

**Ironton Publications, Inc. and Athens Printing Pressmen and Assistants Union No. 269-M, affiliated with Graphic Communications International Union, AFL-CIO-CLC.** Cases 9-CA-27061, 9-CA-30300, 9-CA-30366, 9-CA-30398, 9-CA-30450, 9-CA-30481, 9-CA-30520, 9-CA-30527, 9-CA-30633, and 9-CA-30664

May 12, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND  
BROWNING

On October 13, 1993, Administrative Law Judge Martin J. Linsky issued the attached decision. The Respondent filed exceptions and a supporting 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 brief and has decided to affirm the judge's rulings,<sup>1</sup> findings,<sup>2</sup> and con-

<sup>1</sup> No exceptions were taken to the judge's refusal to defer certain issues to the arbitral process.

<sup>2</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In sec. III,C, par. 10 of his decision, the judge inadvertently stated that two new part-time employees were hired to work in the *pressroom*, rather than the *mailroom*.

The judge inadvertently failed to include injunctive provisions in his recommended Order to remedy the violations involving the unlawful rule against discussion of wages and the unlawful discipline and probation of employees Jeff Clutters, Roger Jenkins, and Shawn Jenkins. We have modified the recommended Order and notice to employees to provide for such relief.

We agree with the judge that the Respondent violated Sec. 8(a)(3) and (1) by reducing employee Jeff Clutters' work hours. In this regard, we find that the General Counsel established by a preponderance of the evidence that Clutters' union activity was a motivating factor in the Respondent's decision and that the Respondent did not carry its burden under *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), of demonstrating that it would have reduced Clutters' hours even absent his protected concerted activities.

The judge found that the Respondent unlawfully treated pressroom employee Jack Day as a supervisor in order to reduce the size of the bargaining unit to one person. Although we agree with the judge that the assistant foreman position is not supervisory, the issue of reducing the unit to one person was neither alleged in the complaint nor litigated at the hearing. Therefore, we shall vacate the judge's finding in this regard and modify the recommended Order and notice to employees accordingly.

clusions<sup>3</sup> and to adopt the recommended Order as modified and set forth below.<sup>4</sup>

ORDER<sup>5</sup>

The National Labor Relations Board orders that the Respondent, Ironton Publications, Inc., Ironton, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Informing employees that new employees in the bargaining unit represented by the Union who choose not to become union members can participate in the Respondent's profit-sharing plan, but those bargaining unit employees who become union members cannot participate in the plan.

(b) Promulgating and maintaining a rule prohibiting employees from discussing their wages, salaries, and pay increases with other employees.

(c) Reducing the work hours of employees because they engage in protected concerted activity.

(d) Denying employees Christmas bonuses because they engage in protected concerted activity.

(e) Denying employees participation in our profit-sharing plan because they engage in protected concerted activity.

(f) Reducing employees' vacation times because they engage in protected concerted activity.

(g) Refusing to permit employees to reschedule holidays because they engage in protected concerted activity.

<sup>3</sup> The Respondent excepts to the judge's conclusion that the Respondent's unilateral imposition of daily floor mopping duties on the pressroom employees violated Sec. 8(a)(5) of the Act. The Respondent argues, inter alia, that the management-rights clause—art. IV—of the collective-bargaining agreement gave the Respondent the right to take this action without bargaining with the Union. We disagree. Although art. IV(f) does give the Respondent the right to "change . . . assignments," it permits such changes only "in accordance with the terms of this Agreement." It is at least arguable that art. II of the agreement, the recognition and jurisdiction provision, which makes the agreement applicable to all printing presses and associated devices within the pressroom, qualifies art. IV(f) so as to withhold from the Respondent the right unilaterally to impose new tasks on the pressroom employees that are not directly related to the pressroom equipment. The management-rights clause therefore does not clearly waive the Union's right to bargain over this subject. Accordingly, we agree with the judge that the Respondent violated Sec. 8(a)(5) and (1) by unilaterally adding mopping of the pressroom floor to the unit employees' duties.

<sup>4</sup> We amend the judge's remedy to provide that backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We have modified the recommended Order and notice to reflect these changes. Additionally, we have modified the recommended Order and notice to conform to the make-whole language traditionally used by the Board.

<sup>5</sup> Nothing in this Order shall preclude the Respondent from notifying and providing the Union an opportunity to bargain over changing James Jenkins' terms and conditions of employment to be consistent with the contractual terms and conditions.

(h) Placing employees in a 4-year formal training program in retaliation for engaging in protected concerted activity.

(i) Transferring employees out of the pressroom bargaining unit because they engage in protected concerted activity.

(j) Failing and refusing to promote employees because they engage in protected concerted activity.

(k) Failing to pay employees extra compensation for serving as assistant foreman because they engage in protected concerted activity.

(l) Issuing written discipline to employees and placing employees on probation because they engage in protected concerted activity.

(m) Unilaterally changing employees' hours and other terms and conditions of employment without giving the Union prior notice and opportunity to bargain.

(n) Unilaterally imposing additional duties on bargaining unit employees without giving the Union prior notice and opportunity to bargain.

(o) 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.

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

(a) Remove James Jenkins from the 4-year training program, promote him to assistant foreman in the pressroom, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(b) Transfer Roger Jenkins to the pressroom as a full-time employee, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(c) Make whole Jeff Clutters for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(d) Remove from its files any reference to the April 1993 discipline of Jeff Clutters, Roger Jenkins, and Shawn Jenkins and notify them in writing that this has been done and that the discipline will not be used against them in any way.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its Ironton, Ohio facility copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the no-

tice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Judgment of the United States 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 the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT inform employees that new employees in the bargaining unit represented by Athens Printing Pressmen and Assistants Union No. 269-M, affiliated with Graphic Communications International Union, AFL-CIO-CLC, who choose not to become union members can participate in our profit-sharing plan, but those bargaining unit employees who become union members cannot participate in the plan.

WE WILL NOT promulgate or maintain a rule prohibiting you from discussing your wages, salaries, and pay increases with other employees.

WE WILL NOT reduce your work hours because you engage in protected concerted activity.

WE WILL NOT deny you Christmas bonuses because you engage in protected concerted activity.

WE WILL NOT deny you participation in our profit-sharing plan because you engage in protected concerted activity.

WE WILL NOT reduce your vacation time because you engage in protected concerted activity.

<sup>6</sup>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

WE WILL NOT refuse to permit you to reschedule holidays because you engage in protected concerted activity.

WE WILL NOT place you in a 4-year formal training program in retaliation for engaging in protected concerted activity.

WE WILL NOT transfer you out of the pressroom bargaining unit because you engage in protected concerted activity.

WE WILL NOT fail or refuse to promote you because you engage in protected concerted activity.

WE WILL NOT fail to pay you extra compensation for serving as assistant foreman because you engage in protected concerted activity.

WE WILL NOT issue written discipline or put you on probation because you engage in protected concerted activity.

WE WILL NOT unilaterally change your hours or other terms and conditions of employment without giving the Union prior notice and opportunity to bargain.

WE WILL NOT unilaterally impose additional duties on you without giving the Union prior notice and opportunity to bargain.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remove James Jenkins from the 4-year training program,

WE WILL promote him to assistant foreman in the pressroom, and

WE WILL make him whole for any loss of earnings and other benefits resulting from the failure to promote, plus interest.

WE WILL transfer Roger Jenkins to the pressroom as a full-time employee, and WE WILL make him whole for any loss of earnings and other benefits resulting from the failure to transfer, plus interest.

WE WILL make whole Jeff Clutters for any loss of earnings and other benefits resulting from the reduction of his work hours, less any net interim earnings, plus interest.

WE WILL remove from our files any reference to the April 1993 discipline of Jeff Clutters, Roger Jenkins, and Shawn Jenkins, and WE WILL notify them in writing that this has been done and that the discipline will not be used against them in any way.

#### IRONTON PUBLICATIONS, INC.

*Earl L. Ledford, Esq.* and *Mary Elizabeth Walker-McBride, Esq.*, for the General Counsel.

*Craig A. Allen, Esq.*, of Ironton, Ohio, for the Respondent.  
*Walter L. Martin*, International Representative, of Dayton, Ohio, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge. On December 1, 1989, the charge in Case 9-CA-27061 was filed by the Union against Ironton Publications, Inc. (Respondent). Thereafter, between January 7 and May 25, 1993, charges and amended charges were filed in Cases 9-CA-30300, 9-CA-30366, 9-CA-30398, 9-CA-30450, 9-CA-30481, 9-CA-30520, 9-CA-30527, 9-CA-30633, and 9-CA-30664.

On May 28, 1993, the National Labor Relations Board, by the Regional Director for Region 9, issued a fourth consolidated complaint alleging that the Respondent violated Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act (the Act).

Respondent filed an answer in which it denied that it violated the Act in any way.

A hearing was held before me in Ironton, Ohio, on June 15, 16, and 17, 1993.

On the entire record in this case, to include posthearing briefs submitted by the General Counsel and Respondent, and on my observation of the demeanor of the witnesses, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

At all material times, Respondent, a corporation, has been engaged in the publication, circulation, and distribution of "The Ironton Tribune" in the Ironton, Ohio area.

During the past 12 months, Respondent, in conducting its operations described above, derived gross revenues in excess of \$200,000, held membership in or subscribed to various interstate news services, including The Associated Press, published various nationally syndicated features, including Columnist Ann Landers and the comic strip Garfield, and advertised various nationally sold products and services, including Maytag products.

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

#### II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. Overview

Respondent publishes a newspaper. Numerous unfair labor practices are alleged in the complaint tried before me. Essentially they break down into two areas of activity at the newspaper, namely, the pressroom and the mailroom. I will first address the alleged unfair labor practices in the pressroom and then address the alleged unfair labor practices in the mailroom.

##### B. The Pressroom

Since 1963 the Union has been the designated exclusive collective-bargaining representative of the employees in the following unit:

All employees employed in the operation of the pressroom, including the camera, offset platemaking and all press operations, excluding all other employees, and all professional employees, guards and supervisors as defined in the Act.

In other words, the Union represented all employees in the unit and not just union members.

On November 1, 1989, representatives of the Employer and the Union met at a Ramada Inn in Southpoint, Ohio, for a negotiating session.

At the session Respondent was represented by Jennifer Allen and John Mathew. Union Representative Walter Martin wanted to negotiate the people he represented into Respondent's profit-sharing plan and made an inquiry regarding new employees and was told by John Mathew, an admitted agent of Respondent, that if a new employee was hired in the unit, completed the probationary period and did not join the Union he could enroll in the profit-sharing plan but if he did join the Union he could not participate in the profit-sharing plan.

The Union filed a charge over this (Case 9-CA-27061), which was settled between the Respondent and the Regional Director for Region 9 with the posting of a notice over the signature of Jennifer Allen, publisher and CEO of Respondent. In the notice Respondent promised that it would not tell employees in the bargaining unit that they could participate in Respondent's profit-sharing plan if they did not join the Union but could not participate if they did join the Union. The notice was dated May 7, 1990.

Clearly what John Mathew said on November 1, 1989, was a violation of Section 8(a)(1) of the Act because it discriminated between employees on the basis of their union membership, i.e., union members could not participate in the profit-sharing plan but nonmembers could participate. The parties did agree to a contract which by its terms ran from May 8, 1990, to May 7, 1993. The settlement was set aside by the Regional Director for Region 9 because of what Respondent allegedly said and did to James Jenkins regarding the profit-sharing plan once it learned that Jenkins had joined the Union.

For years three employees worked full time in the pressroom. The foreman was not a member of the unit but the other two employees, one of whom was an assistant foreman, were in the unit. Up to May 1990 the full-time people in the pressroom consisted of Foreman Greg Gilmore, who was not in the unit, and employees Joe Gann and Bob Kellogg who were in the unit. Joe Gann for 10 years prior to his retirement in November 1992 was designated assistant foreman. Prior to that Bob Kellogg had been designated the assistant foreman.

Beginning in 1989 James Jenkins, who had been hired into the mailroom, began working in the pressroom on a part-time basis. In May 1990 when Bob Kellogg suddenly died James Jenkins took his place in the pressroom. He began a 1-year training program under the auspices of Pressroom Foreman Greg Gilmore and Assistant Foreman Joe Gann and successfully completed that training program. He received merit pay increases and very good job performance evaluations.

The contract between the Respondent and the Union contained neither a union-security clause nor a dues-checkoff provision. Jenkins did not join the Union for over 2 years

and his terms and conditions of employment were governed by the employee handbook and not by the contract.

Unfortunately Respondent has a fundamental misunderstanding of the law. If an employee is in the bargaining unit, as James Jenkins was in this case, then the terms and conditions of his employment are governed by the collective-bargaining agreement then in effect between the Respondent and the Union. Respondent, in this case, simply decided to apply the contract to the persons in the bargaining unit if, and only if, they were members of the Union. If an employee was in the bargaining unit but not a member of the Union then the Respondent treated that employee as if he were not a member of a bargaining unit represented by a union.

In the fall of 1992 Respondent unilaterally and without giving prior notice and opportunity to bargain to the Union added an additional duty to the unit employees in the pressroom, namely, a duty to mop the floor. The duty to mop the floor had heretofore for many decades been the job of Respondent's custodial staff or cleaning crew. Mopping the floor, according to the uncontradicted testimony of James Jenkins, took about 20 minutes a day. The duty of mopping the floor in the pressroom is a term or condition of employment about which the Union should have been given prior notice and opportunity to bargain. Joe Gann, who had worked for Respondent for 37-1/2 years, decided to retire earlier than he had planned because of this added duty of mopping the pressroom floor. In other words this was not an insignificant or trivial change in the job but one that drove a veteran employee to retire somewhat earlier than he had planned. Respondent violated Section 8(a)(1) and (5) of the Act when it added mopping duties to the duties of the employees in the pressroom.

In June 1992, after working in the pressroom for over 2 years as a full-time pressroom employee, James Jenkins, joined the Union. This fact was not brought to the attention of Respondent's management, however, until Joe Gann told Jennifer Allen in November 1992 that James Jenkins had joined the Union.

Thereafter, a number of discriminatory actions took place against James Jenkins. He was informed by either Jennifer Allen or Greg Gilmore that because he was now a union member the following would occur:

- (1) he could no longer participate in Respondent's profit-sharing plan,
- (2) he was no longer eligible for a Christmas bonus and did not get one in December 1992,
- (3) his regular hours of work were reduced from 40 to 37-1/2 hours per week and Jenkins testified without contradiction that he made less money as a result of this even though overtime would kick in after 37-1/2 hours rather than after 40 hours of work,
- (4) his vacation, which he was told would go to 3 weeks per year in 1993 under the provision of the employee handbook, based on his years of service, would remain at two weeks per year,
- (5) he was put on a 4-year training program even though he had already successfully completed a 1-year training program, and
- (6) he was not permitted to reschedule his 4th of July 1993 holiday which fell on his regularly scheduled day off to a day beyond the week before or the week

after the 4th of July even though a fellow unit employee, Jack Day, was permitted to reschedule his Memorial Day holiday beyond the 2-week period.

Respondent claims it did not violate the Act because in the collective-bargaining agreement covering the pressroom employees the employees do not participate in the profit-sharing plan, do not receive Christmas bonuses, work a 37-1/2 hour workweek, receive 2 weeks' vacation, participate in a 4-year training program when hired, and must receive credit for any holiday that is rescheduled within the week before or the week after the holiday.

Suffice it to say Respondent misses the point. Employees in the bargaining unit have their hours, wages, and other terms and conditions of employment set by the agreement reached between the Employer and the Union. James Jenkins' hours, wages, and terms and conditions of employment should have been governed by the contract. They weren't. Respondent cannot, more than 2 years after James Jenkins became a member of the bargaining unit, decide to apply the terms and conditions of the contract to Jenkins' detriment when Respondent learns for the first time that he joined the Union. This is discrimination based on union membership and a violation of Section 8(a)(1) and (3) of the Act since it is intended to and indeed does interfere with protected concerted activity and is designed to undermine the Union. In fact what Respondent did amounts to a total repudiation of the collective-bargaining relationship between it and the Union. See *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956). In addition Respondent violated Section 8(a)(1) and (5) of the Act in changing the hours and terms and conditions of employment for a unit employee without giving prior notice and opportunity to bargain to the Union.

For some months before Joe Gann retired in November 1992 he had voluntarily reduced his hours of work. James Jenkins' brother, Roger Jenkins, who had been also hired into the mailroom, was detailed to the pressroom to help out. Roger Jenkins wanted to replace Joe Gann as a full-time employee in the pressroom. He worked in the pressroom full time from November 1992 until late January 1993 when he was abruptly removed from working on a full-time basis in the pressroom and assigned to work there only part time. Later, he was totally removed from the pressroom.

The pressroom foreman, Greg Gilmore, told Roger Jenkins that he thought Roger Jenkins was removed from being full time in the pressroom because of his brother, James Jenkins, and the Union.

Prior to being removed from the pressroom Roger Jenkins had been told by Dale Buie, an agent of Respondent, that he would be the person to replace Joe Gann when Gann retired. Indeed, Buie had asked the Jenkins brothers if they had any problem about both of them in the pressroom full time because they could no longer take vacations together. They assured Buie that this would not be a problem. Pressroom Foreman Greg Gilmore told Roger Jenkins that Jennifer Allen, Respondent's CEO, had selected him to succeed Joe Gann. Roger Jenkins sought out Allen and thanked her and Allen told Roger Jenkins that his good work got him the job. Allen claims she merely told him that he was in the running for the job. I credit Roger Jenkins' version of what Jennifer Allen said. No one had any complaint whatsoever about the job performance in the pressroom of Roger Jenkins. But lo

and behold within approximately 2 months of Allen finding out that James Jenkins has joined the Union, Roger Jenkins is out as Joe Gann's replacement. Indeed, just 1 day before Roger Jenkins was removed as a full-time employee in the pressroom Jennifer Allen was questioned by a Board agent in connection with the investigation of the charge in Case 9-CA-30300. The charge concerned alleged discrimination against James Jenkins but in the interview Allen was asked a number of questions about staffing in the pressroom and the name of Roger Jenkins was mentioned.

It is clear that the removal of Roger Jenkins as a full-time employee from the pressroom and the renegeing by Respondent of its commitment to name him as Joe Gann's successor was a violation of Section 8(a)(1) and (3) of the Act. This is demonstrated not only by the facts set forth above, namely, James Jenkins joins the Union and all sorts of unfair things happen to him, a charge is filed, Roger Jenkins' status in the pressroom is questioned, and all of a sudden Roger Jenkins, James, brother, is out of the pressroom as a full-time employee but by the facts surrounding the hiring of Jack Day to replace Joe Gann in the pressroom.

In early March 1993 Jack Day was hired. Day was an experienced printer but had never worked a press similar to the press at the Ironton Tribune. He was hired and put on a 1 year training program. In addition, he was designated as the assistant foreman even though the assistant foreman's position should have gone to James Jenkins. Further, Respondent advised its employees that henceforth just three employees would work in the pressroom, namely, Foreman Greg Gilmore, Assistant Foreman Jack Day, and James Jenkins. And, unbelievably, Respondent took the position that Assistant Foreman Jack Day was a statutory supervisor and not in the pressroom unit represented by the Union. It did not apply the collective-bargaining agreement to him even though for more than 25 years the assistant foreman was always in the unit. Respondent claims that it gave Day the authority to hire and fire, which, of course, is preposterous considering the fact that he was in a department, i.e., the pressroom with just three people and supposedly this pressroom consisted of two supervisors but just one employee. Lastly, by claiming that only three people would work in the pressroom and that two of them were statutory supervisors the pressroom unit was reduced to a one person unit under Respondent's theory and, therefore, Respondent could legally ignore the Union since a one person unit is not recognized as an appropriate unit under the Act. See *Searles Refrigeration Co.*, 297 NLRB 139 (1989). The minimum number required to be in the unit is two. Needless to say Day had never hired or fired anyone at the paper. Indeed, Pressroom Foreman Greg Gilmore and employee James Jenkins trained Jack Day in his job and, according to the uncontradicted testimony of foreman Greg Gilmore on June 15, 1993, before me, James Jenkins had the skills to put the paper out but Jack Day did not. Respondent violated the Act in trying to reduce the unit to a one-person unit.

It is clear to me that based on these violations James Jenkins should be promoted to assistant foreman with the extra compensation that goes with that job and that Roger Jenkins should be transferred into the pressroom. I note that Shawn Jenkins, a cousin of James and Roger Jenkins, had worked in the pressroom on a part-time basis and no longer does.

However, I don't see any violation of the Act in Respondent's removing Shawn Jenkins from the pressroom.

*C. The Mailroom*

The mailroom employees were responsible for, among other things, putting advertising inserts into the newspaper.

The foreman in the mailroom was Gary Cochran until April 8, 1993, when he left Respondent's employ. The assistant foreman was Roger Jenkins. This is the same Roger Jenkins referred to in section III,B, above. A number of other employees worked either full time or part time in the mailroom.

Jeff Clutters, a part-time employee in the mailroom, who also worked full time for Rich Oil, spoke, at James Jenkins' suggestion, with International Union Representative Walter Martin about getting the Union to represent the employees in the mailroom. Clutters and Martin spoke over the phone about union representation on March 28, 1993.

Clutters was instructed by Martin to let him know the names, addresses, and phone numbers of the employees in the mailroom. Open discussions were held at work about the Union among the mailroom employees. Those participating in such open discussions included Jeff Clutters, Roger Jenkins, Shawn Jenkins, and David Mart. These discussions took place in the mailroom in full view of those others at the paper, management or otherwise, inclined to look and listen. In addition, Jeff Clutters and Shawn Jenkins could be heard hollering "majority rules" on numerous occasions within the mailroom. These union-related conversations and the hollering of "majority rules," as a practical matter, could not have escaped the notice of management.

According to the credited testimony of David Mart, who is still employed by Respondent, Sherry Beckman, who is circulation manager and who oversees the mailroom, knew of the union activity of Jeff Clutters, Roger Jenkins, and Shawn Jenkins, because David Mart heard Mark Fields tell Sherry Beckman that Jeff Clutters, Roger Jenkins, and Shawn Jenkins were the primary union supporters in the mailroom.

On March 24, 1993, management held a meeting with the mailroom employees. CEO Jennifer Allen and Circulation Manager Sherry Beckman ran the meeting. The subject matter was problems with inserts. At the meeting management told the mailroom employees that there would be no fingerpointing regarding insert problems, e.g., not putting the correct advertising insert into the paper, and that the entire mailroom staff was responsible for seeing that inserts were properly handled.

On April 16, 1993, there was an insert problem. A Chrysler/Dodge advertising insert was not placed in the paper until a number of copies of the paper had gone out. Circulation Manager Sherry Berkman first saw the problem several hours after the inserts should have been inserted in the paper. A number of papers went out prior to the problem being discovered.

Jeff Clutters, Roger Jenkins, and Shawn Jenkins, the three employees pointed out to Sherry Beckman as the principal union supporters by Mark Fields, all received written discipline and were placed on 90 days' probation. Clutters was a part-time employee and Roger and Shawn Jenkins were full time. Other mailroom employees who were working at the time, i.e., David Mart and Doris Boyd, were not disciplined. Only these three were disciplined even though just a few

weeks before on March 24, 1993, the mailroom staff had been told that there would be no fingerpointing and that the entire staff was responsible for making sure that the inserts were handled in a proper fashion. Further, subsequent to the insert problem with the Chrysler/Dodge ad there were two more insert problems, one with a grocery store named Wolohan's and one with a business named Auto Works. However, no one was disciplined for these two insert problems. Lastly, Shawn Jenkins, it turned out, was not working in the mailroom at the time of the discovery of the Chrysler/Dodge insert problem. He brought this to management's attention and was told the discipline would be withdrawn but it hadn't been withdrawn by the time of the hearing before me. The disciplining of these three prounion employees was done in violation of Section 8(a)(1) and (3) of the Act.

These same three union supporters, Jeff Clutters, Roger Jenkins, and Shawn Jenkins, were also denied pay increases when similarly situated employees received pay increases. However, not all mailroom employees received raises, only David Mart and Doris Boyd, and Respondent made a good case that Mart got a raise because he was an outstanding employee and Boyd got a raise because she switched from piece work to an hourly wage. I find no violation of the Act in these three not receiving pay raises.

Jeff Clutters' hours of work were reduced at the same time that Respondent learned of his union activity. Respondent admits that it reduced Clutters' hours of work but claims it was due to lack of work. I find this claim to be specious because at the same time Clutters' hours were reduced for several weeks from 25 hours a week to 11 hours a week two new part-time employees were hired in the pressroom, i.e., Julia Clark on April 5, 1993, and Larry Lee Wilson on April 13, 1993.

As noted above Roger Jenkins was the assistant foreman in the mailroom and traditionally received \$5 per day when he worked as foreman, i.e., when the foreman was on vacation or ill or otherwise absent. Yet for 3 weeks after Gary Cochran left Respondent's employ Roger Jenkins did not receive the extra compensation to which he was entitled on the grounds, according to Respondent, that Sherry Beckman was doing Cochran's job rather than Roger Jenkins. I credit the testimony of Roger Jenkins that he filled in during this period for Cochran and should have received the extra compensation and that Beckman did what she normally did when Cochran was absent. The failure of Respondent to give Roger Jenkins this extra compensation was a violation of Section 8(a)(1) and (3) of the Act since prompted by Roger Jenkins' prounion activity.

*D. Rule Prohibiting Discussion of Wages*

Since November 6, 1992, Respondent has promulgated and maintained a rule which prohibits its employees from discussing their wages, salaries, or pay increases with other employees. This rule was reemphasized in late January or early February 1993.

Forgetting the fact that it is ironic indeed that a newspaper, which routinely, I'm sure like all papers, prints the salaries and compensation of ball players, movie stars, business executives, and government officials, would prohibit its own employees from telling each other what they are paid is a serious interference with organizational rights to prevent

employees, who may want to organize, to discuss their pay with each other. Preliminary to any effort to organize would be for the employees to discuss their hours, wages, and other terms and conditions of employment.

The promulgation and maintenance of this rule the violation of which could result, according to Respondent, in discharge violates Section 8(a)(1) of the Act. See *Jeanette Corp.*, 217 NLRB 653 (1975).

#### E. *Deferral to the Arbitral Process*

Respondent argues that this is an appropriate case for deferral to the arbitral process in regards to the unfair labor practices regarding pressroom employee James Jenkins. I disagree. In attempting to reduce the pressroom unit to a one person unit Respondent would destroy the Union. The evidence in this case reflects employer animosity to the employees' exercise of protected rights and deferral is inappropriate. See *United Technologies Corp.*, 268 NLRB 557 (1984).

#### REMEDY

The remedy in this case should include a cease-and-desist order, the posting of the notice and the additional remedial action necessary and appropriate in light of the specifics of Respondent's unfair labor practices in both the pressroom and the mailroom, which are spelled out more fully in my recommended order set forth below. Respondent and the Union had one negotiating session for a successor agreement to the one which expired on May 7, 1993. They agreed to postpone negotiations for a new contract until the instant complaint is resolved.

#### CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act when on November 1, 1989, it informed employees that if new employees in the bargaining unit represented by the Union chose not to become union members, they could participate

in Respondent's profit-sharing plan, but if they became union members, they could not participate in the plan.

4. Respondent violated Section 8(a)(1) and (3) of the Act when, upon learning that pressroom unit employee James Jenkins had joined the Union and because he joined the Union, it informed James Jenkins that his work hours would be reduced from 40 to 37-1/2 hours and then did reduce his hours, denied him his 1992 Christmas bonus, denied him participation in Respondent's profit-sharing plan, reduced his vacation from 3 to 2 weeks, refused to permit him to reschedule his 4th of July holiday, and placed him in a 4-year formal training program.

5. Respondent violated Section 8(a)(1) of the Act when it promulgated and maintained a rule prohibiting employees from discussing their wages, salaries, or pay increases with other employees thus interfering with employee protected concerted activity.

6. Respondent violated Section 8(a)(1) and (3) of the Act when it reduced the hours of work of Jeff Clutters because he engaged in protected concerted activity.

7. Respondent violated Section 8(a)(1) and (3) of the Act when it transferred Roger Jenkins out of the pressroom bargaining unit because he engaged in protected concerted activity.

8. Respondent violated Section 8(a)(1) and (3) of the Act when it failed to promote James Jenkins to the position of assistant foreman.

9. Respondent violated Section 8(a)(1) and (3) of the Act when it failed to pay Roger Jenkins extra compensation for serving as "assistant foreman" in the mailroom.

10. Respondent violated Section 8(a)(1) and (3) when in April 1993 it gave written discipline and put on 90 days, probation Jeff Clutters, Roger Jenkins, and Shawn Jenkins because they engaged in protected concerted activity.

11. Respondent violated Section 8(a)(1) and (5) of the Act when it unilaterally and without prior notice to the Union gave bargaining unit employees the additional duty of mopping and when it changed the hours and other terms and conditions of employment of James Jenkins.

12. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]