Banknote Corporation of America *and* Graphic Communications International Union, Local 119B-43B, New York *and* New York Lithographers & Photoengravers Union, #1-P, G.C.I.U. *and* District 15, International Association of Machinists & Aerospace Workers. Cases 2–CA–24304, 2–CA–24371, and 2–CA–24500

December 16, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND BROWNING

On March 3, 1992, Administrative Law Judge D. Barry Morris issued the attached decision. The Respondent, the General Counsel, and Charging Party Graphic Communications International Union, Local 119B-43B, New York, filed exceptions and supporting briefs; the Respondent and the General Counsel filed answering briefs; and the Respondent filed a reply brief.

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

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

We agree with the judge's finding that the Respondent is the legal successor to American Bank Note Company (ABN) within the meaning of *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), and that the three historical units which the Charging Party Unions claim to represent constitute appropriate units for bargaining. Specifically, we find that the Respondent failed to show that the changes that it made in the operation of the plant rendered inappropriate the three longstanding units at issue here. We also agree with the judge's conclusion that the Respondent was not a ''perfectly clear'' successor to ABN within the meaning of *Burns*, and therefore was free to set initial terms and conditions of employment prior to its April 19, 1990 hiring of ABN's former employees. On that date, however, a bargaining obligation had attached with respect to any subsequent changes the Respondent wished to make in terms and conditions of employment. Accordingly, we find that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing terms and conditions of employment on about April 23, 1990, without affording the Charging Party Unions an opportunity to bargain about the changes.

I. FACTUAL BACKGROUND

On December 15, 1989, Francois-Charles Oberthur, through its subsidiary, Respondent Banknote Corporation of America (BCA), entered into a purchase agreement to acquire ABN's Ramapo facility in Suffern, New York. The sale of ABN's Ramapo facility was completed on February 27, 1990,[1] and the Respondent began operations at the plant on April 19.

At the time of the acquisition, the Ramapo plant employed about 100 production employees who were represented in separate units by 11 unions, including the three Charging Party Unions.

On March 23, the Respondent sent a letter to all 11 unions stating that the Respondent intended to attempt to hire its initial work force from the employees currently working at the Ramapo facility, but that it was not making a commitment to recognize the Unions or be bound by their collective-bargaining agreements with ABN. This letter expressly disavowed a March 1 letter from ABN's director of human resources to Charging Party Lithographers Local 1-P stating that the Respondent intended to recognize the Unions at Ramapo and to be bound by the collective-bargaining agreements. We find that the March 23 letter adequately disavowed the comments attributed to ABN's management official. The March 23 letter stated that the ABN official was not an agent of BCA and had no authority to make such a commitment on behalf of BCA.

On April 11, the Respondent met with representatives of all the Unions and informed them that it would not honor the collective-bargaining agreements with ABN. Martin Ferenczi, the Respondent's president, advised the Unions' representatives that the Respondent intended to have a more flexible operation with respect to the jobs that employees would perform, and that it would cross-train employees so that they would be able to perform various functions. Ferenczi also told the Unions that health benefits presently in effect would continue for a period of 60 days.[2] Fernczi did not discuss any other terms and conditions of employment during the April 11 meeting with the Unions.

On April 16, the Respondent interviewed 102 job applicants, all former ABN employees. All the employees who testified at the hearing were asked about the interviews. Their testimony was limited to the following.

Machinist Augustine Leone testified that the Respondent said nothing to him during his interview about vacation, sick leave, or holidays. He testified that flexibility was mentioned, and that he was told that employees would do things other than their own basic jobs. Machinist Jaroslaw Sawaryn testified that he was told that there would be job flexibility and that he would be asked to do different things. Machinist

[1] All dates are in 1990, unless otherwise stated.

[2] The Respondent also announced that ABN would close on April 13, that applications would be given to all employees then working for ABN, and that the Respondent would be operational on April 19.

Shop Steward Salvatore Manitone said he was told nothing about benefits in the interview.

Platefinishers Robert Whelan and Gerard Lindsey recalled no discussion of holidays, vacation, sick leave, or other benefits during their interviews. Lindsey recalled that the interviewers mentioned that hours might be longer and that the Company would like to have more flexibility in terms of jobs. Photoengraver Luz Ruiz testified she was told during the interview that the salary and benefits would be the same.

The only employees hired by the Respondent were approximately 50 of these former ABN employees. They began working for the Respondent on April 19, along with four former ABN supervisors. These employees comprised the Respondent's entire work force.

On about April 23, the Respondent unilaterally changed the employees' terms and conditions of employment, with the result that as of that date all employees worked the same hours, participated in the same pension, vacation, and sick pay plans, received the same health and welfare benefits, and observed new company holidays. The three units at issue in this case encompass 14 employees. Graphic Communications Local 119-43B claims to represent nine employees classified as ''general workers'' who work in the printing department; Lithographers Local 1-P claims to represent three photoengravers who work in the engraving department; and Machinists District 15 claims to represent two other employees who work in the engraving department. The Respondent has recognized two other unions as the bargaining representatives of employees who are in the engraving department. These two recognized unions are Printers and Engravers Local 28-58, which represents 10 employees, and ALA Local 1, which represents 6 employees.

II. THE JUDGE'S DECISION

The judge found, and we agree, that after the Respondent took over the operation of the Ramapo facility from ABN, the same employees produced the same products, in the same plant, with the same equipment, in the same jobs, and by the same methods. He concluded, therefore, that the Respondent was the legal successor to ABN.

The judge properly noted that under *Burns*, supra, the Supreme Court made it clear that a successor is normally entitled to set the initial terms and conditions of employment on which it will hire the predecessor's employees. He further noted, however, that in cases where the successor plans to retain the predecessor's employees, and makes no mention of changes of employment conditions, the Board requires the successor to bargain concerning initial terms and conditions of employment.[3] The judge found that the only changes in terms and conditions of employment which were announced prior to hiring the employees were a desire for flexibility in terms of job functions, and that the health benefits in effect at that time with ABN would continue for a period of 60 days. The judge thus concluded that the Respondent was required to bargain concerning any changes in other terms and conditions of employment. Accordingly, the judge found that by unilaterally changing terms and conditions of employment on April 23, without affording the Unions a chance to bargain about the changes, the Respondent violated Section 8(a)(5) and (1).

The Respondent had contended, inter alia, that it was not the legal successor to ABN because the three units involved in this case were no longer appropriate in view of changes the Respondent made in the organization of production processes and the duties of the employees. The Respondent argued that throughout its discussions with the Unions it announced its intention to introduce job flexibility and overlap, and that the duties of the employees in the three units at issue had changed significantly.

Although the judge acknowledged that under the Respondent's operation certain employees fill in for employees in other departments, he concluded that this was a result of the reduction in size of the work force, and that employees in the three units perform the same duties they previously performed for ABN.[4] The judge noted that while changes in working conditions may have been casually mentioned in some employee interviews, by no means were all or most of the employees specifically told before they were hired of any definite changes. In fact, the judge found that the employees were told that things would be about the same. The judge held that the three Charging Parties remained the bargaining representatives of the employees in each of the three respective units.

III. DISCUSSION

The General Counsel and the Charging Parties have excepted to the judge's failure to find that the Respondent is a ''perfectly clear'' successor to ABN within the meaning of *Burns*, supra, 406 U.S. at 294–295, with an obligation to bargain with the Unions before setting initial terms of employment. We find no merit in these exceptions.

The Board held in *Spruce Up Corp.*, 209 NLRB 194 (1974), enfd. on other grounds 529 F.2d 516 (4th Cir. 1975), that even if a successor employer indicates a willingness to hire a majority of its employees from the ranks of the predecessor's employees, it is not

[3] *Royal Vending Services*, 275 NLRB 1222, 1222–1228 (1985).

[4] The judge also found that the aforementioned changes in employment terms and conditions were instituted after the Respondent's duty to bargain took effect, and therefore, the Respondent could not rely on the commonality of hours, benefits, and other terms to show that the three separate units in question were inappropriate.

''perfectly clear'' that it will be a successor if, at the same time, it informs those employees that it does not intend to adopt the terms and conditions of employment which had prevailed under the predecessor. As the Board explained in *Spruce Up*:

> When an employer who has not yet commenced operations announces new terms prior to or simultaneously with his invitation to the previous work force to accept employment under those terms, we do not think it can fairly be said that the new employer 'plans to retain all of the employees in the unit,' as that phrase was intended by the Supreme Court. The possibility that the old employees may not enter into an employment relationship with the new employer is a real one. 209 NLRB at 195.

That is the situation presented in this case. Although in its March 23 letter to the Unions the Respondent stated its ''intention to attempt to hire its initial work force from among the employees currently working at the Ramapo facility,'' this letter also effectively announced that it would be instituting new terms and conditions of employment. Specifically, the Respondent's statements in the March 23 letter disavowing the notion that the Respondent had agreed to be bound by the terms and conditions of the ABN collective-bargaining agreements and declaring that the Respondent had ''not made any such commitments'' put the employees on notice that the Respondent would be making changes in the employment terms of the predecessor. In our view, the Respondent's statements in the letter convey to the predecessor's employees the message that the Respondent would not be adopting the predecessor's terms and conditions of employment. Thus, simultaneous with its stated intention to retain the predecessor's employees, the Respondent announced new terms and conditions of employment. Subsequently, specific anticipated changes were communicated to the Unions and to three of the prospective employees at their interviews. Under these circumstances, we conclude that the Respondent was not a ''perfectly clear'' successor under *Burns*, and that its bargaining obligation did not attach until it hired the employees on April 19.

Critical to a finding of successorship is a determination that the bargaining unit of the predecessor employer remains appropriate for the successor employer.[5] In *Burns*, supra, the Supreme Court found that the successor employer (Burns) was obligated to bargain with the union that represented the employees of the predecessor (Wackenhut). The Court observed however: ''It would be a wholly different case if the Board had determined that because Burns' operational structures and practices differed from those of Wackenhut, the Lockheed bargaining unit was no longer an appropriate one.'' Id. at 280. The Board's longstanding policy is that ''a mere change in ownership should not uproot bargaining units that have enjoyed a history of collective-bargaining unless the units no longer conform reasonably well to other standards of appropriateness.'' *Indianapolis Mack Sales & Service*, 288 NLRB 1123 fn. 5 (1988). As noted by the judge, the Board has consistently held that long-established bargaining relationships will not be disturbed where they are not repugnant to the Act's policies.[6] The Board places a heavy evidentiary burden on a party attempting to show that historical units are no longer appropriate. See *Columbia Broadcasting System*, 214 NLRB 637, 642–643 (1974) (''compelling circumstances'' must be shown before the Board will disturb a historical unit).

We find that the Respondent has not sustained its burden of showing that the Charging Parties' historical units no longer are appropriate separate units. The sketchy testimony of the six employees above, as well as several inconclusive documents purporting to show the switch in job duties, are the only evidence supporting the Respondent's contention that the three units are now inappropriate for bargaining. Contrary to our dissenting colleague's position, we do not find this proof to be sufficient to overturn well-established units, particularly where many of the changes in duties relied upon by the Respondent actually occurred after the bargaining obligation attached.

Careful review of the record strongly supports the judge's finding that the employees in these units continued performing the same or substantially the same work as they had prior to the change in ownership, only occasionally filling in as needed on tasks otherwise assigned to employees in other bargaining units. Such occasional or sporadic performance of duties across unit lines is insufficient to destroy the integrity of the Charging Parties' units at the facility.

When employed by ABN, the photoengravers represented by Lithographers Local 1-P were responsible for preparing film components and etching. Under BCA's work assignment system, they remain the only employees who perform these duties. The Respondent's engraving division manager testified that the

[5] We agree with the judge, and our dissenting colleague does not dispute, that all of the other legal prerequisites for successorship are satisfied in this case. We also agree with the judge's finding that the only initial terms and conditions set by the Respondent were those announced to the Unions' representatives at the April 11 meeting. Contrary to our dissenting colleague, we find that the Respondent's inconsistent and generally vague statements to various employees in their prehire interviews were insufficient to provide notice of additional initial terms and conditions of employment.

[6] *Fraser & Johnston Co.*, 189 NLRB 142, 151 fn. 50 (1971), enf. granted in relevant part and denied in part on other grounds 469 F.2d 1259 (9th Cir. 1972).

photoengravers ''seldom'' perform the additional tasks of creating models, designing support materials, and preparing litho plates.

The employees represented by the Machinists carry out precisely the same functions in the production process as they had under ABN, which generally involves shearing, grinding, and cutting. These employees have been given no new assignments by the Respondent, and employees in other units fill in to perform some of their functions only from time to time.

Although the employees represented by Graphic Communications Workers 119B-43B have been assigned to fill in on a wider scope of new duties, the fact remains that they continue to serve as the primary, and in some areas the only, employees performing their traditional duties.

The Respondent's contention that the intermittent or occasional performance of tasks across unit lines destroys the appropriateness of the Charging Parties' historical units is belied by its voluntary recognition of two of the other historical units, whose functions and duties the Respondent describes as ''relatively intact and distinct.'' The evidence presented by the Respondent reveals that the employees in those two voluntarily recognized units also are performing new duties under the Respondent's operation. For example, employees represented by Printers and Engravers Local 28-58 now perform eight new functions not previously assigned to them by ABN. In addition, four of the tasks previously assigned exclusively to those employees are now occasionally performed by others. Thus, the introduction of new job duties is not a basis for distinguishing between the two units recognized by the Respondent and the three units at issue.[7]

The evidence presented by the Respondent, as well as the employee testimony, demonstrates that the work of the employees in the three units, although less skilled than some of the work of the hand engravers in the voluntarily recognized Local 28-58 unit, continues to be assigned in much the same manner as it had been by ABN. Thus, we find that the functions of these units are also ''relatively intact and distinct'' despite the Respondent's introduction of some job flexibility.

In sum, the burden was on the Respondent to demonstrate that it had instituted such fundamental changes in the employees' duties that the three historical units no longer were separate, appropriate units. The Respondent failed to satisfy this heavy burden. Instead of producing detailed records concerning new and different functions being performed by the employees in the three units, the Respondent introduced nothing more than conclusory evidence of interchange, and virtually no evidence about the magnitude of that alleged interchange. Thus, from the testimony and other evidence presented by the Respondent, we can determine only that one or more employees in one traditional bargaining unit have on some occasion performed duties within the same general job function as employees in another traditional unit. In the face of such scant evidence, the presumed appropriateness of the three traditional units represented by the Charging Parties was left undisturbed.

We are cognizant that this case arises in an industry that has traditionally been characterized by multiple, narrowly defined bargaining units and that the printing industry has undergone significant technological change in recent years. Such technological change, as well as the reductions in operations and staffing present in this case, may sometimes make cross-training and job flexibility both desirable and appropriate. The Board is keenly aware that unit fragmentation may result from these changes. Nonetheless, the Board's procedures for unit clarification provide a mechanism for ensuring that bargaining units continue to reflect the reality of the workplace. Here, however, the issue presented is whether the Respondent was a legal successor, including whether the bargaining units were appropriate, at a particular point in time, no later than April 19, when the former ABN employees began their employment with the Respondent. We are persuaded that the Respondent's job flexibility system, as described prior to the employees' commencement of work for the Respondent and as it operated when production began on April 19 under the Respondent's ownership, did not fundamentally alter the identity of the established bargaining units.[8] Accordingly, we conclude that the Respondent had a duty to bargain with the Charging Parties concerning the April 23 changes in terms and conditions of employment and that its failure to do so violated Section 8(a)(5) and (1).[9]

ORDER

The National Labor Relations Board adopts the recommended order of the administrative law judge and orders that the Respondent, Banknote Corporation of America, Suffern, New York, its officers, agents, suc-

[7] We recognize that Local 28-58 represents some employees who perform hand engraving, the most highly skilled work at the facility, and that this work continues to be reserved for them.

[8] We agree with the judge that this case is distinguishable from *P. S. Elliott Services*, 300 NLRB 1161 (1990), where, upon the acquisition of the business by the new owner, the employees became part of a highly integrated and centralized organization in which a single location unit could not be appropriate for bargaining.

[9] The record shows that among the changes unilaterally implemented on April 23 was the institution of a new health and welfare benefits program for all employees. Thus, the Respondent did not act consistently with its pre-April 19 announcement to employees that the predecessor's health benefits would continue in effect for 60 days. Accordingly, we find that the Respondent's April 23 changes in health benefits also were unlawful.

cessors, and assigns, shall take the action set forth in the Order.

MEMBER STEPHENS, dissenting in part.

Contrary to my colleagues in the majority, I find merit in the Respondent's exceptions to the judge's finding that the bargaining units are appropriate and that the Respondent is the legal successor to ABN.

Based on my examination of the record, I find that, even assuming the units in which the Charging Parties sought to represent the Respondent's employees were appropriate under ABN, they are not appropriate units under the Respondent.[1]

At Ramapo under ABN, 11 unions represented its 100 production employees in 11 separate units, and there was strict compartmentalization of functions and job duties. With rare exceptions, each unit was exclusively responsible for particular steps in the printing and engraving process. The Respondent's work force is approximately half the size of that employed by ABN at Ramapo. Unlike the five departments utilized by ABN, the Respondent has two departments—printing and engraving.

The Respondent has recognized two unions as the bargaining representatives of certain employees who are in the engraving department and whose functions remain relatively unchanged from what they were under ABN. These two recognized unions are Printers and Engravers Local 28-58, which represents 10 employees and ALA Local 1, which represents 6 employees. The Respondent has designated all other employees in both departments as general workers and cross-trained them so that all of them perform several new duties. General workers' duties in the printing department require minimal qualifications, as evidenced by the Respondent's frequent use of temporary employees for these positions. General workers in the engraving department are skilled or semi-skilled employees, but their skills are interchangeable and these employees are not restricted to one set of tasks.

The Respondent's documentary evidence was not specifically contradicted, and it was corroborated by the testimony of the employees. It shows that many tasks previously performed by employees from only one or at most two former ABN units are now performed by employees from as many as five former ABN bargaining units. In addition, employees in the three units claimed by the Charging Parties are performing job functions for the Respondent that differ markedly from the duties they performed for ABN.

Specifically with regard to the units at issue, under ABN, employees represented by Local 119B-43B were exclusively responsible for finishing work in the engraving department. That work is now performed by nearly all general worker employees, including many who were represented by other unions under ABN. In addition, the Respondent's employees formerly represented by Local 119B-43B now perform unwinding and rewinding duties which they did not do for ABN. These duties are also performed by general worker employees that Local 119B-43B is not seeking to represent. Further, the nine employees in the unit sought by Local 119B-43B also perform examining work, which is a duty that is shared by a number of other employees not included in the unit. In sum, the nine employees sought by Local 119B-43B are functionally part of a group of 19 relatively unskilled general worker employees who are engaged in the end of the production process.

The three photoengravers sought to be represented in a separate unit by Local 1-P are part of a larger group of 14 engraving department employees who make printing plates by photographic processes such as operating cameras, making negatives, and stripping and assembling the negatives. Although these employees are skilled and semiskilled employees with a history of separate representation, they are not functionally distinct in the Respondent's operation. For example, employees represented by Local 28-58 also perform certain functions that the three photoengravers perform, i.e., creating models, designing support material, and preparing lithographic plates. The record shows that only the hand engravers and designers (employees not at issue with respect to this unit) possess such specialized skills that other engraving department employees could not perform their jobs.

Finally, Charging Party Machinists District 15 seeks to represent 2 of 14 engraving department general workers who move, repair, and maintain presses and other equipment, and who also perform plate-making duties. Unlike under ABN's operation, these two employees are no longer exclusively responsible for equipment maintenance and moving or for plate preparation functions. In addition to the two employees sought by the Machinists, the Respondent also uses employees previously represented by the Platefinishers Union (employees not in issue in this case) to operate machines in the engraving department and assist in the plate preparation process. Similarly, although the two employees previously represented by the Machinists perform some maintenance functions in the printing department, they share that work with employees previously represented by other unions. Further, because their job functions are performed in two separate departments, the two employees sought by the Machinists are not supervised exclusively by one supervisor.

As is apparent from the factual recitation above, the predecessor employer was essentially a traditional printing and engraving operation with numerous highly specialized, separately represented crafts. The Re-

[1] I join my colleagues in the majority in finding that the Respondent is not a ''perfectly clear'' successor under *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

spondent's operation, reflecting an entirely different organization of the work, features both an amalgamation of tasks—i.e, now one worker often performs tasks formerly split among workers in two or more crafts—and a splitting of tasks—i.e., tasks formerly performed by a single craft or classification of workers may now be performed both by a worker in one of the groups sought by the Charging Party Unions and by workers outside the groups sought be represented. In short, the units which the three Charging Party Unions now seek to represent are not clearly definable either by their place in the organizational structure of the plant or the work they do.

The Board does not lightly disturb long-established bargaining relationships, and historical units will not normally be found inappropriate simply because of minor changes in the successor employer's operation such as the addition of some new job duties for employees.[2] In the unique circumstances presented here, however, contrary to my colleagues in the majority, I would find that, because of the Respondent's extensive and fundamental changes in the scope of the job tasks performed by its employees, that each of the three units no longer retains a distinct community of interest sufficient to support a determination that each unit is a separate appropriate unit for bargaining.[3]

Here, before it began operating the Ramapo facility, the Respondent announced to the employees and their unions its clear intention to operate without the functional distinctions that existed under ABN, and instead to utilize employee flexibility and interchangeability among jobs. These changes were already in the works before the Respondent hired its employee complement and the Respondent implemented these changes in job functions from the start, beginning with its hiring decisions and continuing through the commencement of operations.[4] Indeed, the Respondent was able to cut substantially the size of the work force, in part because of the elimination of the strict lines between crafts that had existed in the ABN operation. These actions were taken contemporaneously with the beginning of the Respondent's operation of the Ramapo plant, and were consistent with what employees were told during their hiring interviews. Thus, the employees had no reason to believe that they would be working in the narrow crafts that they had under ABN; rather, the employees were put on notice that they would be performing duties different from those they had performed for the predecessor. As reconstituted under the Respondent's operation, the employees in the three units in question no longer function as distinct craft groups, and no longer have distinct communities of interest.

Because I have found that the functional distinctions that may once have justified recognizing separate bargaining units for the Charging Parties under ABN do not exist under the Respondent's operation of the Ramapo facility, I find that the three units sought by the Charging Parties are not appropriate.[5] Accordingly, I find in the peculiar circumstances presented here that the Respondent is not a successor with an obligation to bargain with these historical units, and that it thus did not violate Section 8(a)(5) and (1) by unilaterally implementing changes in employees' terms and conditions of employment on April 23. *P. S. Elliott Services*, 300 NLRB 1161 (1990).

[2] See, e.g., *Phoenix Pipe & Tube Co.*, 302 NLRB 122 (1991), enfd. mem. 940 F.2d 766 (3d Cir.1991).

[3] In finding that the three units sought by the Charging Parties are not appropriate, I emphasize that I express no opinion on what may constitute an appropriate unit or units under the Respondent's operation.

[4] These changes are distinguishable from the April 23 changes in terms and conditions of employment, which were not implemented until after the Respondent commenced operations. As to the latter changes, I agree with the judge that the Respondent may not rely upon them to show that the three units in question are no longer appropriate.

[5] Thus, this case differs markedly from the situation presented in *Phoenix Pipe & Tube Co.*, supra, where the Board found that the respondent company was a successor employer even though it had changed job classifications and requirements of craft employees. Unlike here, the employees in Phoenix Pipe continued to do substantially the same work that they did for the predecessor (with the addition of some cleaning and painting duties), and the respondent employer's plans to cross-train employees were speculative.

Laura B. Sacks, Esq. and *David E. Leach III, Esq.*, for the General Counsel.

J. Richard Hammett, Esq., Mary K. Williams, Esq., and *Katherine A. Ellis, Esq. (Verner, Liipfert, Bernhard, McPherson & Hand)*, of Houston, Texas, for the Respondent.

Moss K. Schenck, Esq., of New York, New York, for Local 1-P.

Valerie Marcus, Esq. (Vladeck, Waldman, Elias & Engelhard), of New York, New York, for Local 119B-43B.

William Rudis, of Stamford, Connecticut, for District 15.

DECISION

STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge. This case was heard before me in New York City on April 15–19, 1991. Upon charges filed on April 13, May 18, and July 17, 1990,[1] a consolidated complaint was issued on November 21 and amended on March 28, 1991, alleging that Banknote Corporation of America (BCA or Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). Respondent filed an answer denying the commission of the alleged unfair labor practices.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed by General Counsel and Respondent on July 8, 1991. A reply brief was

[1] All dates refer to 1990 unless otherwise specified.

filed by Respondent on August 15, 1991, and an answering brief was filed by General Counsel on September 4, 1991.

Upon the entire record of the case, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, with an office and place of business in Suffern, New York, has been engaged in the production, engraving, and printing of security documents. Respondent admits that based on a projection of its operations since April 18, 1990, it annually sells and ships from its Suffern facility goods valued in excess of $50,000 to customers located outside the State of New York. I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. In addition, it has been admitted, and I find, that Graphic Communications International Union, Local 119B-43B, New York (Local 119B-43B), New York Lithographers & Photoengravers Union, #1-P, G.C.I.U. (Local 1-P), and District 15, International Association of Machinists & Aerospace Workers (District 15; (the Unions) are labor organizations within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The issues in this proceeding are:

1. Is Respondent the legal successor to American Bank Note Company (ABN)?

2. Did Respondent violate Section 8(a)(1) and (5) of the Act by setting new terms and conditions of employment without prior bargaining with the Unions?

B. *The Facts*

1. Background

Prior to the spring of 1989 there were two principal competitors in the securities printing industry, United States Banknote Company and ABN. ABN was a subsidiary of International Banknote Co., Inc. Around June 1989, United States Banknote made a tender offer for International Banknote. The United States Department of Justice, however, raised antitrust objections to the proposed tender offer and required the sale of at least one ABN security printing facility to a neutral third party. Consequently, on December 15, 1989, Francois-Charles Oberthur (FCO), through its subsidiary, BCA, entered into a purchase agreement with United States Banknote to acquire substantially all of ABN's assets at its Ramapo facility in Suffern, New York.[2]

On January 9 BCA announced its intent to acquire the Ramapo facility as an operating plant. On February 26 Jean-Pierre Savare, chairman of the board of FCO, wrote the following letter to Malcolm Pritzker, attorney for FCO:[3]

> Confirming our telephone conversation of earlier this afternoon, please be advised that Francois-Charles Oberthur, through its USA subsidiary, Banknote Corporation of America, Inc., has decided to recognize the unions presently recognized at the American Bank Note plant in Suffern, New York (''Ramapo facility'') and to continue the union contracts currently in force at the Ramapo facility.

The sale of assets of BCA closed on February 27. On March 1, Robert J. Tesoriero, director of human resources for ABN, advised Stanley Aslanian, president of Local 1-P, as follows:

> I have been advised that the Oberthur Company has agreed to recognize the Unions who are party to collective bargaining agreements at the Ramapo plant and to be bound to the terms of the existing collect[ive] bargaining agreements.

On March 23 John P. Campbell, newly appointed counsel to FCO and BCA, wrote to Aslanian, as follows:

> It has come to our clients' attention that persons not authorized to speak on behalf of Oberthur or BCA have made statements to you to the effect that Oberthur or BCA have already agreed to recognize the unions at the Ramapo facility and [have] already agreed to be bound to the terms and conditions of the existing collective bargaining agreements at the facility. Any such statements were not authorized by Oberthur or BCA, and Oberthur and BCA hereby disavow them. No one has been or is authorized to speak on behalf of Oberthur or BCA on such matters except Oberthur or BCA. Oberthur and BCA have not made any such commitments.

The parties stipulated that an identical letter was submitted to all the Unions. The letter also noted that ''it is BCA's intention to attempt to hire its initial workforce from among the employees currently working at the Ramapo facility.''

On April 11 a meeting was held between representatives of BCA and the Unions. The meeting was chaired by Martin Ferenczi, president of BCA. Ferenczi announced that ABN would close on April 13, that applications would be given to all the employees then working at ABN, and that these employees would be interviewed by BCA on April 16 and 17. Ferenczi also announced that BCA would be operational on April 19. In addition, Ferenczi reiterated that BCA would not honor the collective-bargaining agreements then existing between ABN and the Unions. Ferenczi testified that he stated at the meeting that BCA intended to introduce flexibility in terms of jobs and that health benefits presently in effect with ABN would continue for a period of 60 days. Ferenczi also testified that he did not discuss working hours, nor did he discuss any other benefits.

2. Interviews and employment at BCA

Augustine Leone testified that he was laid off by ABN on April 13, when the ABN operations ceased. On April 12 the

[2] The acquisition of International Banknote by United States Banknote Co. was completed on February 27, 1990.

[3] There is some dispute as to whether Pritzker was in fact counsel to FCO. In any event, Savare testified that he did not authorize Pritzker to circulate the February 26 letter. In view of Campbell's March 23 letter, sent prior to any offers of employment having been made, I believe that I need not decide the question of Pritzker's status and authority.

ABN employees were handed applications and told to come to the plant for interviews by BCA on April 16. Leone testified that on April 16 only former employees of ABN were at the plant for the purpose of being interviewed. Leone was interviewed by Savare, Ferenczi, and Philip Hurwitz, vice president of BCA and formerly vice president and general manager of ABN. Leone testified that nothing was said to him about vacation, sick leave, or holidays. On April 18 Leone was called and told that he was hired and that he should report to work the following day. Leone testified that when he first began work at BCA his duties were the same as he had previously performed for ABN, and substantially the same products were produced, namely, stock certificates and securities.

Jaroslaw Sawaryn similarly testified that he was interviewed on April 16 and the persons being interviewed that day were all prior employees of ABN. Sawaryn testified that he was told at the interview that flexibility would be required in terms of jobs but that the benefits would be about the same as they were with ABN. Sawaryn also testified that he was told that vacations would be 1 week less and that operations were to begin on April 19. Sawaryn was informed by Hurwitz on April 18 that he was being hired and he started work on April 19. Sawaryn testified that when he began work with BCA his duties were substantially the same as they were at ABN. He further testified that as of December 1990, in addition to his other duties, he also worked on a numbering machine.

Robert Whelan testified that at the interview he was told that he would be performing the same duties with BCA that he did with ABN. He did not recall there having been any discussion about vacation time and testified that there was no mention of sick leave and holidays. Gerard Lindsey testified that during the interview there was no mention of holidays, vacations, sick leave, or other benefits. He testified, however, that the interviewers may have mentioned that the hours ''might be longer'' and that Savare mentioned that the Company would like to have flexibility in terms of jobs. Luz Ruiz testified that she was told that the salary and benefits would be the same as they were at ABN. Salvatore Mantione testified that during the interview nothing was said about the benefits he would receive if he were hired by BCA.

Ferenczi testified that the interviews took place on April 16 and 17, that offers were made on April 18 and that the payroll started on April 19. He testified that 102 people were interviewed, all of whom had previously worked for ABN and who had been laid off by ABN on April 13. The parties stipulated, that except for two maintenance employees, the production employees at BCA all had previously been employees of ABN at the Ramapo plant. Ferenczi further testified that 50 production employees were initially hired and four former ABN supervisors were hired to be supervisors for BCA. Thus, John Volpe had been engraving division manager at ABN and he holds the same position at BCA. Stanley Golemba was assistant plant manager at ABN and is printing department manager at BCA. As previously mentioned, Philip Hurwitz had been vice president and general manager at ABN and is vice president and plant manager at BCA. Hurwitz testified that the processing of documents is the same at BCA as it was at ABN.

Discussion and Conclusions

1. Respondent is the legal successor of ABN

On February 27, 1990, Respondent purchased the assets of ABN. It had earlier announced its intent to acquire the Ramapo facility as an operating plant. The parties stipulated, that except for two maintenance employees, the BCA production employees had all previously been employees of ABN at the Ramapo plant. Four of the ABN supervisors continued as supervisors at BCA. Leone credibly testified that when he first began to work at BCA his duties were the same as they had been at ABN and substantially the same products were produced, mainly stock certificates and securities. This testimony was corroborated by Sawaryn. In addition, Hurwitz, who had been vice president and general manager at ABN and is vice president and plant manager at BCA, testified that the processing of documents at BCA is the same it was at ABN.

The Board has evolved a set of criteria to determine whether legal successorship exists. The relevant questions include:

> (1) whether there has been a substantial continuity of the same business operations; (2) whether the new employer uses the same plant; (3) whether he has the same or substantially the same work force; (4) whether the same jobs exist under the same working conditions; (5) whether he employs the same supervisors; (6) whether he uses the same machinery, equipment, and methods of production; and (7) whether he manufactures the same product or offers the same services. *J. P. Mfg.*, 194 NLRB 965, 968 (1972); *Band-Age, Inc.*, 217 NLRB 449, 452–53 (1975), enfd. 534 F.2d 1 (1st Cir. 1976).

Based on the above, Respondent clearly meets the criteria necessary for it to be deemed the legal successor of ABN.

2. Duty to bargain

In *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), the Supreme Court made it clear that a successor is entitled to set the initial terms of employment on which it will hire the predecessor's employees. However, in cases where the successor plans to retain the old employees, and makes no mention of changes in employment conditions, the Board has held that the successor must bargain concerning initial terms and conditions of employment. *Royal Vending Services*, 275 NLRB 1222, 1227–1228 (1985).

The complaint alleges that on April 23, 1990, BCA imposed a new set of terms and conditions of employment which, inter alia, changed employees' hours of employment, health and welfare benefits, holidays, pension benefits, and vacation leave. These changes were made without the Unions being afforded an opportunity to negotiate and bargain with respect to such changes. At the meeting held on April 11, Ferenczi testified that he stated that BCA intended to introduce flexibility in terms of jobs and that health benefits presently in effect with ABN would continue for a period of 60 days. Ferenczi also testified that at that meeting he did not discuss working hours nor did he discuss any other benefits. Leone testified that at his interview on April 16 nothing was said to him about vacations, sick leave, or holidays. Sawaryn

testified that he was told at the interview that flexibility would be required in terms of jobs but that the benefits would be substantially the same as they were with ABN. Similarly, Whelan and Lindsey testified that during their interviews there was no mention of holidays, vacations, sick leave, or other terms of employment. However, Lindsey testified that the interviewers may have mentioned that the hours ''might'' be longer and that Savare stated that the Company would like to have flexibility in terms of jobs. In addition, Ruiz testified that benefits would be the same as they were at ABN and Montione testified that during the interview nothing was said about the benefits he would receive if he were hired by BCA.

Based on the above, I find that the only changes in terms of employment, which were announced prior to hiring the employees, were a desire for flexibility in terms of jobs and that the health benefits presently in effect with ABN would continue for a period of 60 days. No mention of changes in other employment conditions was made. In accordance with the cases cited above, Respondent would be required to bargain concerning any changes in the other terms and conditions of employment.

3. Appropriate bargaining units

Respondent argues that because of changes it made in the duties of the employees, the units involved in this proceeding are no longer appropriate bargaining units. The Board has consistently held that long-established bargaining relationships will not be disturbed where they are not repugnant to the Act's policies. *Fraser & Johnston Co.*, 189 NLRB 142, 151 fn. 50 (1971), enf. granted in part and denied in part on other grounds 469 F.2d 1259 (9th Cir. 1972). Sawaryn testified that his duties at BCA were substantially the same as they were at ABN, although, as of December 1990, he also worked on a numbering machine. Similarly, Leone testified that his duties at BCA were the same as they were at ABN, except that he also does ''cross-over work between the engraving division and the mechanical division.'' Whelan testified that he performed the same duties at BCA as he did at ABN, except that in December 1990 he received some training in other departments and at that time he did some filling in for employees in other departments. Thus, the evidence establishes that employees in the units involved in this proceeding perform the duties they previously performed for ABN and on occasions certain employees fill in for others as a result of the reduction in size of the Ramapo plant work force. As the Board stated in *Fraser & Johnson Co.*, id., ''divided production and maintenance units are not uncommon and are certainly not inappropriate per se.'' While more inclusive units may also be ''appropriate,'' it does not follow that the units in this proceeding are therefore ''inappropriate.'' As the Board held in *Parsons Investment Co.*, 152 NLRB 192, 193 fn. 1 (1965):

> There is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act requires only that the unit be ''appropriate.'' [Citation omitted.]

See also *Federal Electric Corp.*, 157 NLRB 1130, 1132–1133 (1966); *Texas Electric Service Co.*, 261 NLRB 1455 fn. 1 (1982).

In support of its position Respondent has cited *P. S. Elliott Services*, 300 NLRB 1161 (1990). I believe, however, that that case is distinguishable. In *Elliott*, respondent, which was in the business of providing cleaning services at a number of buildings, took over the cleaning services at the Brisbane building. Employees at all the locations were commonly supervised out of a central office and all personnel matters were handled exclusively at the central office. In addition, employee interchange between the buildings was regular and frequent. Under such circumstances, the Board found that the employees at the Brisbane building did not by themselves constitute an appropriate bargaining unit. In the instant proceeding, however, except for the two previously announced changes, all the other changes in the terms and conditions of employment took place after the obligation to bargain attached. Thus, while Repondent argues that all of its employees work the same hours, have the same lunchbreak, participate in the same pension, vacation, and sick pay plans, wear the same uniforms, and observe new company holidays, these changes were instituted after Respondent's duty to bargain took effect. See *Alondra Nursing Home*, 242 NLRB 595, 598 fn. 12 (1979).

I find, therefore, that the units involved in this proceeding constitute appropriate units for collective bargaining.

Conclusions of Law

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

2. The Unions are labor organizations within the meaning of Section 2(5) of the Act.

3. By refusing to negotiate with the Unions with respect to certain changes in terms and conditions of employment, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent has engaged in certain unfair labor practices, I find it necessary to order Respondent to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act.

On April 23, 1990, Respondent imposed a new set of terms and conditions of employment without having afforded the Unions an opportunity to negotiate and bargain with respect to the changes. Except for announcing that it intended to introduce flexibility in terms of jobs and that health benefits in effect with ABN would continue for a period of 60 days, Respondent did not announce any other changes in employment conditions when it offered jobs to the employees. Accordingly, having found that Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing certain terms and conditions of employment without notice to, and bargaining with, the Unions, I shall order Respondent to restore the status quo by rescinding, on request from the Unions, those unilateral changes put into effect on April 23, 1990, which were not previously announced; and to make all

affected unit employees whole for losses they incurred by virtue of its unilateral changes in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[4]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Banknote Corporation of America, Suffern, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally changing the terms and conditions of employment without prior notice to or bargaining with the Unions, as the exclusive representatives of the employees in the below-described bargaining units.

(b) Refusing to bargain with Graphic Communications International Union, Local 119B-43B, New York, in the following appropriate unit:

> The unit of employees set forth in the Shop Rules and Wage Scales Contract between Local 119B-43B and Printers League Section Association of the Graphic Arts, Inc.

(c) Refusing to bargain with New York Lithographers & Photoengraphers Union, #1-P, G.C.I.U., in the following appropriate unit:

> All journey persons and apprentice photoengravers, excluding all other employees, guards, professional employees and supervisors as defined in the Act.

(d) Refusing to bargain with District 15, International Association of Machinists & Aerospace Workers, in the following appropriate unit:

> All machinists, excluding all other employees, guards, professional employees and supervisors as defined in the Act.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

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

(a) On request, recognize and bargain collectively with the Unions, as the exclusive representatives of the employees in the aforesaid appropriate units, with respect to rates of pay, hours, and other terms of employment and, if understandings are reached, embody such understandings in signed agreements.

(b) On request of the Unions, rescind the unilateral changes instituted on April 23, 1990, which were not previously announced, and make affected employees whole for losses they incurred by virtue of the unilateral changes, with interest as prescribed in the remedy section above.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts owing under the terms of this Order.

(d) Post at its facility in Suffern, New York, copies of the attached notice marked ''Appendix.''[6] Copies of the notice on forms provided by the Regional Director for Region 2, 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.

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

[4] Under *New Horizons*, interest on and after January 1, 1987, shall be computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] 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.''

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.

WE WILL NOT unilaterally change the terms and conditions of employment for bargaining unit employees, without prior notice to or bargaining with the Unions, as the exclusive representatives of the employees in the below-described bargaining units.

WE WILL NOT refuse to bargain with Graphic Communications International Union, Local 119B-43B, New York, in the following appropriate unit:

> The unit employees set forth in the Shop Rules and Wage Scales Contract between Local 119B-43B and Printers League Section Association of the Graphic Arts, Inc.

WE WILL NOT refuse to bargain with New York Lithographers & Photoengravers Union, #1-P, G.C.I.U., in the following appropriate unit:

> All journey persons and apprentice photoengravers, excluding all other employees, guards, professional employees and supervisors as defined in the Act.

WE WILL NOT refuse to bargain with District 15, International Association of Machinists & Aerospace Workers, in the following appropriate unit:

All machinists, excluding all other employees, guards, professional employees and supervisors as defined in the Act.

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

WE WILL, on request, recognize and bargain collectively with the Unions, as the exclusive representatives of the employees in the aforesaid appropriate units, with respect to rates of pay, hours, and other terms of employment and, if understandings are reached, embody such understandings in signed agreements.

WE WILL, on request of the Unions, rescind the unilateral changes instituted on April 23, 1990, which were not previously announced, and make affected employees whole for losses they incurred by virtue of the unilateral changes, with interest.

BANKNOTE CORPORATION OF AMERICA