

Insert Color Press and Local One, Amalgamated Lithographers of America and Local 966, International Brotherhood of Teamsters, AFL-CIO, Party to the Contract

Quality Color Press and Local One, Amalgamated Lithographers of America and Local 966, International Brotherhood of Teamsters, AFL-CIO, Party to the Contract

Local 966, International Brotherhood of Teamsters, AFL-CIO and Local One, Amalgamated Lithographers of America. Cases 29-CA-17537, 29-CA-17549, 29-CA-17550, 29-CB-8950, and 29-CB-8951

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

Upon charges in Cases 29-CA-17537, 29-CA-17549, 29-CA-17550, 29-CB-8950, and 29-CB-8951 filed by Local One, Amalgamated Lithographers of America (Local One), the General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and notice of hearing on October 26, 1993, against Respondent Insert Color Press (Respondent Insert), Respondent Quality Color Press (Respondent Quality or collectively Respondent Employers), and Local 966, International Brotherhood of Teamsters, AFL-CIO (Respondent Union or Respondent Local 966), alleging that they have violated Sections 8(a)(1), (2), and (3) and 8(b)(1)(A) and (2) of the National Labor Relations Act. Although properly served copies of the charges and consolidated complaint, the Respondents have failed to file an answer.

On December 6, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On December 9, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letters dated November 10, 1993, notified the Re-

spondent Employers and the Respondent Union that unless answers were received by November 17, 1993, a Motion for Summary Judgment would be filed.¹

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Insert, a New York corporation, with its principal office and place of business located at 90 Air Park Drive, Ronkonkoma, County of Suffolk, State of New York, has been engaged in the production and printing of newspaper advertisement inserts, promotional fliers, and related products. Respondent Quality, a New York corporation, with its principal office and place of business located at 145 Commack Street, Ronkonkoma, County of Suffolk, State of New York, has been engaged in the production of sheet fed printing material and related products. Each of the Respondent Employers, during the past year, which is representative of their annual operations generally, purchased and received at their separate facilities paper, printing ink, and other products, goods, and materials valued in excess of \$50,000 directly from points outside the State of New York. Respondent Employers have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single integrated business enterprise. Based on their operations, Respondent Employers constitute a single integrated business enterprise and a single employer within the meaning of the Act. We find that the Respondent Employers are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local One and Respondent Union are labor

¹ The undisputed allegations in the Motion for Summary Judgment indicate that Respondent Employers' president stated during a telephone conversation that the Respondent Employers did not intend to retain counsel, would not file an answer to the consolidated complaint, and understood that this would result in the filing of a Motion for Summary Judgment. The Employers have not verified this conversation in writing nor have they refuted this assertion in response to the Motion for Summary Judgment or the Notice to Show Cause.

The copy of this letter forwarded to the Union's counsel of record by certified mail has neither been returned to the Region nor has a return receipt been forwarded. It is well established that the policies of the Act may not be defeated by failure to accept certified mail. See *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Moreover, we note that this reminder letter was sent as a courtesy and is not a requirement of the Act.

organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On or about June 21 and 22, 1993, Respondent Employers permitted access to their Air Park Drive plant during working hours, and since on about June 23, 1993, have continued to permit access to both their Air Park Drive and Commack Street plants during working hours to representatives of Respondent Local 966 for the purpose of soliciting their employees to sign authorization cards on behalf of Respondent Local 966 and to post notices to their employees, notwithstanding that Respondent Employers had an established policy prohibiting access to their plants by labor organizations to solicit their employees, and thereafter, on or about July 15, 16, 20, 26, 27, and 28, 1993, Respondent Employers denied such access to their plants to Local One, notwithstanding Local One's written request for such access which was transmitted to Respondent Employers on or about June 30, 1993.

On or about June 23, 1993, Respondent Insert and Respondent Local 966 executed a Stipulation Agreement in which Respondent Insert recognized Respondent Local 966 as the exclusive collective-bargaining representative of Respondent Employers' employees at the Air Park Drive plant in the following unit (designated unit A):

All Lithographic production employees (i.e., all pressroom department and prep department employees, including all pressmen, joggers, roll handlers, platemakers, strippers and scanners).

On or about July 23, 1993, Respondent Employers and Respondent Local 966 entered into a Memorandum of Agreement relating to rates of pay, wages, hours of employment, and other terms and conditions of employment of Respondent Employers' unit A employees. Respondent Employers and Respondent Local 966 engaged in this conduct notwithstanding the fact that Respondent Local 966 did not, at the time thereof, nor at any time thereafter, represent either an actual numerical majority or an uncoerced numerical majority of the unit A employees.

On or about July 27, 1993, Respondent Local 966, and on or about August 1, 1993, Respondent Employers, respectively, executed a collective-bargaining agreement (the July 27 contract) covering the rates of pay, wages, hours of employment, and other terms and conditions of employment of Respondent Employers' employees employed at its Air Park Drive and Commack Street plants in the following collective-bargaining unit or units (which will be designated unit B):

All employees, excluding guards, supervisors, office employees, foremen, salesmen and execu-

tives. (At each plant separately or at both plants combined.)

The collective-bargaining agreement contains, inter alia, provisions in articles III and IV which require membership in Respondent Local 966 as a condition of employment, and provide for the deduction of union initiation fees and dues from the wages of the unit B employees and the remittance of the initiation fees and dues to Respondent Local 966. Respondent Employers and Respondent Local 966 executed the collective-bargaining agreement and since the execution thereof have maintained in effect and enforced provisions of the collective-bargaining agreement, notwithstanding the fact that Respondent Local 966 did not at the time of the execution of the agreement, nor at any time thereafter, represent either an actual numerical majority or an uncoerced numerical majority of the unit B employees.

The agreement contains a provision in article XXI entitled "Travel Allowance" which provides that all employees shall receive from Respondent Employers a travel allowance of \$26.30 per month, which is the same amount as the current monthly dues assessed by Respondent Local 966 from its members. The purpose of the Travel Allowance is to require Respondent Employers to pay the monthly union membership obligation of their unit B employees.

Since on or about July 26, 1993, Respondent Employers have threatened the unit B employees that they would no longer receive any health insurance benefits unless they became members of and signed dues-checkoff authorization cards on behalf of Respondent Local 966 without according them any grace period during which to do so.

CONCLUSION OF LAW

By the acts and conduct described above, Respondent Employers have violated Section 8(a)(1), (2), and (3) of the Act and Respondent Local 966 has violated Section 8(b)(1)(A) and (2) of the Act, and they have engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent Employers and Respondent Union have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Respondent Employers shall be ordered to withdraw and withhold recognition from Respondent Union and to cease giving effect to the collective-bargaining agreements they executed with Respondent Union. However, nothing here shall authorize or require the withdrawal or elimination of any wage increase or other benefits or terms and conditions of employment that may have been es-

established pursuant to the performance of those agreements (with the exception of the Travel Allowance).² The Respondent Employers shall reimburse all present and former employees, who were coerced into membership in the Respondent Union by virtue of the threat of loss of health insurance or by virtue of the union-security clauses contained in the July 27 contract with the Respondent Union, for moneys paid by or withheld from them for initiation fees, dues, or other obligations or membership, with interest computed in the manner provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Respondent Employers and Respondent Union are jointly and severally liable for this obligation.³

The Respondent Union shall be ordered to disestablish its relationship with Respondent Employers and to rescind the collective-bargaining agreements it executed with the Respondent Employers and reimburse unit employees for all initiation fees, dues, or other obligations of membership collected, with interest computed in the manner provided in *New Horizons*, supra.⁴

Finally, because the violations of the Act committed by the Respondent Employers and the Respondent Union are widespread and of such an egregious nature that they evidence a general disregard for the employees' statutory rights, we find that a broad injunctive order is warranted. *Hickmott Foods*, 242 NLRB 1357 (1979).

ORDER

The National Labor Relations Board orders that

A. The Respondent Employers, Insert Color Press and Quality Color Press, Ronkonkoma, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, and coercing their employees and rendering unlawful assistance and support to Respondent Local 966 by

(1) Allowing Respondent Union access to their plants for the purpose of soliciting while discriminatorily denying such access to Local One.

(2) Recognizing, bargaining, and executing a collective-bargaining agreement with the Respondent Union as the representative of its unit A and unit B employees unless and until that labor organization has been certified by the National Labor Relations Board as the

exclusive bargaining representative of those employees. The units are as follows:

Unit A:

All Lithographic production employees (i.e., all pressroom department and prep department employees, including all pressmen, joggers, roll handlers, platemakers, strippers and scanners).

Unit B:

All employees, excluding guards, supervisors, office employees, foremen, salesmen and executives. (At each plant separately or at both plants combined.)

(3) Giving effect to its contracts with Respondent Union or to any extension, renewal, or modification of its contracts; provided, however, that nothing in this Order shall authorize or require the withdrawal or elimination of any wage increase or other benefits, terms, and conditions of employment that may have been established pursuant to the performance of those contracts.

(4) Entering into a collective-bargaining agreement which includes a provision that Respondent Employers agree to pay their employees' monthly union membership obligations.

(5) Threatening to terminate the health insurance benefits of employees unless they became members of and signed dues-checkoff authorizations on behalf of Respondent Union, or any other labor organization.

(b) Interfering with, restraining, and coercing their employees, rendering unlawful assistance and support to Respondent Local 966, and discriminating in regard to hire, tenure, and terms and conditions of employment encouraging membership in Respondent Local 966 and discouraging membership in Local One by

(1) Maintaining and enforcing the July 27, 1993 contract which requires membership in Respondent Local 966 as a condition of employment and provides for the deduction of union initiation fees and dues from the wages of unit B employees.

(2) Maintaining and enforcing the July 27, 1993 contract notwithstanding the fact that Respondent Local 966 has never obtained either an actual numerical majority or an uncoerced numerical majority of employees in unit B.

(c) In any other 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) Withdraw and withhold recognition from Respondent Union as the collective-bargaining representative of its employees, cease giving effect to the contracts with the Respondent Union, and jointly and severally with Respondent Union reimburse all moneys paid by them for initiation fees, dues, or other obliga-

² See, generally, *Alpha Beta Co.*, 294 NLRB 228, 231 (1989), citing *Human Development Assn.*, 293 NLRB 1228 (1989); *Unit Train Coal Sales*, 234 NLRB 1265 (1978). Because the net result of the "Travel Allowance" scheme did not impact unit employees' net pay, the Travel Allowance shall be abolished.

³ See, e.g., *Ned West, Inc.*, 276 NLRB 32, 47 (1985), citing *Rainey Security Agency*, 274 NLRB 269 fn. 3 (1985); *Hermet, Inc.*, 222 NLRB 29 fn. 1 (1976).

⁴ See, e.g., *Teamsters Local 814 (Santini Bros.)*, 208 NLRB 184 (1974).

tions of membership in Respondent Union with interest computed as provided in the remedy section of this Decision and Order.

(b) 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.

(c) Post at its facility in Ronkonkoma, New York, copies of the attached notice marked "Appendix A."⁵ Copies of the notice, on forms provided by the Regional Director for Region 29, 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.

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

B. The Respondent Union, Local 966, International Brotherhood of Teamsters, AFL-CIO, Ronkonkoma, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Restraining and coercing employees by

(1) Receiving aid, assistance, and support from the Respondent Employers by agreeing to accept recognition as the exclusive collective-bargaining representative of certain employees of the Respondent Employers notwithstanding the fact that the Respondent Union did not represent an uncoerced majority of the Respondent Employer's employees.

(2) Negotiating and agreeing to collective-bargaining agreements with the Respondent Employers concerning the wages, hours, working conditions, and other terms and conditions of employment of certain employees of the Respondent Employers, one of which collective-bargaining agreements includes union-security provisions.

(b) Restraining and coercing employees and causing and attempting to cause Respondent Employers to discriminate against their employees in violation of the Act by

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(1) Maintaining and enforcing the provisions of the July 27, 1993 contract which requires membership in Respondent Local 966 as a condition of employment and provides for the deduction and remittance of union initiation fees and dues from the wages of unit B employees.

(2) Maintaining, and enforcing the provisions of the collective-bargaining agreement, notwithstanding the fact that the Respondent Union did not represent an uncoerced majority of the Respondent Employers' employees.

(c) In any other manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

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

(a) Cease acting as the exclusive collective-bargaining representative of the Respondent Employers' employees unless and until such time as the Respondent Union has been certified by the National Labor Relations Board as the exclusive collective-bargaining representative of such employees.

(b) Cease giving any effect to the terms and conditions of the collective-bargaining agreements between it and the Respondent Employers.

(c) Jointly and severally with the Respondent Employers reimburse the employees of the Respondent Employers for the union dues, fees, and assessments which they paid as a result of the unfair labor practices found here. Interest on such money is to be computed in accordance with the remedy section of this decision.

(d) 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.

(e) Post at its facility in Ronkonkoma, New York, copies of the attached notice marked "Appendix B."⁶ Copies of the notice, on forms provided by the Regional Director for Region 29, 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.

⁶ See fn. 5.

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

Dated, Washington, D.C. February 7, 1994

James M. Stephens, Chairman

Dennis M. Devaney, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

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.

WE WILL NOT allow access to our plants to Local 966, International Brotherhood of Teamsters, AFL-CIO, for the purpose of soliciting our employees to sign authorization cards and to post notices while discriminatorily denying such access to Local One, Amalgamated Lithographers of America.

WE WILL NOT recognize, bargain, and execute collective-bargaining agreements with Local 966 covering the following units of employees unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive bargaining representative of those employees:

All Lithographic production employees (i.e., all pressroom department and prep department employees, including all pressmen, joggers, roll handlers, platemakers, strippers and scanners).

All employees, excluding guards, supervisors, office employees, foremen, salesmen and executives. (At each plant separately or at both plants combined.)

WE WILL NOT give effect to the collective-bargaining agreements with Local 966 or to any extension or modification of those contracts provided that nothing shall require the withdrawal, renewal, or elimination of any wage increase or other benefits, terms, and conditions of employment that may have been established pursuant to the performance of such contracts (with the exception of the Travel Allowance).

WE WILL NOT deduct union initiation fees and dues from the wages of the employees covered by the contracts with Local 966.

WE WILL NOT create a "Travel Allowance" in order to pay the monthly union membership obligations of our employees under the contracts with Local 966.

WE WILL NOT encourage membership in Local 966 and discourage membership in Local One by threatening our employees that they will no longer receive any health insurance benefits unless they became members of, and sign dues-checkoff authorization cards on behalf of, Local 966 without according them any grace period.

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

WE WILL withdraw and withhold recognition from Local 966 as the collective-bargaining representative of our unit employees unless Local 966 becomes certified as the representative by the National Labor Relations Board.

WE WILL reimburse, with interest, all present and former unit employees for moneys paid by or withheld from them for initiation fees, dues, or other obligations of membership in Local 966.

WE WILL rescind the Travel Allowance.

INSERT COLOR PRESS AND QUALITY
COLOR PRESS

APPENDIX B

NOTICE TO MEMBERS
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.

WE WILL NOT restrain and coerce employees by receiving aid, assistance, and support from Insert Color Press and Quality Color Press by agreeing to accept recognition as the exclusive collective-bargaining representative of certain employees of those Employers notwithstanding the fact that our Union did not represent an uncoerced majority of their employees.

WE WILL NOT restrain and coerce employees by negotiating and agreeing to a collective-bargaining agreement with Insert Color Press and Quality Color Press concerning the wages, hours, working conditions, and other terms and conditions of employment of certain of their employees, one of which collective-bargaining agreements includes a union-security provision.

WE WILL NOT restrain and coerce employees and cause and attempt to cause Insert Color Press and Quality Color Press to discriminate against employees

in violation of the Act by maintaining and enforcing the provisions of the collective-bargaining agreements, notwithstanding the fact that our Union did not represent an uncoerced majority of the employees.

WE WILL NOT in any other manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL cease acting as the exclusive collective-bargaining representative of the employees of Insert Color Press and Quality Color Press unless and until such time as our Union has been certified by the National Labor Relations Board as the exclusive collective-bargaining representative of such employees. The units are as follows:

All Lithographic production employees (i.e., all pressroom department and prep department employees, including all pressmen, joggers, roll handlers, platemakers, strippers and scanners).

All employees, excluding guards, supervisors, office employees, foremen, salesmen and execu-

tives. (At each plant separately or at both plants combined.)

WE WILL cease giving any effect to the terms and conditions of the collective-bargaining agreements between our Union and Insert Color Press and Quality Color Press with regard to the employees in the units described above.

WE WILL jointly and severally with the Employers named above reimburse the employees of those Employers for the union dues, fees, and assessments which they paid as a result of the unfair labor practices found by the the National Labor Relations Board. Interest on such money is to be computed in accordance with the National Labor Relations Board decisions and such interest paid to the employees.

LOCAL 966, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO