBA, District Lodge agreed that it would  
18 "not call or sanction any strike . . . during the period of [the  
19 CBA]." CBA art. 24. The CBA also provides that Pratt "will  
20 retain the sole right . . . to determine the number and location  
21 of its plants . . . [and] the assignment of all work to employees  
22 or other persons." Id. art. 1.

23 Article 27 of the CBA details the procedures that Pratt  
24 is required to follow before closing a facility or transferring a  
25 business unit governed by the CBA. Among other things, if Pratt  
26 announces a plan to close a facility, it is required to make

1 itself available to meet and confer with the Union about such a  
2 plan. See id. art. 27. Article 27 also provides, however, that  
3 "[t]he final decision regarding closing a plant or transferring a  
4 business unit rests solely with [Pratt]." Id. It is undisputed  
5 that Pratt has complied with the procedural requirements set  
6 forth in Article 27.

7           There are thirty-four "Letters of Agreement"  
8 incorporated into the CBA. One of these, Letter 22, is the focus  
9 of this action. It provides, inter alia: "[T]he Company [Pratt]  
10 will make every reasonable effort to preserve the work presently  
11 and normally manufactured by employees [covered by the CBA]."  
12 Letter 22 § 2(A). "[E]very reasonable effort" is further defined  
13 as:

14           pursuing actively and in good faith the goal  
15 of preserving the work presently and normally  
16 manufactured by employees covered by [the  
17 CBA], while giving reasonable consideration  
18 to the Company's own interests, including the  
19 profitability of its operations. The Company  
20 will . . . assign extra value in its  
21 decision-making to choices that preserve such  
22 work in the bargaining unit. As part of any  
23 "meet and confer" process undertaken pursuant  
24 to Article 27, the Company will describe the  
25 efforts made to comply with this Letter and  
26 will provide the Union the opportunity to  
27 propose other reasonable efforts, including  
28 modifications to the collective bargaining  
29 agreement, which the Company will consider in  
30 good faith. In no event will "every  
31 reasonable effort" require the Company to  
32 make a capital investment, increase the size  
33 of the workplace, or require lower profits.

34 Id. § 2(b)(4).

35           Over the course of the past three years, Pratt has  
36 developed restructuring plans that contemplate the closure of

1 Cheshire and CARO. According to those plans, it would begin  
2 relocating work from Cheshire in 2010, and close the facility in  
3 2011. It would also begin relocating work from CARO in 2010 and  
4 close that facility in the same year. Implementation of the  
5 plans would cost approximately 832 bargaining unit employees  
6 their jobs.

7           The closure plans for Cheshire and CARO evolved  
8 somewhat differently. Cheshire has historically performed less  
9 well than Pratt's other engine repair facilities. In July 2008,  
10 Pratt foresaw that the national economic downturn and the merger  
11 of Delta Airlines and Northwest Airlines would likely further  
12 worsen Cheshire's results beginning in early 2010.<sup>2</sup> The  
13 supervisor of the facility, Thomas Mayes, recommended to Pratt  
14 that Cheshire be closed and the work be transferred to a facility  
15 outside Connecticut. Pratt's President, David Hess, gave his  
16 support to the closure plan in or about January 2009. Pratt  
17 requested funding for the closure plan from its parent, UTC, on  
18 February 13, 2009. With the approval of UTC, Pratt announced the  
19 plan to the Union five months later, on July 21, 2009.

20           In arriving at his recommendation, Mayes considered  
21 three alternatives: closing the facility but transferring the  
22 work to another bargaining unit facility in Connecticut; reducing  
23 the number of product lines at Cheshire; and allowing volume to

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<sup>2</sup> Pratt had a contract with Northwestern that was cancelled after the merger because Delta operates its own engine repair facility that would accommodate the Northwestern work done by Pratt.

1 reduce by attrition through non-renewal of customer contracts.  
2 He rejected all three, however, because they did not offer  
3 financial returns equivalent to those that would likely be  
4 achieved through closing the plant. In comparing the value of  
5 the closure plan to the value of the alternatives, Mayes did not  
6 assign extra monetary value to workforce preservation.

7 When Pratt presented the closure plan to UTC for  
8 approval, it also presented alternative programs that were  
9 projected to generate lower savings over a recurring period, but  
10 it did not pursue funding for any such program. In making that  
11 decision, Pratt did not assign extra monetary value to workforce  
12 preservation. It did represent to UTC, however, that one of its  
13 objectives was to avoid disruption to the workforce.

14 Before Pratt received approval for the closure plan and  
15 announced it to the Union, it implemented, at Mayes' insistence,  
16 various short-term measures at Cheshire that succeeded in making  
17 some improvement to its performance.

18 Pratt began considering a plan to close CARO in 2007,  
19 at which time the facility was performing poorly. Pratt's Vice-  
20 President of Global Repair Services, Tom Hutton, initially  
21 declined to pursue a closure option, in part because of the value  
22 he attached to work preservation. Drastic operational  
23 improvements at CARO were accomplished in 2008 by scaling down  
24 its operations. Nevertheless, in February 2009, Hutton  
25 recommended closing the facility, a move he estimated would yield  
26 approximately \$20 million in annual recurring savings measured in

1 terms of EBIT. Even after Hutton proposed the closure plan,  
2 Pratt made efforts to improve performance at CARO.

3 Pratt President Hess agreed with the proposal. None of  
4 the decision-makers appears to have assigned "extra value" at  
5 this stage of the process to alternatives that would preserve  
6 bargaining unit work. The closure plan was -- like the plan to  
7 close Cheshire -- presented to UTC for approval and funding in  
8 February 2009. And -- also like the Cheshire plan -- Pratt  
9 announced it to the Union, with the approval of UTC, in July  
10 2009.

11 The Union exercised its right under Article 27 to  
12 engage the company in a meet-and-confer process, during which the  
13 proposed closures of Cheshire and CARO were both discussed.  
14 Early in the process, Pratt informed the Union that the closure  
15 of the two facilities (together, the "Closure Plan") would yield  
16 \$53.8 million in annual recurring savings.<sup>3</sup> The \$53.8 million  
17 figure, which was a product of calculations using the EBIT  
18 metric, did not reflect the fact that, because several of Pratt's  
19 facilities were joint ventures, Pratt would not realize the full  
20 value of the savings achieved through the Closure Plan. It  
21 appears instead that approximately \$13 million of the projected  
22 \$53.8 million savings would be realized by Pratt's joint venture  
23 partners.

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<sup>3</sup> That forecast had in fact fluctuated widely in 2009.

1 Pratt also informed the Union that in order to persuade  
2 Pratt to keep the bargaining unit work in Connecticut, the Union  
3 would have to propose an alternative plan that would generate  
4 approximately \$40 million in annual recurring EBIT savings.  
5 Pratt intended the difference between its \$53.8 million figure  
6 and its \$40 million demand on the Union to satisfy the  
7 requirement under Letter 22 of the CBA that it assign "extra  
8 value" to plans that preserve bargaining unit work.

9 The district court found that although Pratt used EBIT  
10 to calculate its \$53.8 million savings, and insisted that any  
11 alternative plan proposed by the Union generate \$40 million in  
12 annual recurring EBIT savings, Pratt has frequently used metrics  
13 other than EBIT to evaluate business plans. It has in the past,  
14 for example, measured the net present value of a business plan in  
15 terms of the cash savings it would generate.

16 Pratt and the Union exchanged several proposals during  
17 the meet-and-confer process. Pratt never offered or considered  
18 any proposal that was not projected to generate significant  
19 savings through at least 2013. And each of Pratt's proposals,  
20 including its last, best offer, would have required Union members  
21 who were unconnected with the two facilities in question to agree  
22 to a wage reduction.

23 Throughout the meet-and-confer process, the State of  
24 Connecticut consulted with both parties. It offered Pratt  
25 assistance that it valued at \$20 million in savings per year for  
26 five years to keep the jobs in question in the State. Pratt

1 valued it at approximately \$5 million annually. The difference  
2 in valuation was at least in large part a product of Pratt's use  
3 of the EBIT metric, i.e., the State's offer would have conferred  
4 on Pratt a yearly cash benefit that was greater than \$5 million  
5 but would not have increased its EBIT by that amount. The State  
6 informed Pratt that it would be willing to provide an additional  
7 \$10-12 million over five years and that Pratt should engage the  
8 State in further talks if it was close to an agreement with the  
9 Union. Pratt did not initiate further negotiations with the  
10 State.

11 On September 8, 2009, toward the end of the meet-and-  
12 confer process, two Pratt officials exchanged emails raising, but  
13 leaving unanswered, the question of what Pratt would do if the  
14 Union succeeded in proposing an alternative plan that would  
15 generate the target savings. The district court inferred from  
16 this exchange that at least some Pratt officials were not certain  
17 that Pratt would abandon the Closure Plan even if the Union  
18 identified an alternative way to generate savings on the scale  
19 that Pratt demanded.

20 The Union never did propose such an alternative plan,  
21 however. On September 21, 2009, shortly after the conclusion of  
22 the meet-and-confer process, Pratt informed the Union that it was  
23 proceeding with the Closure Plan. The Union filed a lawsuit the  
24 next day in the United States District Court for the District of  
25 Connecticut seeking to prevent Pratt from implementing the  
26 Closure Plan.

1           Following a five-day bench trial, the district court  
2 ruled in favor of the Union. See District Lodge 26 of Int'l Ass'n  
3 of Machinists & Aerospace Workers, AFL-CIO v. United Techs.  
4 Corp., Pratt & Whitney, 689 F. Supp. 2d 219 (D. Conn. 2010)  
5 ("District Lodge"). The court concluded that the Closure Plan  
6 violated the requirement under Letter 22 that Pratt make every  
7 reasonable effort to preserve work within the bargaining unit.  
8 The court also found that the Closure Plan violated Pratt's  
9 implied covenant.

10           The district court found facts as rehearsed above. In  
11 determining that the Closure Plan was in breach of the CBA, it  
12 relied on, among other things, Pratt's refusal to consider an  
13 alternative plan that would not generate recurring annual savings  
14 through at least 2013; its refusal to measure savings under any  
15 metric other than EBIT, which the court found resulted in the  
16 overvaluation of the Closure Plan and the undervaluation of  
17 alternatives; its undervaluation of the State's proposal (also  
18 based on Pratt's refusal to look beyond EBIT savings); its  
19 failure to engage the State in negotiations to the extent offered  
20 by the State; and its failure to accord "extra value" to plans  
21 that would preserve work before the meet-and-confer process, by  
22 which time the Closure Plan had already been developed internally  
23 and proffered to the union. See id. passim.

24           In addition, in reaching its conclusion, the court took  
25 into account the September 8, 2009, emails between Pratt  
26 officials expressing doubt as to the possible consequences of an

1 alternative Union plan had it been able to generate the target  
2 savings. It also made note of two other emails. One was from  
3 the President of UTC indicating that he had already decided that  
4 he "[would] not support" a request from the State "not to go  
5 ahead with [the closure of] Cheshire" before the meet-and-confer  
6 process had concluded. Id. at 236. The other was from the chief  
7 human resources officer of UTC acknowledging that the assistance  
8 proposed by the State, which the State valued at \$20 million, but  
9 Pratt valued at \$5 million, may actually "benefit" Pratt "beyond  
10 the [\$5 million]," but stating that he would "feel better if all  
11 there [was] for real savings [was] the [\$5 million]." Id. at  
12 235.

13 In determining that the Closure Plan was also in breach  
14 of the implied covenant of good faith and fair dealing, the  
15 district court reasoned that Pratt had "materially evaded the  
16 spirit of [the CBA]," which the court defined as Pratt's  
17 obligation to "make a good faith effort to preserve work within  
18 the bargaining unit" by "going through the motions of complying  
19 with Letter 22 without making any genuine effort to preserve  
20 work." Id. at 266.

21 The district court entered a declaratory judgment "that  
22 [Pratt's] announced plans to close [Cheshire and CARO], and to  
23 move the work performed at those facilities outside of the State  
24 of Connecticut constitutes a breach of Letter 22 . . . ."  
25 Accordingly, it issued a permanent injunction "prohibiting the  
26 defendant from implementing the restructuring plans . . . during

1 the term of the [CBA]." District Lodge, No. 09 Civ. 1494,  
2 Judgment (Feb. 18, 2010) (Dkt. No. 72).

3 Pratt appeals.

#### 4 **DISCUSSION**

##### 5 I. Jurisdiction and Standard of Review

6 Section 301 of the Labor Management Relations Act  
7 "provides subject matter jurisdiction to the federal courts for  
8 suits involving violations of collective bargaining agreements."  
9 Baldracchi v. Pratt & Whitney Aircraft Div., United Techs. Corp.,  
10 814 F.2d 102, 104 (2d Cir. 1987). "In cases where section 301 is  
11 the basis of jurisdiction, it also requires that courts apply  
12 federal common law to determine the meaning of the agreement."  
13 Id. "While it is true that traditional contract rules do not  
14 always rigidly apply to collective bargaining agreements, courts  
15 must look to traditional state contract law, when it is not  
16 inconsistent with federal labor policy, to form the content of  
17 the federal common law governing labor agreements." Local 377,  
18 RWDSU, UFCW v. 1864 Tenants Ass'n, No. 06 Civ. 1190, 2007 WL  
19 634751, at \*11, 2007 U.S. Dist. LEXIS 14766, at \*37 (S.D.N.Y.  
20 Mar. 1, 2007), aff'd, 533 F.3d 98 (2d Cir. 2008) (per curiam);  
21 see also S. Air Crew Grp. v. S. Air, Inc., No. 3:08 Civ. 1115,  
22 2008 WL 4642939, at \*2, 2008 U.S. Dist. LEXIS 83601, at \*6 (D.  
23 Conn. Oct. 20, 2008) ("In interpreting a collective bargaining  
24 agreement, traditional rules of contract interpretation apply as  
25 long as they are consistent with federal labor  
26 policies."); cf. Bozetarnik v. Mahland, 195 F.3d 77 (2d Cir.

1 1999) (relying on cases from this Circuit and others to interpret  
2 a collective bargaining agreement).

3 "In reviewing a district court's decision in a bench  
4 trial, we review the district court's findings of fact for clear  
5 error and its conclusions of law de novo." White v. White Rose  
6 Food, 237 F.3d 174, 178 (2d Cir. 2001). "A finding is 'clearly  
7 erroneous' when although there is evidence to support it, the  
8 reviewing court on the entire evidence is left with the definite  
9 and firm conviction that a mistake has been committed." United  
10 States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948).

## 11 II. Whether Pratt Breached Letter 22

### 12 A. The "Every Reasonable Effort" Clause

13 Letter 22 required Pratt to make "every reasonable  
14 effort" to preserve work within the bargaining unit. The parties  
15 agreed upon a definition of "every reasonable effort" that  
16 focused on an "active" and "good faith" pursuit of the goal of  
17 work-preservation. The question whether Pratt pursued the goal  
18 of work-preservation in good faith is one of fact. See Habetz v.  
19 Condon, 224 Conn. 231, 237 n.11, 618 A.2d 501, 505 n.11 (1992)  
20 ("It is the burden of the party asserting the lack of good faith  
21 to establish its existence and whether that burden has been  
22 satisfied in a particular case is a question of fact."); see  
23 also Tractebel Energy Mktg., Inc. v. AEP Power Mktg., Inc., 487  
24 F.3d 89, 98 (2d Cir. 2007) ("[W]hether particular conduct  
25 violates or is consistent with the duty of good faith and fair  
26 dealing necessarily depends upon the facts of the particular

1 case, and is ordinarily a question of fact to be determined by  
2 the jury or other finder of fact."); cf. Songbird Jet Ltd., Inc.  
3 v. Amax, Inc., 581 F. Supp. 912, 925 (S.D.N.Y. 1984) ("[T]he  
4 corporate state of mind [is] a fact capable of ascertainment.");  
5 In re Motors Liquidation Co., No. 09 Civ. 7794, 2010 WL 1730802,  
6 at \*7, 2010 U.S. Dist. LEXIS 41642, at \*21 (S.D.N.Y. Apr. 28,  
7 2010) ("The Bankruptcy Court's finding of good faith . . . is  
8 either a factual question or mixed question of fact and law that  
9 must be reviewed for clear error.").

10 Because the question of whether Pratt pursued the goal  
11 of work preservation in good faith is one of fact, we review for  
12 clear error the district court's conclusion, following a five-day  
13 bench trial at which the district court had the opportunity to  
14 review the evidence and observe witnesses first-hand, that  
15 Pratt's actions did not constitute "every reasonable effort" to  
16 preserve work within the bargaining unit.

17 We are not left with "the definite and firm conviction  
18 that a mistake [w]as . . . committed" by the district court in  
19 its findings of fact requiring us to overturn the district  
20 court's ruling in this regard. U.S. Gypsum, 333 U.S. at 395.  
21 Quite the contrary. The district court could easily infer from  
22 the facts outlined above that Pratt, in developing and seeking to  
23 implement the Closure Plan, was not pursuing in good faith the  
24 goal of preserving work within the bargaining unit.

1           B. Other Asserted Errors of Law

2           The central argument in Pratt's briefing, and the focus  
3 of its presentation at oral argument, was that the district court  
4 overstepped its bounds by faulting Pratt for refusing to consider  
5 any savings that came in non-EBIT form. The district court found  
6 that Pratt's refusal to consider non-EBIT savings resulted in the  
7 undervaluation of alternative plans, including assistance offered  
8 by the State, and its insistence on measuring savings only under  
9 EBIT resulted in the overvaluation of the savings that could be  
10 achieved by the Closure Plan.

11           Pratt argues that its decision to value the Closure  
12 Plan and alternative plans exclusively in terms of their  
13 projected EBIT savings was a business decision to which the  
14 district court was required to defer. "The business judgment  
15 rule is a presumption that in making a business decision the  
16 directors of a corporation acted on an informed basis, in good  
17 faith and in the honest belief that the action taken was in the  
18 best interests of the company." In re Citigroup Inc. S'holder  
19 Derivative Litig., 964 A.2d 106, 124 (Del. Ch. 2009) (internal  
20 quotation marks omitted).

21           But it inheres in the nature of a contract relating to  
22 the business of a corporation -- a collective bargaining  
23 agreement included -- that to the extent set forth in the  
24 contract the corporation has surrendered the ability to act  
25 otherwise than according to its lawful obligations thereunder  
26 irrespective of the corporation's subsequent contrary "business

1 judgment." Each party fully exercises its business judgment by  
2 voluntarily entering into an agreement, thereby surrendering, to  
3 some extent, its free exercise thereof thereafter. Pratt cannot,  
4 then, by invoking the business judgment rule, effectively  
5 insulate from review whether it engaged in a good faith pursuit  
6 of work preservation by requiring that we defer to its method of  
7 accounting for its measures.

8 The valuation of the Closure Plan and its alternatives  
9 was plainly part of the calculus used by Pratt in determining  
10 whether to close the two Connecticut facilities. The means of  
11 that valuation are subject to review in determining whether  
12 Pratt's adoption of the Closure Plan was proper. The district  
13 court concluded that the adoption of the Closure Plan was  
14 improper. It supported that conclusion with its factual finding  
15 that Pratt has used metrics other than EBIT to evaluate business  
16 plans. And Pratt does not appear to contest the district court's  
17 finding that the consideration of savings other than in terms of  
18 EBIT may well have lowered the value of the Closure Plan and  
19 increased the value of various alternatives.

20 Pratt also argues that the district court should have  
21 deferred to its "business judgment" to consider only alternative  
22 proposals that would generate annual recurring savings at least  
23 through 2013. But again, it was contractually bound to use  
24 "every reasonable effort" to preserve work within the bargaining  
25 unit. Pratt cannot invoke the business judgment rule to argue  
26 that under the contract the sufficiency of the effort must be

1 judged on the basis of recurrent savings for three years. The  
2 contract neither says nor implies as much.

3 Pratt contends that the district court erred in  
4 attempting to judge its "subjective intent," complaining that the  
5 court effectively required it to "think good thoughts" about  
6 preserving work within the bargaining unit. Appellant's Br. at  
7 54; see also Koufakis v. Carvel, 425 F.2d 892, 906 (2d Cir. 1970)  
8 ("A breach is a breach; it is of marginal relevance what  
9 motivations led to it."). But the district court did not decide  
10 whether Pratt's thoughts were good or evil or, in the abstract,  
11 whether Pratt's motivation for doing what it did was benevolent.  
12 The court analyzed Pratt's subjective intent because Letter 22  
13 bound it to operate with the good faith pursuit of bargaining  
14 unit work. Pratt's subjective intent, insofar as it failed to  
15 pursue "in good faith" the goal of preserving work for its  
16 Connecticut employees, was the violation of the CBA.

17 The district court did not, moreover, decide whether  
18 Pratt wanted to keep the Connecticut facilities open. Indeed, it  
19 is clear, but not determinative of whether Pratt breached the  
20 CBA, that Pratt wanted to move the operations and attendant  
21 employment in question elsewhere for economic reasons. The  
22 question, as the district court recognized, was whether Pratt  
23 made a genuine effort to keep the work at issue within the  
24 bargaining unit as it was contractually bound to do, whether it  
25 wanted to or not.

1 Pratt argues that the improvements it made to Cheshire  
2 and CARO before the Closure Plan gained traction unambiguously  
3 demonstrate such an effort, but Pratt has identified no basis in  
4 law for rejecting the district court's finding that such  
5 improvements, viewed together with the other factual  
6 circumstances, did not require an overall finding of a good faith  
7 pursuit of work preservation. Pratt's decision to make short-  
8 term operational improvements to the Connecticut facilities in  
9 2008 was not inconsistent with an unwillingness to attempt in  
10 good faith to keep the facilities open in 2010.

11 The district court relied, in part, on emails from  
12 Pratt and UTC executives to determine whether Pratt was pursuing  
13 the goal of work preservation in good faith. That was not an  
14 improper method for attempting to gauge corporate intent.  
15 "[C]orporate intent is shown by the actions and statements of the  
16 officers, directors, and employees who are in positions of  
17 authority or have apparent authority to make policy for the  
18 corporation." United States v. Basic Constr. Co., 711 F.2d 570,  
19 573 (4th Cir. 1983). The emails discussed by the district court  
20 were sent by officers at Pratt and UTC, including the President  
21 of UTC. Nowhere in its briefing does Pratt dispute that these  
22 officers were in positions of authority at Pratt or, in the case  
23 of the UTC officers, had the authority to make policy that would  
24 be binding on Pratt. In any event, the emails discussed by the  
25 district court constitute only a small portion of its analysis,

1 and the district court's conclusion was independently supported  
2 by the other evidence it discussed.

3 Finally, Pratt argues that the district court erred in  
4 finding that Letter 22 required it to accord extra value to  
5 options that would preserve work within the bargaining unit  
6 before the meet-and-confer process began. The district court  
7 based its finding on a close reading of the language of the  
8 contract: Letter 22 set forth the "extra value" requirement  
9 before describing the meet-and-confer process, during which Pratt  
10 was to describe to the Union the efforts it had already made to  
11 comply with Letter 22.

12 This was a reasonable interpretation of Letter 22.  
13 Pratt has persuasively argued that the contract was ambiguous as  
14 to when the extra value had to be assigned.<sup>4</sup> "Whether []  
15 contractual language is ambiguous is [] a question of law subject  
16 to our de novo review." Aon Fin. Prods., Inc. v. Société  
17 Gènèrale, 476 F.3d 90, 95 (2d Cir. 2007). "If the language of a  
18 contract is susceptible to more than one reasonable  
19 interpretation, [] the contract is ambiguous." 19 Perry St., LLC  
20 v. Unionville Water Co., 294 Conn. 611, 623, 987 A.2d 1009, 1018  
21 (2010) (internal quotation marks omitted; alterations  
22 incorporated); In re Holocaust Victim Assets Litig., 282 F.3d

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<sup>4</sup> Indeed, the contract was also ambiguous as to how extra value was to be assigned at all, because the extra value provision was followed by a provision to the effect that Pratt was not required to accept lower profits. However, Pratt does not dispute the district court's finding that Letter 22 required extra value to be assigned to proposals that would further the goal of work preservation.

1 103, 108 (2d Cir. 2002). But the interpretation of an ambiguous  
2 contract provision is a question for the finder of fact that we  
3 review for clear error. See Tobet v. Tobet, 119 Conn. App. 63,  
4 68, 986 A.2d 329, 333 (Conn. App. Ct. 2010); In Time Prods., Ltd.  
5 v. Toy Biz, Inc., 38 F.3d 660, 665 (2d Cir. 1994). The district  
6 court's interpretation of Letter 22, well-grounded in its text  
7 and the circumstances under which it was drafted, was not clearly  
8 erroneous.

9 III. Whether Pratt Violated the Implied Covenant of  
10 Good Faith and Fair Dealing

11 The actual declaratory judgment issued by the court  
12 referred only to Pratt's breach of the CBA and not to any  
13 violation of the implied covenant of good faith and fair dealing.  
14 But the district court did find, in the course of its opinion,  
15 that the Closure Plan violated Pratt's implied covenant of good  
16 faith and fair dealing.

17 There is an implied covenant of good faith and fair  
18 dealing in every contract. See, e.g., Magnan v. Anaconda Indus.,  
19 Inc., 193 Conn. 558, 566, 479 A.2d 781, 785-86 (1984); cf. 511 W.  
20 232nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 144, 153,  
21 746 N.Y.S.2d 131, 135, 773 N.E.2d 496, 500 (2002) (New York law).  
22 However, in general, "[i]f the allegations do not go beyond the  
23 statement of a mere contract breach and, relying on the same  
24 alleged acts, simply seek the same damages or other relief  
25 already claimed in a companion contract cause of action, they may  
26 be disregarded as superfluous as no additional claim is actually  
27 stated." Hall v. EarthLink Network, Inc., 396 F.3d 500, 508 (2d

1 Cir. 2005) (internal quotation marks omitted) (California law);  
2 see also Deer Park Enters., LLC v. Ail Sys., Inc., 57 A.D.3d 711,  
3 712, 870 N.Y.S.2d 89, 90 (2d Dep't 2008) ("A cause of action to  
4 recover damages for breach of the implied covenant of good faith  
5 and fair dealing cannot be maintained where the alleged breach is  
6 intrinsically tied to the damages allegedly resulting from a  
7 breach of contract." (internal quotation marks omitted)) (New  
8 York law); Monahan v. GMAC Mortg. Corp., 179 Vt. 167, 187 n.5,  
9 893 A.2d 298, 316 n.5 (2005) ("[W]e will not recognize a separate  
10 cause of action for breach of the implied covenant of good faith  
11 and fair dealing when the plaintiff also pleads a breach of  
12 contract based upon the same conduct." (emphasis in original))  
13 (Vermont law); but see Gen. Clutch Corp. v. Lowry, 10 F. Supp. 2d  
14 124, 133-34 (D. Conn. 1998) (upholding, as non-overlapping,  
15 separate jury awards of damages for breach of employment  
16 agreement and breach of implied covenant of good faith and fair  
17 dealing, based on "the same factual evidence" or "conduct  
18 evidence").

19 We need not decide whether the district court's finding  
20 of a breach of the implied covenant of good faith and fair  
21 dealing by Pratt was clearly erroneous as a matter of fact or  
22 mistaken as a matter of law. The declaratory judgment, as noted,  
23 made no mention of any breach of the implied covenant. It was  
24 explicitly based on the district court's finding as to the breach  
25 of contract claim. We conclude that the declaratory judgment and  
26 the injunction issued by the district court were amply supported

1 by the court's finding that Pratt's Closure Plan breached Letter  
2 22 of the CBA. We therefore affirm the judgment on that basis  
3 without reaching the assertions as to the implied covenant of  
4 good faith and fair dealing.

5 **CONCLUSION**

6 For the reasons set forth above, the judgment of the  
7 district court is affirmed.