

Amersig Graphics, Inc., and Amersig Southeast, Inc. d/b/a American Signature, Inc. and Graphic Communications International Union, AFL-CIO

Quebecor Printing Atlanta, Inc. and Graphic Communications International Union, AFL-CIO.
Cases 10-CA-29813, 10-CA-30025, 10-CA-30055, 10-CA-30320, 10-CA-30378, and 10-CA-30896

August 2, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

On March 19, 1999, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Respondent, Amersig Graphics, Inc., and Amersig Southeast, Inc., d/b/a American Signature, Inc. (Amersig), and the Respondent Quebecor Printing Atlanta, Inc. (Quebecor), each separately filed exceptions and a supporting brief. The Charging Party Graphic Communications International Union, AFL-CIO (the Union) filed an answering brief to the Respondents' exceptions. Amersig 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 (except in two noted instances) the judge's rulings, findings, and conclusions as further discussed below and to adopt the recommended Order as modified and set forth in full below.¹

For the reasons set forth below, we agree with the judge's findings: (1) that Amersig violated Section 8(a)(3) and (1) of the Act by failing to reinstate unfair labor practice strikers following their unconditional offer to return to work; (2) that Quebecor is a successor employer to Amersig under *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973); (3) that as a *Golden State* successor, Quebecor is obligated to remedy Amersig's outstanding unfair labor practices and to offer reinstatement to the former strikers; and (4) that Amersig, along with Quebecor, must jointly and severally make employees whole for any losses suffered as a result of both Respondents' unlawful failure and delay in reinstating them. The judge found further, and we agree, except in one instance, that Quebecor violated Section 8(a)(5) and (1) of the Act, by failing to timely comply with the Union's requests for information. Finally, we do not agree

¹ We shall modify the judge's recommended Order to correct inadvertent errors and to conform to the violations found.

with the judge's finding that Quebecor violated Section 8(a)(5) and (1) of the Act by unilaterally implementing a policy of involuntary layoffs of bargaining unit employees.

Factual Background

The factual background is set forth in full in the judge's decision and is summarized here. On April 29, 1993, the Union commenced a strike against Amersig. The Union also filed unfair labor practice charges against Amersig. Thereafter, the General Counsel issued a complaint alleging that the strikers were unfair labor practice strikers.

On November 23, 1996, the Union notified Amersig that it was terminating its strike and made an unconditional offer to return to work on behalf of the strikers. On December 5 and 6, 1996, Amersig responded that it considered the strikers to be economic strikers who had been permanently replaced and who would be reinstated as vacancies occurred. On December 9, 1996, the Union replied that it did not agree that the employees had been economic strikers. On December 12, 1996, Amersig offered seven of the former strikers reinstatement consistent with its treatment of them as economic strikers.

On December 27, 1996, Administrative Law Judge Howard I. Grossman issued his decision in the unfair labor practice case referred to above. He found that Amersig had committed numerous violations of the Act, that the strikers were engaged in an unfair labor practice strike, and that they were entitled to reinstatement upon their unconditional offer to return to work. Amersig did not file exceptions to the judge's decision.²

On January 8, 1997, Amersig mailed offers of reinstatement to the former strikers. The offers were accompanied by a letter advising that the sale of Amersig to Quebecor was to take effect on January 15, 1997, and that the former strikers would no longer have a job with Amersig upon completion of the sale.

Amersig thereafter instructed former strikers to report to a mandatory orientation training to be held at a hotel located approximately 10 miles from Amersig's Atlanta facility. There was no functioning printing equipment to perform the unit work at the hotel; all machinery was located at Amersig's Atlanta printing facility. The orientation was conducted on 6 consecutive weekdays, from Tuesday, January 14, through Tuesday, January 21, 1997.

At the conclusion of the orientation, Amersig advised the attendees not to report to the Atlanta facility, because

² On March 14, 1997, the Board adopted the judge's decision, *Footte & Davies, Inc., d/b/a American Signature*, Cases 17-CA-16090, et al., in the absence of exceptions.

the sale to Quebecor was to take place on Wednesday, January 22, 1997. It is undisputed that, following its offer of reinstatement, Amersig never actually reinstated any former unfair labor practice striker to his or her former job at the Atlanta facility.

Analysis

1. The judge found that Amersig violated Section 8(a)(3) and (1) of the Act by failing immediately to reinstate the unfair labor practice strikers following their unconditional offer to return to work in November 1996. The judge also found that Amersig's January 1997 reinstatement offer was not valid. Rather, the judge found that the offer of reinstatement was a sham designed to keep the former strikers out of Amersig's Atlanta printing plant, and to hold them at bay in their quest for reinstatement. We have carefully reviewed the record evidence and find that it fully supports the judge's findings.

It is settled law that unfair labor practice strikers are entitled to immediate reinstatement upon making an unconditional offer to return to work. *NLRB v. International Van Lines*, 409 U.S. 48, 50–51 (1972). An employer is required to terminate replacement workers who have been hired to fill the jobs of the unfair labor practice strikers, if necessary to make room for those returning strikers. See, e.g., *NLRB v. Champ Corp.*, 933 F.2d 688, 697 (9th Cir. 1990), cert. denied 502 U.S. 957 (1991). An offer of employment must be specific, unequivocal, and unconditional in order to toll backpay and satisfy a respondent's remedial obligation. See, e.g., *Hoffman Plastic Compounds*, 326 NLRB 1060, 1061 (1998), enfd. 237 F.3d 639 (D.C. Cir. 2001); *Pace Motor Lines*, 260 NLRB 1395 fn. 2 (1982), enfd. 703 F.2d 28 (2d Cir. 1983).

In determining whether a respondent has satisfied these requirements and made a valid offer of reinstatement, the Board examines whether the respondent merely "went through the formalities of a job offer" which did not result in actual reinstatement. *IMCO/International Measurement Co.*, 277 NLRB 962, 968 (1985), enfd. mem. 808 F.2d 837 (7th Cir. 1986). This inquiry is critical to ensure that compliance with an obligation of reinstatement does not "consist of simply going through the motions without fulfilling [the] intent and spirit" of reinstatement. *Id.* The key is offering to return employees to their former jobs at the employing enterprise. See *Fabsteel Co. of Louisiana*, 231 NLRB 372, 380 (1977) ("offer of jobs away from the employing enterprise which is continuing does not constitute an offer of reinstatement which effectuates the purposes of the Act"), enfd. 587 F.2d 689, 693 (5th Cir. 1979), cert. denied 442 U.S. 943 (1979).

a. When the strikers made their unconditional offer to return to work on November 23, 1996, they were unfair labor practice strikers entitled to immediate reinstatement. Amersig, however, did not recall them to their prestrike jobs and instead treated them as economic strikers. The judge found, we agree, and Amersig does not dispute, that it violated Section 8(a)(3) and (1) of the Act by refusing to immediately reinstate the unfair labor practice strikers.

b. We now turn to Amersig's contention that its January 8, 1997 offers of reinstatement were valid and tolled its liability to the unfair labor practice strikers. As discussed below, we find that the evidence establishes that Respondent Amersig went through the formalities of a job offer, while failing to fulfill its remedial obligation to actually reinstate the former strikers to their former jobs at Amersig's Atlanta facility.

We rely first on the fact that the strikers' orientation did not in fact take place at the Atlanta facility. The individuals who conducted the orientation training testified at the hearing that normally such training is conducted on-the-job with functioning equipment.³ Manager Harmon testified that Amersig deviated from traditional practice and decided to conduct the orientation training offsite to create a "cooling down period" to "calm things down before we started a full integration back into the workforce." Amersig has not called any evidence of violence or aggression at the plant to our attention, and the record contains none. Indeed, Harmon admitted, and the judge found, that Amersig experienced no problems when former strikers returned prior to its offer of reinstatement on January 8, 1997. Amersig has failed to demonstrate that it was justified in delaying reinstatement because of a concern for employee violence or other misconduct.⁴ Harmon testified further that the second reason Amersig decided to hold the orientation away from its Atlanta facility was because of the lack of a room big enough to accommodate all anticipated returning strikers. Approximately 20 former strikers attended the offsite orientation. Harmon admitted that, upon learning of this number of attendees on the first day of orientation, there was no impediment, logistical or otherwise, to immediately returning them to the plant. Thus, Amersig has failed to establish any legal or factual justi-

³ One trainer testified that in 8 years of conducting training programs for operators he could not recall one instance of conducting a training program away from the relevant equipment. The other trainer testified that he had done "a little" but "not much" offsite training.

⁴ See *NLRB v. Champ Corp.*, supra, 933 F.2d at 697 (Ninth Circuit found that the employer failed to demonstrate that it was justified in delaying reinstatement because of a concern for potential employee violence).

fication for conducting the orientation away from its Atlanta printing plant.

Second, Harmon acknowledged in his testimony that the orientation as scheduled “went quicker than we thought.” Instead of returning the strikers to work, however, he modified the orientation schedule to add a full day trip in which attendees toured a plant that manufactures printing plates. The record shows that Amersig does not manufacture printing plates but purchases them from third-party vendors. Harmon could not cite a single instance in which Amersig had ever previously sent employees to tour a plate manufacturing plant. Amersig’s extension of the offsite orientation with superfluous activity, rather than simply returning former strikers to its Atlanta facility, supports our finding that Amersig evaded rather than fulfilled its obligation to return the strikers to their former jobs at the employing enterprise.⁵

Third, Amersig has failed to offer any meaningful explanation for its requirement that the unfair labor practice strikers, who were senior, experienced employees, attend 6 full days of orientation. By contrast, when Amersig on December 12, 1996, offered reinstatement to seven former strikers (deemed by Amersig to be economic strikers), there was no requirement of any formal orientation, offsite or otherwise. The Respondent’s decision to treat the former strikers differently in January further supports our finding that the Respondent’s January 8 offers were an exercise in “simply going through the motions” and were not valid.

Fourth, Amersig’s contention that it satisfied its reinstatement obligation because it repeatedly told orientation attendees at the hotel that they were “active” Amersig employees, and enrolled them on its payroll and benefit programs for the duration of the orientation, is unpersuasive. These nominal actions are insufficient to satisfy the Respondent’s legal obligation to return the employees to their former jobs at the Atlanta plant, which necessarily would have meant allowing them to resume their prior duties on the job. *Fabsteel Co. of Louisiana*, supra, 231 NLRB at 380.

Finally, while there was a short time period between Judge Grossman’s decision of December 27, 1996, and the sale of the plant on January 22, 1997, that factor did not relieve Amersig of its obligation to properly reinstate the unfair labor practice strikers. After all, it was Amersig’s admitted and unlawful failure to timely act on the Union’s unconditional offer to return to work that deter-

mined this sequence of events. “The order of reinstatement would be a moot consideration if the duty had been properly carried out.” *Capitol Steel & Iron Co. v. NLRB*, 89 F.3d 692, 698 (10th Cir. 1996), enfg. 317 NLRB 809 (1995). Amersig cannot be excused from its failure to actually reinstate former strikers to their jobs based on a situation created by its own unlawful conduct.

For all these reasons, we find that the record evidence as a whole confirms the judge’s finding that Amersig’s reinstatement offers were not valid. Consequently, at the time Quebecor purchased Amersig’s Atlanta facility, Amersig’s obligation to reinstate the former strikers remained unsatisfied, and its violation of Section 8(a)(3) remained unremedied.

2. We agree with the judge’s finding that Quebecor is a *Golden State* successor to Amersig. Under *Golden State*, a successor employer with notice of an existing unfair labor practice charge against its predecessor can be held accountable to remedy those past wrongs. 414 U.S. at 181–186; *NLRB v. Jarm Enterprises*, 785 F.2d 195, 202 (7th Cir. 1986), enfg. *Blu-Fountain Manor*, 270 NLRB 199 (1984). “It is the burden of the successor employer to establish that it lacks knowledge of unfair labor practices pending at the time of purchase.” *Proxy Communications*, 290 NLRB 540 fn. 2 (1988), enfd. 873 F.2d 552 (2d Cir. 1989); *Robert G. Andrew, Inc.*, 300 NLRB 444 (1990).

There is no dispute that Quebecor continued Amersig’s operations without substantial change.⁶ Quebecor further does not dispute the judge’s finding, based on ample record evidence, that it had knowledge of the unfair labor practice charge filed in this proceeding alleging Amersig’s failure to reinstate the former unfair labor practice strikers, as well as of Amersig’s unlawful conduct set forth in Judge Grossman’s decision. Quebecor nevertheless argues in its exceptions that the notice requirement of *Golden State* is not satisfied because it believed that Amersig had remedied its unfair labor practices by making its offer of reinstatement of January 8, 1997. Quebecor’s asserted belief is based on an oral representation by Amersig on that date that it was “accepting” Judge Grossman’s decision and reinstating the former strikers. Quebecor’s reliance on the simple expression by Amersig that its unfair labor practices were remedied is legally insufficient under *Jarm Enterprises*, supra, to negate Quebecor’s status as a *Golden State* successor.

⁵ Amersig’s reliance on *Oregon Steel Mills*, 300 NLRB 817 (1990), enfd. 47 F.3d 1536 (9th Cir. 1995), to justify its offsite orientation, is misplaced. There was no contention in that case that an orientation conducted for former economic strikers, apparently held in the employer’s plant, rendered invalid the employer’s offer of reinstatement.

⁶ The parties have stipulated that Quebecor continued to operate Amersig’s printing business at the Atlanta location, with substantially the same employees, performing the same functions, operating the same equipment, with the same supervisors and substantially the same labor relations personnel, for substantially the same customers.

In *Jarm Enterprises*, the successor employer had been put on notice of a pending appeal of the dismissal of the union's unfair labor practice charge against the predecessor. The successor contended that this did not constitute notice under *Golden State* since it was informed by its predecessor's counsel that in his opinion the union's claim was meritless. The Seventh Circuit rejected this contention:

This argument is unpersuasive. A party who acts in reliance upon an initial determination despite the pendency of an appeal assumes the risk that the actions may later be found to be unlawful. *NLRB v. Sav-on Drugs, Inc.*, 728 F.2d 1254, 1256 (9th Cir. 1984). *Jarm* [the successor employer] was aware of the labor problems at [the predecessor employer] at the time of purchase and its reliance on the future prospects of the Union's claim was misplaced. [785 F.2d at 205.]

At the time it purchased Amersig, Quebecor was likewise clearly aware of the unfair labor practice charge underlying the instant proceeding. In relying on its predecessor's representation, Quebecor assumed the risk that the charge would later be found meritorious.⁷ The pending unfair labor practice charge had neither been withdrawn by the Union nor dismissed by the Board's Region Office without appeal. Further, the Union gave Quebecor no reason to believe that the Union considered its legal claims to be settled or otherwise inactive.⁸ The record evidence fully supports the judge's finding that Quebecor is a *Golden State* successor to Amersig.⁹

3. The judge found, and we agree, that Quebecor, as a *Golden State* successor, is obligated to remedy Amersig's outstanding unfair labor practices and to offer reinstatement to the former strikers. The Supreme Court in *Golden State* approved the Board's *Perma Vinyl*¹⁰ line of cases imposing liability on the successor for past unfair

labor practices committed by the predecessor. Specifically, the Court held that the *Perma Vinyl* doctrine strikes an appropriate balance among "the conflicting legitimate interests of the bona fide successor, the public, and the affected employee." 414 U.S. at 181. The Court cited with approval the Board's emphasis upon protection for the victimized employee:

Especially in need of help . . . are the employee victims of unfair labor practices who, because of their unlawful discharge, are now without meaningful remedy when title to the employing business operation changes hands. [414 U.S. at 181, quoting *Perma Vinyl Corp.*, 164 NLRB at 969. (Internal quotation marks omitted.)]

As the Court explained at length:

When a new employer . . . has acquired substantial assets of its predecessor and continued, without interruption or substantial change, the predecessor's business operations, those employees who have been retained will understandably view their job situations as essentially unaltered. Under these circumstances, the employees may well perceive the successor's failure to remedy the predecessor employer's unfair labor practices arising out of an unlawful discharge as a continuation of the predecessor's labor policies. To the extent that the employees' legitimate expectation is that the unfair labor practices will be remedied, a successor's failure to do so may result in labor unrest as the employees engage in collective activity to force remedial action. Similarly, if the employees identify the new employer's labor policies with those of the predecessor but do not take collective action, the successor may benefit from the unfair labor practices due to a continuing deterrent effect on union activities . . . [and] a failure to reinstate may result in a leadership vacuum in the bargaining unit. [414 U.S. 184–185.]

The Board, thus, has the authority under *Golden State* to require Quebecor to remedy Amersig's unfair labor practices, since it is established that Quebecor is Amersig's successor and knew of those unfair labor practices when it bought the company. Quebecor nevertheless argues that it should not be required to remedy Amersig's outstanding unfair labor practices and to offer reinstatement to the former strikers.

Quebecor first contends that a reinstatement obligation should not apply in the absence of evidence that it discriminated against former strikers when hiring its workforce. This contention fundamentally misconceives the basis for imposing successor liability under *Golden State*. The basis for liability "is not focused on the conduct of the successor but rather the need to prevent mere changes in the title to the business from frustrating the national

⁷ Quebecor's argument is particularly tenuous because it rests not even on an initial decision by a disinterested adjudicative body, but solely on the assertion of a litigant.

⁸ Contrary to the judge's finding, the Union's letter of January 10, 1997, asserting that Amersig's offer of reinstatement was invalid, was sent to Amersig, rather than Quebecor. However, the record is replete with other evidence that the Union repeatedly notified Quebecor that it was required to reinstate all former strikers to their prestrike positions.

⁹ Quebecor has excepted to the judge's denial of its motion to dismiss, which asserted that the General Counsel failed to allege that Quebecor had notice of the unfair labor practice charge filed against Amersig. Quebecor reiterates its argument on appeal, further asserting that the pleadings were not amended to conform to the evidence offered at the hearing. The judge correctly denied Quebecor's motion, because the amended consolidated complaint clearly alleged that Quebecor was a successor to Amersig liable to remedy the latter's unfair labor practices, and Quebecor does not dispute that the issue of whether it was on notice of those unfair labor practices was fully litigated.

¹⁰ 164 NLRB 968 (1967), enf. sub nom. *United States Pipe & Foundry Co. v. NLRB*, 398 F.2d 544 (5th Cir. 1968).

labor policy of remedying unfair labor practices.” *NLRB v. Jarm Enterprises*, supra, 785 F.2d at 202.

According to Quebecor, its status as a *Burns* successor¹¹ precludes an order under the *Golden State* doctrine that it offer reinstatement to former strikers. It is true that a successor employer under *Burns* is under no obligation to hire the employees of its predecessor, subject, of course, to the restriction that it not discriminate against union employees. 406 U.S. at 280 fn. 5. The Supreme Court held in *Golden State*, however, that nothing in *Burns* militated against the imposition of successor liability to remedy a predecessor’s outstanding unfair labor practices, including offering reinstatement. 414 U.S. at 184–185. As the Court explained, the successor must have notice before liability can be imposed. Its potential liability for remedying prior unlawful conduct is thus a matter which may be reflected in the price paid for the business or otherwise addressed in the terms of the transaction. *Id.* Quebecor purchased Amersig and made its initial hiring choice with full knowledge of the latter’s unlawful conduct. Indeed, the terms of the transaction required Amersig to indemnify Quebecor for liabilities arising out of the underlying unfair labor practice proceedings. Quebecor cannot now point to its freedom under *Burns* to make initial hiring choices for legitimate reasons as a bar to *Golden State* liability. See *Proxy Communications*, supra, 290 NLRB 540, 543 (1988), enfd. 873 F.2d 552 (2d Cir. 1989) (successor employer under *Burns* ordered to offer reinstatement to employees under *Golden State* doctrine); *Jarm Enterprises*, supra, 785 F.2d 195 (same); *Fabsteel Co. of Louisiana*, supra, 587 F.2d 689 (same).

Quebecor additionally contends that a balancing of the conflicting legitimate interests involved, as required under *Golden State*, should absolve it of any obligation to remedy Amersig’s unfair labor practices. Quebecor asserts that requiring it to offer reinstatement to the former strikers unduly favors them in hiring, works to the detriment of the rights of other employees it hired, and infringes its right to nondiscriminatorily hire its own initial workforce. Quebecor’s purported application of the *Golden State* balancing test, however, entirely ignores the Supreme Court’s instruction that an emphasis must be placed upon protecting the employee victims of unfair labor practices. 414 U.S. at 181. Nor does Quebecor accord any weight to the important national labor policies of protecting employee exercise of statutory rights, preventing deterrence of the exercise of those rights, and avoiding labor strife that may result from unremedied

unfair labor practices. *Id.*, at 184–185. Rather, Quebecor unduly elevates its own interests as the purchaser of Amersig’s assets with a right to hire its employees, and the interests of the employees it hired, to the exclusion of the other probative factors. *Proxy Communications*, supra, 290 NLRB at 543. An appropriate balance under *Golden State* warrants a finding that Quebecor is required to offer reinstatement to the former strikers to remedy Amersig’s outstanding unfair labor practices.¹²

4. We further agree with the judge that Amersig, along with Quebecor, must jointly and severally make employees whole for any losses suffered as a result of the unlawful failure and delay in reinstating them. Amersig argues in its exceptions that even if the offers of reinstatement are deemed invalid, it can only be held liable until the date it sold its operation to Quebecor and effectively went out of business. The Court in *Golden State*, however, specifically rejected such an argument by the predecessor respondent. 414 U.S. at 186–187. “[W]ith respect to the offending employer himself, it must be obvious that it cannot be in the public interest to permit the violator of the Act to shed all responsibility for remedying his own unfair labor practices by simply disposing of the business.” *Id.*, quoting *Perma Vinyl Corp.*, supra, 164 NLRB at 970. Accordingly, we shall order that Amersig, along with Quebecor, jointly and severally make employees whole for any losses suffered as a result of the unlawful failure and delay in reinstating them.

5. We do not agree with the judge’s finding that Quebecor violated Section 8(a)(5) and (1) by unilaterally implementing a policy of involuntary layoffs of bargaining unit employees. At the hearing, the judge granted the General Counsel’s motion, over the Charging Party’s objection, to amend the amended consolidated complaint to allege that Quebecor unilaterally implemented a policy of soliciting volunteers from the bargaining unit for layoffs.¹³ In his decision, however, the judge did not address the merits of the amended complaint allegation (unilateral implementation of a policy of *voluntary* layoffs). Instead, the judge found an unfair labor practice

¹² Quebecor’s additional attempt to avoid liability based on fn. 6 of *Golden State* is misplaced. The Court there clarified that a successor employer may not be bound to a predecessor’s outstanding bargaining obligation, because the successor is not initially obligated to hire any of the predecessor’s employees, and there may thus be no showing of majority support for the union necessary to support a bargaining order. In this case, Quebecor does not dispute that it has a bargaining obligation to the Union and that it continued Amersig’s business with substantially the same employees. The basic holding of *Golden State* that a successor may be ordered to reinstate discriminatees to remedy the predecessor’s unfair labor practices is not altered by fn. 6 of *Golden State*.

¹³ The Charging Party has not filed exceptions to the judge’s ruling granting the motion to amend the complaint.

¹¹ *NLRB v. Burns Security Services*, 406 U.S. 272 (1972). The parties have stipulated that Quebecor is a successor employer under *Burns*.

that the General Counsel had not alleged (unilateral implementation of a policy of *mandatory* layoffs).

In light of the judge's ruling at the hearing, the complaint allegation as amended is the one before us for decision. We have carefully reviewed the record evidence and find that it is insufficient to support a finding that Quebecor implemented a policy of *voluntary* layoffs. Rather, the record shows that the layoffs were *mandatory*. We shall accordingly dismiss this amended complaint allegation.

6. We agree with the judge's finding that Quebecor violated Section 8(a)(5) and (1) of the Act by failing to timely comply with requests for information by Local 8-M, Graphic Communications International Union (Local 8-M), and by Local 96-B, Graphic Communications International Union (Local 96-B).¹⁴

It is axiomatic that an employer has an obligation to furnish to a union, upon request, information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967). An employer must respond to the information request in a timely manner. *Leland Stanford Junior University*, 307 NLRB 75, 80 (1992). An unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all. *Valley Inventory Service*, 295 NLRB 1163, 1166 (1989). An employer has a duty to timely furnish such information absent presentation of a valid defense. See, e.g., *Mary Thompson Hospital*, 296 NLRB 1245 fn. 1 (1989), enf. 943 F.2d 741 (7th Cir. 1991); *NLRB v. Illinois-American Water Co.*, 933 F.2d 1368, 1377-1378 (7th Cir. 1991), enf. 296 NLRB 715 (1989).

a. On January 22, 1997, and on subsequent dates, Local 96-B requested from Quebecor the names, classifications, hire dates, seniority dates, race, sex, addresses, telephone numbers, and pay rates of employees in the bargaining unit it represents.¹⁵ On February 20, 1997, Local 8-M requested from Quebecor the names, addresses, classifications, seniority dates, and wage rates of employees in the bargaining unit it represents.¹⁶ Quebecor does not dispute that such information pertaining to

employees within the bargaining units is presumptively relevant.¹⁷ The record shows that Quebecor did not reply to the requests for this information until April 1 and 24, 1997. Quebecor has advanced no justification for its delay in furnishing the requested information. "Absent evidence justifying an employer's delay in furnishing a union with relevant information, such a delay will constitute a violation of Section 8(a)(5) inasmuch '[a]s the Union was entitled to the information at the time it made its initial request, [and] it was Respondent's duty to furnish it as promptly as possible.'" *Woodland Clinic*, 331 NLRB 735 (2000), quoting *Pennco, Inc.*, 212 NLRB 677, 678 (1974). The record further shows that Quebecor has not complied with the requests by Local 96-B and Local 8-M for updated lists of unit employees. For these reasons, we conclude that Quebecor violated Section 8(a)(5) and (1) of the Act by failing to provide Local 96-B and Local 8-M with updated lists of employees and by failing to timely furnish the other requested information.

b. The record shows that Quebecor failed to furnish Local 96-B and Local 8-M with the names of all temporary employees working at its Atlanta facility, including their wage rates, hire dates, and job descriptions. Local 96-B and Local 8-M made this request on February 20, 1997. Local 96-B repeated its request on June 2, 1997. Local 8-M repeated its request on June 27, 1997. Quebecor asserts that it complied with these requests by informing Local 96-B and Local 8-M that it has not employed any temporary employees at the Atlanta facility. The record shows, however, that Quebecor did in fact employ temporary workers at the Atlanta facility during the relevant timeframe. Quebecor's failure to comply with the requests by Local 96-B and Local 8-M for a list of temporary employees, including their wage rates, hire dates, and job descriptions, violated Section 8(a)(5) and (1) of the Act.

c. On February 20, 1997, Local 96-B and Local 8-M requested that Quebecor furnish them with documents related to the sale of Amersig's assets to Quebecor. Quebecor did not respond to this request until July 30, 1997, at which time Quebecor supplied the asset purchase agreement of the transaction between Amersig and Quebecor. Quebecor has supplied no explanation for its more than 5-month delay in supplying this requested information. The record shows further that the asset purchase agreement as supplied does not include referenced attachments or schedules to that document. Quebecor's delay in furnishing, and failure to furnish the complete

¹⁴ Local 8-M represents a bargaining unit composed of pressroom and preparatory department employees employed at Quebecor's Atlanta facility. Local 96-B represents a bargaining unit composed of bindery and mailing department employees employed at Quebecor's Atlanta facility.

¹⁵ The record shows that Local 96-B repeated its request on January 28, February 14 and 20, and March 27, and requested updated lists on April 18, May 11, June 2, and August 23, 1997.

¹⁶ The record shows that Local 8-M requested an updated list on June 27, 1997.

¹⁷ See, e.g., *E. J. Alrich Electrical Contractors*, 325 NLRB 1036, 1039 (1998). Indeed, Quebecor does not dispute the relevance of any of the information requested by the Union.

asset purchase agreement, violated Section 8(a)(5) and (1) of the Act.

d. The record shows that Quebecor violated Section 8(a)(5) and (1) of the Act by failing to furnish lists of all unit employees who have been laid off since Quebecor began operations at the Atlanta facility. On April 8, 1997, Local 96-B requested a list of employee layoffs in the unit it represents. It repeated this request on April 18 and June 2, 1997. Quebecor does not dispute in its brief to the Board that it never supplied a response to these requests. On May 13, 1997, Local 8-M requested a list of employee layoffs in the unit it represents. Quebecor does not dispute that it failed to provide a complete and updated list of employee layoffs in the bargaining unit represented by Local 8-M.¹⁸ We accordingly find that Quebecor violated Section 8(a)(5) and (1) by failing to furnish Local 96-B and Local 8-M with a list of all unit employees who have been laid off since Quebecor began operations at the Atlanta facility.

e. Finally, we reverse the judge's finding that Quebecor violated the Act by failing to comply with Local 96-B's request of January 28, 1997, and on subsequent occasions, for a statement of the reasons why Quebecor had not hired, or returned to their former positions of employment, all of the unfair labor practice strikers and discriminatees referred to in Judge Grossman's decision. The record shows that Quebecor complied with this request by informing the Union of its legal position that it was not liable to remedy the unfair labor practices of Amersig. We shall accordingly dismiss this complaint allegation.¹⁹

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that

A. Respondent, Amersig Graphics, Inc., and Amersig Southeast, Inc. d/b/a American Signature, Inc., Atlanta, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to timely reinstate unfair labor practice strikers to their former positions of employment.

(b) 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) Jointly and severally with Respondent Quebecor Printing Atlanta, Inc., make whole the employees listed in Appendix C for any loss of earnings and other benefits suffered as a result of both Respondents' discrimination against them, in the manner set forth in the remedy section of the judge's decision.

(b) Within 14 days from the date of this Order, remove from its files any reference to its unlawful failure to reinstate the former strikers, and within 3 days thereafter notify in writing the employees named in Appendix C that this has been done and that the failure to reinstate will not be used against them in any way.

(c) Preserve and, within 14 days of a 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, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, duplicate and mail at its own expense copies of the attached notice marked "Appendix A"²⁰ on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, to all employees employed by the Respondent at any time since November 23, 1996, including the discriminatees named in the attached Appendix C.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. Respondent, Quebecor Printing Atlanta, Inc., Atlanta, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to timely reinstate unfair labor practice strikers to their former positions of employment.

(b) Failing or refusing to timely furnish Local 96-B, Graphic Communications International Union, and Local 8-M, Graphic Communications International Union, information that is relevant and necessary to their role as the exclusive collective-bargaining representative of unit employees.

¹⁸ On June 23, 1997, Quebecor did provide, however, a partial list of employee layoffs in the bargaining unit represented by Local 8-M.

¹⁹ Neither the Union nor the General Counsel filed exceptions to the judge's failure to find that Quebecor violated Sec. 8(a)(5) and (1) of the Act by failing to comply with Local 96-B's request that Quebecor furnish it with the machine numbers worked on by unit employees at the time they received a bonus of Atlanta Braves' tickets.

²⁰ 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."

(c) 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) Within 14 days from the date of this Order, offer the employees named in Appendix C full reinstatement to their former jobs, discharging, if necessary, any employees currently in those positions, or, if these jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Jointly and severally with Respondent Amersig Graphics, Inc., and Amersig Southeast, Inc. d/b/a American Signature, Inc., make whole the employees named in Appendix C for any loss of earnings and other benefits suffered as a result of both Respondents' discrimination against them, in the manner set forth in the remedy section of the judge's decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful failure to reinstate the former strikers, and within 3 days thereafter notify in writing the employees named in Appendix C that this has been done and that the failure to reinstate will not be used against them in any way.

(d) To the extent it has not already done so, furnish Local 96-B, Graphic Communications International Union, in a timely manner the information requested by it in letters dated January 22 and 28, February 14 and 20, March 27, April 8 and 18, May 11, June 2, and August 23, 1997.

(e) To the extent it has not already done so, furnish Local 8-M, Graphic Communications International Union, in a timely manner the information requested by it in letters dated February 20, May 13, and June 27, 1997.

(f) Preserve and, within 14 days of a 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, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its place of business in Atlanta, Georgia, copies of the attached notice marked "Appendix B."²¹ Copies of the notice, on forms provided by the Regional Director for Region 10, 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 23, 1996.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations not found.

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.

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 fail or refuse to timely reinstate unfair labor practice strikers to their former positions of employment.

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, jointly and severally with Respondent Quebecor Printing Atlanta, Inc., make whole the following employees for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest:

Local 8-M Strikers

Davis L. Adams, Carroll H. Allen, John C. Allen, Kenneth R. Baker, William E. Baldwin, Charles P. Banks, Herbert L. Barber, Harold V. Barnes, James R. Bivins, Jr., Terry Boss, Robert H. Braddock, Jr., Billy J.

²¹ See fn. 20, supra.

Brannon, Harold G. Bray, Felix J. Brittain, Franklin D. Brogdon, John D. Brown, Marcus R. Buice, Phillip R. Buice, Kenneth L. Carver, Ancil D. Chambers, Alvin B. Chewning, Buddy E. Cooper, Richard Darnell, John M. Dixon, Clifford L. Dunson, Bruce W. Elzey, T.L. Fortenberry, Donald T. Fox, Creighton T. Fuller, Kenneth Gates, Ooscor C. Griffith, Gary N. Griswell, Donald E. Harvey, Robert C. Hice, Benny F. Hickey, Loyed J. Hillard, Buddy Holt, Donald L. Jenkins, Erwin D. Jones, Jack E. Keen, Michael W. Kelley, Billy G. Lummus, James H. Mabry, David E. Manis, Michael Martin, Joe A. McWilliams, Henry R. Meyer, Jr., Clinton R. Mulkey, Ronald J. New, David K. Noland, James R. Noland, Jr., Tommy C. Parrott, Howard W. Payne, Dewayne E. Richmond, Ricardo Rogers, Jarell Scott, Glenn A. Shuler, Willie R. Simmons, Spencer Smith, Eugene Spraggs, Larry S. Stanley, Jarred L. Starnes, Wade B. Stephens, Oscar A. Stovall, James D. Street, Darrel E. Timpson, Lester L. Torbush, Robert L. Turner, Kermit W. Warcop, Phillip Weaver, Felix G. Whiten, Andrew E. Williams, Ralph E. Williamson, David L. Wooten, Michael A. Yancey, Ronnie B. Zastrow

Local 96-B Strikers

Hollis Bagwell, Mildred Blake, Janice Bolton, John Bolton, Roger Brantley, Lenore Buice, John Carson, David Constans, Bobby Craddock, Stan Cunningham, Morris Darnell, Randy Dewberry, Lex Dockery, Melvin Dukes, Leon Furgusson, Elizabeth Freeman, Nancy Frix, Alan Green, George Grieves, Virginia Hannah, William C. Haynes, James Hogsted, Mary Ingram, Tommy Johnson, Byran Laird, Charles Ledford, Debra Meacham, Gertrude Morton, Mildred Newsome, Ann Nuckles, James Osborne, Nancy Overcash, Jerry Parks, Jackie Pressley, Lori Richards-Spraggs, JoAnn Slaton, Van Spraggs, Walter J. Tipton, Betty Toole, C. Wayne Torbush, Howard P. Ward, John B. Watson, Patricia A. Williams, Betty Williamson.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful failure to reinstate the former strikers and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the failure to reinstate will not be used against them in any way.

AMERSIG GRAPHICS, INC., AND
AMERSIG SOUTHEAST, INC. D/B/A
AMERICAN SIGNATURE, INC.

APPENDIX B

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 fail or refuse to timely reinstate unfair labor practice strikers to their former positions of employment.

WE WILL NOT fail or refuse to timely furnish Local 96-B, Graphic Communications International Union, and Local 8-M, Graphic Communications International Union information that is relevant and necessary to their role as the exclusive collective-bargaining representative of unit employees.

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, within 14 days from the date of the Board's Order, offer the following employees full reinstatement to their former jobs, discharging, if necessary, any employees currently in those positions, or if these jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed:

Local 8-M Strikers

Davis L. Adams, Carroll H. Allen, John C. Allen, Kenneth R. Baker, William E. Baldwin, Charles P. Banks, Herbert L. Barber, Harold V. Barnes, James R. Bivins, Jr., Terry Boss, Robert H. Braddock, Jr., Billy J. Brannon, Harold G. Bray, Felix J. Brittain, Franklin D. Brogdon, John D. Brown, Marcus R. Buice, Phillip R. Buice, Kenneth L. Carver, Ancil D. Chambers, Alvin B. Chewning, Buddy E. Cooper, Richard Darnell, John M. Dixon, Clifford L. Dunson, Bruce W. Elzey, T.L.

Fortenberry, Donald T. Fox, Creighton T. Fuller, Kenneth Gates, Ostor C. Griffith, Gary N. Griswell, Donald E. Harvey, Robert C. Hice, Benny F. Hickey, Loyed J. Hillard, Buddy Holt, Donald L. Jenkins, Erwin D. Jones, Jack E. Keen, Michael W. Kelley, Billy G. Lummus, James H. Mabry, David E. Manis, Michael Martin, Joe A. McWilliams, Henry R. Meyer, Jr., Clinton R. Mulkey, Ronald J. New, David K. Noland, James R. Noland, Jr., Tommy C. Parrott, Howard W. Payne, Dewayne E. Richmond, Ricardo Rogers, Jarell Scott, Glenn A. Shuler, Willie R. Simmons, Spencer Smith, Eugene Spraggs, Larry S. Stanley, Jarred L. Starnes, Wade B. Stephens, Oscar A. Stovall, James D. Street, Darrel E. Timpson, Lester L. Torbush, Robert L. Turner, Kermit W. Warcop, Phillip Weaver, Felix G. Whiten, Andrew E. Williams, Ralph E. Williamson, David L. Wooten, Michael A. Yancey, Ronnie B. Zastrow

Local 96-B Strikers

Hollis Bagwell, Mildred Blake, Janice Bolton, John Bolton, Roger Brantley, Lenore Buice, John Carson, David Constans, Bobby Craddock, Stan Cunningham, Morris Darnell, Randy Dewberry, Lex Dockery, Melvin Dukes, Leon Furgusson, Elizabeth Freeman, Nancy Frix, Alan Green, George Grieves, Virginia Hannah, William C. Haynes, James Hogsed, Mary Ingram, Tommy Johnson, Byran Laird, Charles Ledford, Debra Meacham, Gertrude Morton, Mildred Newsome, Ann Nuckles, James Osborne, Nancy Overcash, Jerry Parks, Jackie Pressley, Lori Richards-Spraggs, JoAnn Slaton, Van Spraggs, Walter J. Tipton, Betty Toole, C. Wayne Torbush, Howard P. Ward, John B. Watson, Patricia A. Williams, Betty Williamson.

WE WILL, jointly and severally with Respondent Amersig Graphics, Inc., and Amersig Southeast, Inc., d/b/a American Signature, Inc., make whole the employees named above for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful failure to reinstate the former strikers and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the failure to reinstate will not be used against them in any way.

WE WILL furnish Local 96-B, Graphic Communications International Union, in a timely manner the information requested by it in letters dated January 22 and 28, February 14 and 20, March 27, April 8 and 18, May 11, June 2, and August 23, 1997.

WE WILL furnish Local 8-M, Graphic Communications International Union, in a timely manner, the information requested by it in letters dated February 20, May 13, and June 27, 1997.

QUEBECOR PRINTING ATLANTA, INC.

APPENDIX C

Local 8-M Strikers

Davis L. Adams, Carroll H. Allen, John C. Allen, Kenneth R. Baker, William E. Baldwin, Charles P. Banks, Herbert L. Barber, Harold V. Barnes, James R. Bivins, Jr., Terry Boss, Robert H. Braddock, Jr., Billy J. Brannon, Harold G. Bray, Felix J. Brittain, Franklin D. Brogdon, John D. Brown, Marcus R. Buice, Phillip R. Buice, Kenneth L. Carver, Ancil D. Chambers, Alvin B. Chewning, Buddy E. Cooper, Richard Darnell, John M. Dixon, Clifford L. Dunson, Bruce W. Elzey, T.L. Fortenberry, Donald T. Fox, Creighton T. Fuller, Kenneth Gates, Ostor C. Griffith, Gary N. Griswell, Donald E. Harvey, Robert C. Hice, Benny F. Hickey, Loyed J. Hillard, Buddy Holt, Donald L. Jenkins, Erwin D. Jones, Jack E. Keen, Michael W. Kelley, Billy G. Lummus, James H. Mabry, David E. Manis, Michael Martin, Joe A. McWilliams, Henry R. Meyer, Jr., Clinton R. Mulkey, Ronald J. New, David K. Noland, James R. Noland, Jr., Tommy C. Parrott, Howard W. Payne, Dewayne E. Richmond, Ricardo Rogers, Jarell Scott, Glenn A. Shuler, Willie R. Simmons, Spencer Smith, Eugene Spraggs, Larry S. Stanley, Jarred L. Starnes, Wade B. Stephens, Oscar A. Stovall, James D. Street, Darrel E. Timpson, Lester L. Torbush, Robert L. Turner, Kermit W. Warcop, Phillip Weaver, Felix G. Whiten, Andrew E. Williams, Ralph E. Williamson, David L. Wooten, Michael A. Yancey, Ronnie B. Zastrow

Local 96-B Strikers

Hollis Bagwell, Mildred Blake, Janice Bolton, John Bolton, Roger Brantley, Lenore Buice, John Carson, David Constans, Bobby Craddock, Stan Cunningham, Morris Darnell, Randy Dewberry, Lex Dockery, Melvin Dukes, Leon Furgusson, Elizabeth Freeman, Nancy Frix, Alan Green, George Grieves, Virginia Hannah, William C. Haynes, James Hogsed, Mary Ingram, Tommy Johnson, Byran Laird, Charles Ledford, Debra Meacham, Gertrude Morton, Mildred Newsome, Ann Nuckles, James Osborne, Nancy Overcash, Jerry Parks, Jackie Pressley, Lori Richards-Spraggs, JoAnn Slaton, Van Spraggs, Walter J. Tipton, Betty Toole, C. Wayne Torbush, Howard P. Ward, John B. Watson, Patricia A. Williams, Betty Williamson

Jeffery D. Williams, Esq., for the General Counsel.

Harry J. Secaras, Esq., for the Respondent, AmerSig.
Russell Morris, Esq., for the Respondent, Quebecor.
Thomas A. Allison, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on June 30 and July 1 and 2, 1998, in Atlanta, Georgia, pursuant to an amended consolidated complaint filed by the Regional Director of Region 10 of the National Labor Relations Board (the Board) on April 2, 1998, and is based on charges filed by Graphic Communications, International Union AFL-CIO (the Charging Party or the Union) alleging the commission of violations of the National Labor Relations Act (the Act) by AmerSig Graphics, Inc., and AmerSig Southeast, Inc. d/b/a American Signature, Inc. (Respondent AmerSig), and Quebecor Printing Atlanta, Inc., (Respondent Quebecor). The complaint is joined by the answers of Respondents AmerSig and Quebecor as amended at the hearing wherein they deny the commission of any violations of the Act.

On the entire record in this proceeding, including my observations of the witnesses who testified here and the exhibits received in evidence and after due consideration of the briefs filed by the parties, and their contentions at the hearing, I make the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW¹

I. JURISDICTION

A. *The Business of Respondents*

The complaint alleges, Respondents admit in part, and I find on the basis of the uncontroverted evidence that at all material times prior to January 22, 1997, Respondent AmerSig, a Delaware corporation, had and maintained an office and place of business in Atlanta, Georgia, where it had been engaged in the business of commercial printing, that during the 12-month period preceding January 22, 1997, Respondent AmerSig, in conducting its aforesaid business operations purchased and received products valued in excess of \$50,000 directly from suppliers located outside the State of Georgia, and was an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and at all material times since January 22, 1997, Respondent Quebecor, has been a Delaware corporation with an office and place of business in Atlanta, Georgia, where it has been engaged in the business of commercial printing and sold and shipped from its Atlanta, Georgia facility, goods valued in excess of \$50,000 directly to customers located outside the State of Georgia and was an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

B. *The Labor Organization*

The complaint alleges, Respondents admit, and I find that at all times material here, the Union and its Locals 8-M and 96-B

collectively called the Union are, and have been, each a labor organization within the meaning of Section 2(5) of the Act.

C. *The Successorship Issue*

The complaint alleges and the record supports a finding that on or about January 22, 1997, Respondent Quebecor took possession of all assets of Respondent AmerSig's Atlanta, Georgia facility, and since then has been engaging in the same business operations at the same location, providing the same services, and has employed as a majority of its employees, individuals who were previously employees of Respondent AmerSig, and that Quebecor has continued the employing entity and is a successor to Respondent AmerSig.

The Appropriate Unit

The parties stipulated at the hearing, and I find that as of January 23, 1997, Quebecor had employed 203 employees in bargaining unit jobs, 88 of which were in the 8-M bargaining unit which represented pressroom and preparatory department employees and 115 of which were in the 96-B bargaining unit which represented bindery and mailing department employees.

In a prior decision issued by Administrative Law Judge (ALJ) Howard I. Grossman, on December 27, 1996, and adopted by the Board in the absence of exceptions in *Foote & Davis, Inc., d/b/a American Signature*, Case 17-CA-16090 on March 14, 1997, the ALJ found that in 1992, in Atlanta, Local 8-M represented 120 pressroom and preparatory department employees and Local 96-B represented about 170 bindery and shipping and receiving employees of AmerSig.

Facts

Foote & Davies, Inc. (Foote), a Georgia corporation owned printing facilities in Atlanta, Georgia; Lincoln, Nebraska; Dallas, Texas; and Memphis, Tennessee, which were acquired in 1990 by ASG Acquisition Corp. d/b/a American Signature, Inc. (ASG), with financing provided by Heller Financial, Inc. (Heller), a Chicago-based financial services company and subsidiary of Fuji Bank. ASG failed to make required payments to Heller and in 1992 Heller obtained control of ASG's facilities by deeds in lieu of foreclosure. This case involves only the Atlanta, Georgia facility.

When AmerSig took over the Atlanta facility from Foote in November 1992, the pressroom employees were represented by Graphic Communications International Union Local 8-M and the bindery employees were represented by Graphic Communications International Union Local 96-B. AmerSig made several unilateral changes and refused to hire approximately 33 unit employees because of their union support and activities and the Union called a strike on April 29, 1993, and filed charges with the Board against AmerSig. A complaint was issued and the case was heard in November and December 1995. Heller had been seeking to sell AmerSig for several years prior to 1998. In October 1996 Heller entered into exclusive negotiations with Quebecor for the sale of AmerSig to Quebecor.

The strike called by the Union in 1993 had been ongoing and shortly prior to September 27, 1996, the Union's representatives became aware of Quebecor's interest in the purchase of AmerSig. The Union sent Quebecor a letter dated September

¹ This decision includes a composite of the credited testimony of the witnesses at the hearing, the exhibits received in evidence and stipulations of facts.

27, 1996, informing Quebecor of its status as collective-bargaining representative of the pressroom and bindery employees at the Atlanta facility and of the ongoing strike, the pending case, and the underlying complaints and charges. Copies of the complaints and charges were enclosed with the letter. On October 9, 1996, Quebecor issued a press release which announced an agreement in principle between Quebecor and AmerSig and which provided for the purchase of AmerSig by Quebecor in a stock transaction. On October 10, 1996, AmerSig notified its employees by a written memorandum that it would be acquired by Quebecor with a projected closing date of November 30, 1996. On November 23, 1996, Locals 8-M and 96-B made an unconditional offer to return to work to AmerSig on behalf of the striking employees and on about the same date Quebecor was given written notification by the Locals of the unconditional offer to return to AmerSig. On November 25, 1996, AmerSig issued a memorandum to its employees at the facility notifying them of the unconditional offer to return to work and assuring them that their status as employees working at the facility would not be affected.

On December 4, 1996, the Union sent the charge in Case 10-CA-29813 to Region 10 of the Board with a copy to Respondent Quebecor which alleged an unlawful refusal and failure to reinstate the unfair labor practice strikers to their former positions. On December 5, 1996, Respondent AmerSig sent a letter to the former strikers informing them that Respondent considered them economic strikers who had been permanently replaced and would be reinstated as vacancies occur. Patrick Pesch, a senior vice president and senior corporate credit officer of Heller Financial, Inc., who is also a member of the board of directors and executive vice president of AmerSig testified that the board of directors of AmerSig had been advised by their attorney that the strikers were economic strikers who could be permanently replaced rather than unfair labor practice strikers who were entitled to reinstatement to their former positions upon their unconditional offer to return to work. On December 6, 1996, Respondent AmerSig sent letters to the Locals acknowledging receipt of the unconditional offer to return to work and notifying them that the strikers were economic strikers who had been permanently replaced and would be placed on a preferential hire list and reinstated as vacancies occurred. These letters of December 6 were the first direct response to the Union's unconditional offer to return to work made on behalf of the strikers on November 23. Subsequently on December 12, 1996, AmerSig offered reinstatement to seven of the former strikers. The Union wrote a letter to AmerSig on December 9, 1996, notifying it that the Union disagreed with AmerSig's position that the former strikers were economic strikers. The parties agreed to meet on December 17 to discuss the issue with no agreement reached as to the status of the former strikers or the appropriate method of reinstatement. At that meeting AmerSig also informed the Union that it was anticipated that the sale to Quebecor would be concluded by the end of the year. AmerSig also informed the Union that there would be no probationary period for the former strikers and also did not assert that an orientation would be held. Administrative Law Judge Grossman issued his decision on December 27, 1996, and found that the strikers were unfair

labor practice strikers, thus, entitling them to reinstatement upon their unconditional offer to return to work. A copy of this decision was mailed to Quebecor by the Union on January 6, 1997. The decision was adopted by the Board on March 14, 1997, in the absence of exceptions.

AmerSig sent two letters to the former strikers on January 8, 1997. One letter informed them that AmerSig was offering them their former positions, shifts and rates of pay, and directed them to contact AmerSig by January 13, 1997, concerning their reinstatements. The second letter informed the former strikers that the negotiations with Quebecor were completed and that the sale of AmerSig to Quebecor was to take effect on January 15, 1997, that they would no longer have a job with AmerSig on completion of the sale and would have to apply with Quebecor.

International Union Vice President Charles Ellington testified that he received a telephone call from Quebecor's senior vice president and general labor law counsel, Don Bush, who informed him that Quebecor had purchased the assets of AmerSig. Ellington informed Bush that Quebecor was obliged to reinstate the former strikers to their former positions as the Union had made an unconditional offer to return on their behalf. Bush, however, informed Ellington that Quebecor would accept applications from the public, including the former strikers and would select its employees through its own selection process. During that conversation Bush informed Ellington that there were one or two new items of equipment at the plant, but that no problems were foreseen with the operation of this equipment by the former strikers. Ellington sent a letter to Bush on January 9, 1997, outlining this conversation of January 8, and asserting that Quebecor was liable to remedy the violations found by the ALJ which had not been remedied by AmerSig and also asserted the Union's opposition to Quebecor's stated application process requiring the former strikers to apply for positions with Quebecor. Ellington asserted the Union's position that Quebecor was obligated to reinstate the former strikers. Ellington followed up this conversation with a letter dated January 10, 1997, asserting the Union's position that the January 8 offers to the former strikers made by AmerSig were not valid and constituted an attempt by AmerSig to escape its obligation to reinstate them. Ellington remarked in his letter that the January 8 letters were sent long after the unconditional offer to return to work. He also noted in his letter that the offers of reinstatement directed the former strikers to reply to AmerSig's offer by January 13, 1997, which was only 2 days prior to the date AmerSig was to terminate its operations.

On January 10, 1997, Quebecor sent a letter to the former strikers notifying them that it had purchased the assets of AmerSig, inviting them to apply for employment with Quebecor at designated dates, time, and place where it would be accepting applications. Following the receipt of the January 8 letters from AmerSig, many of the former strikers contacted AmerSig seeking reinstatement. However, none were permitted to return to the plant and commence work at their former positions. Rather those who informed AmerSig of their immediate availability for work were told to report to an orientation to be held at a hotel away from the plant. Former strikers who told AmerSig they must provide 2 weeks notice to their current em-

ployer were not informed of the orientation but were told they would be contacted later but were never contacted by AmerSig. Some of the former strikers who attended the orientation believed it would only be 1 day. Some were told that if they needed to give a 2-week notice to their current employer, there would be no job for them when they subsequently reported for work.

The orientation lasted 6 consecutive weekdays from Tuesday, January 14 through Tuesday, January 21, 1997. The former strikers who were called to testify at the hearing testified that at the orientation they received little or no training relevant to their job duties and in the case of the bindery employees were informed by AmerSig that no substantive changes had occurred in their jobs during their absence. The pressmen were given only rudimentary offsite training concerning new presses, whereas training on new presses had always previously been on-the-job training utilizing the actual presses. Former strikers Kenneth Baker, John Holt, Joann Slaton, and Gertrude Morton attended the orientation. Employee Ann Nuckles was returned to her job in January without training. Employees Janice Bolton and James Bivins told AmerSig's representatives they needed to give their current employer 2 weeks' notice and were not contacted again. Employee James Scott attempted to enter the plant to return to his job but was turned away following his receipt of the offer of reinstatement.

Vernon Harmon, AmerSig's division director who was in charge of the facility, testified he was advised by AmerSig's president, Marc Fors to prepare to take the former strikers back to work. There were approximately 130 former strikers who were eligible for reinstatement. Harmon testified he did not know how many of them would choose to return to work and their immediate assimilation into the work force could be a problem and that he decided to conduct the orientation offsite since there was not enough space at the facility and that he also wanted to have a cooling off period prior to reinstating the former strikers to their former positions along with the replacement workers and crossover former strikers who were then working at the plant and whom he planned to retain for at least a 30-day period. Harmon admitted that there had been no problems encountered when former strikers were returned to work following the December 12, 1996 offers of reinstatement. Harmon acknowledged that less than 20 former strikers appeared for the first day of orientation and that they could have been returned to their jobs rather than being required to attend the orientation. Harmon who was subsequently hired by Quebecor as a vice president and general manager of the Atlanta facility on the date of the transfer of the assets from AmerSig to Quebecor, acknowledged that some of the former strikers who AmerSig required to go to the orientation were hired by Quebecor and put to work immediately.

On January 15, 1997, the Union sent a letter to AmerSig in which it stated that the orientation was a sham and an attempt to avoid AmerSig's obligation to reinstate the former strikers. The Union also sent a letter to Quebecor on January 15 objecting to Quebecor's requiring the former strikers to file applications and the Union demanded in that letter that Quebecor offer reinstatement to the former strikers. Quebecor, by its letter of January 17, 1997, reaffirmed its decision to select its initial

employee complement from the aforesaid pool of applicants including but not limited to former strikers. The Union responded in two letters that Quebecor was a successor to AmerSig and was required to reinstate the former strikers.

As of January 31, 1997, when Quebecor commenced operations at the facility, it employed 203 employees in bargaining unit jobs, 88 of whom were in the Local 8-M unit and 150 of whom were in the Local 96-B unit. Quebecor had not offered all of the former strikers reinstatement to their former positions and not all of the aforesaid 203 employees were former strikers and discriminatees. AmerSig admitted that it did not reinstate the former strikers to their former positions at least from November 23, 1996, when the Union made an unconditional offer to return on their behalf through January 7, 1997, the day prior to the January 8 letters. After its purchase of AmerSig's assets, Quebecor continued to operate the facility with substantially the same employees, performing in the same positions, operating the same equipment with the same supervisors, and substantially the same labor relations personnel for substantially the same customers.

The amended consolidated complaint also contained refusal-to-provide information allegations against Respondent AmerSig which were settled at the hearing pursuant to a bilateral informal settlement agreement which was entered into the record and approved by me undersigned. The amended consolidated complaint also contained allegations that Respondent Quebecor refused to provide the Unions with information requested by the Unions, unlawfully withdrew recognition from the Union, unilaterally implemented a practice of providing unit employees with Atlanta Braves' tickets, and unlawfully laid off employees. Respondent Quebecor and counsel for the General Counsel entered into an informal settlement agreement which was entered into the record concerning these allegations. I approved the settlement agreement as it pertained to the withdrawal of recognition and unilateral awarding of Atlanta Braves' tickets. However, on objection from the Charging Party Union, I reserved judgment concerning the refusal-to-provide information allegation and the unlawful layoff allegation. At the hearing, counsel for the General Counsel made a motion to amend the amended consolidated complaint to modify the unlawful layoff allegation to reflect that Respondent Quebecor solicited volunteers from the bargaining units for layoffs and I reserved judgment on this motion, also. I do not approve the settlement agreement with respect to Quebecor's alleged refusal-to-provide information and the alleged unlawful layoffs. I grant the General Counsel's motion to reflect the solicitation of volunteers.

With respect to the alleged refusal by Quebecor to furnish information, this concerns requests by Local 96-B by its letter of January 22, 1997, to Quebecor for a seniority list which included job classifications, seniority dates, and rate of pay, and the reasons why Quebecor had not offered all of the former strikers reinstatement to their prestrike positions. By January 28, 1997, Quebecor had not responded to these requests and on that date Local 96-B directed two separate letters to Quebecor which received the requests for information and Local 96-B additionally requested the addresses, telephone numbers, race and sex of the unit employees. This information was again

requested by Local 96-B by its letters of February 14 and March 27, 1997. Quebecor only initially responded to these requests by providing Local 96-B with a seniority list on April 1, 1997. On April 8, 1997, Local 96-B by its letter of that date requested the names of bargaining unit employees who had been laid off since the commencement of operations by Quebecor at the facility and also requested bargaining over future layoffs. In its letter of April 11, 1997, to Local 96-B, Quebecor stated there had been no layoffs. By its letter of April 18, 1997, Local 96-B set out the reasons for its contention that the seniority list provided on April 1, 1997, was deficient and also disputed Quebecor's contention in its April 11 letter that there had been no layoffs and Local 96-B contended that there had been layoffs on two dates in February 1997.

Local 96-B and Quebecor met on April 24, 1997, and Quebecor gave Local 96-B another seniority list and acknowledged that there had been layoffs of Local 96-B unit employees on two dates in February 1997. On May 11, 1997, Local 96-B directed another letter to Quebecor setting out the deficiencies in the seniority list provided it by Quebecor on April 24, and requested a new, corrected seniority list. Quebecor responded by its letter of May 22, 1997, explaining its position with respect to the seniority lists which it had provided to Local 96-B and in this letter Quebecor also contended that Judge Grossman's decision was only applicable to AmerSig. In its letter of June 2, 1997, Local 96-B set out its problems with the seniority lists provided by Quebecor and requested current seniority lists which request was renewed by Local 96-B's letter to Quebecor on August 23, 1997.

By its letter of May 13, 1997, Local 8-M demanded to bargain over layoffs and Quebecor responded that it was entitled to lay employees off on a temporary basis when there was an interruption in work because of equipment failure or job completion, in accordance with its initial terms and conditions of employment. The reason for layoff of Local 96-B unit employees on February 2 and 3 was lack of work.

The central issues in this case are:

1. Did American Signature violate Section 8(a)(3) and (1) of the Act by refusing to reinstate unfair labor practice strikers represented by Locals 8-M and 96-B, GCIU, to their prestrike classifications and shifts following their November 23, 1996, unconditional offer to return to work? *Answer—Yes.*
2. Is Quebecor a successor to American Signature with an obligation to reinstate the unfair labor practice strikers after its purchase of the assets of American Signature on January 22, 1997, and did its failure and refusal to reinstate the strikers violate Section 8(a)(3) and (1) of the Act? *Answer—Yes!*
3. Did Quebecor's unilateral layoff of bargaining unit employees, without affording notice to and opportunity to bargain to Locals 8-M and 96-B, GCIU violate Section 8(a)(5) and (1) of the Act? *Answer—Yes!*
4. Did Quebecor violate Section 8(a)(5) and (1) of the Act by its refusal to provide relevant information requested by Locals 8-M and 96-B, GCIU? *Answer—Yes!*

Positions of the Parties

The General Counsel's Position

The General Counsel contends that the crux of this case is whether the January 8 letters from AmerSig to the former strikers combined with the orientation constituted valid reinstatement and contends that it did not. The General Counsel cites *Caterair International*, 309 NLRB 869 (1992), in support of the entitlement of unfair labor strikers to immediate reinstatement to their former or substantially equivalent positions of employment on their unconditional offer to return to work. He cites *Capitol Steel & Iron Co.*, 317 NLRB 809 (1995), in support of the duty to reinstate former strikers even where replacement workers have been hired to perform their jobs and that the replacement workers must be terminated, if necessary, to make room for the reinstatement of the strikers.

The General Counsel contends that on receipt of the unconditional offer to return AmerSig immediately made it clear that under no circumstances would the replacement employees be displaced by the former strikers as evidenced by its memorandum distributed to its employees on November 25, 1996. The General Counsel asserts that AmerSig's contention that it sent the January 8 letters out on the earliest possible date it could do so following Judge Grossman's decision is not credible. He contends that AmerSig sent out the January 8 letters to give an appearance of compliance with the ALJ's decision in order to avoid liability to Quebecor as its successor by appearing to offer reinstatement to the former strikers although it had no intention of terminating its replacement workers. He notes that these reinstatement letters were sent only 1 week prior to the anticipated sale of the facility to Quebecor but that this was 6 weeks after the unconditional offer to return was made. He contends that the orientation was a sham designed to keep the former strikers away from the plant and to delay their actual reinstatement until the sale was consummated and Quebecor commenced its operations.

He thus contends that AmerSig has not reinstated the former strikers to their prestrike positions. Consequently Quebecor is liable to reinstate the former strikers as well as AmerSig as Quebecor is an undisputed Burns successor in this case *NLRB v. Burns Security Services*, 406 U.S. 272 (1972). The Union put Quebecor on notice of the charges, complaint and proceedings before Judge Grossman, the charge against AmerSig over its refusal to immediately reinstate the former strikers, Judge Grossman's decision, AmerSig's flawed January 1997 offers to the former strikers, and the Union's contention that Quebecor would be a successor and liable to reinstate the former strikers. Quebecor is a successor pursuant to *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973), and is thus obligated to reinstate the former strikers and is jointly and severally liable along with AmerSig for all backpay owed.

With respect to the information request allegations, the General Counsel contends that the seniority lists provided on April 1 and April 24, 1997, had some discrepancies and the Union made a legitimate request for a current corrected seniority list on May 11, 1997, which was never provided by Quebecor. There is no evidence that Quebecor provided the Union with the requested information concerning Quebecor's use of tempo-

rary employees in the Union's efforts to find out the extent to which Quebecor was utilizing temporary workers while there were reinstated former strikers. The General Counsel contends that the foregoing information requests were necessary and relevant to the performance of the Union's role as collective-bargaining representative, and therefore, was information to which the Union was entitled, citing *Central Manor Home for Adults*, 320 NLRB 1009 (1996).

With respect to the layoff of employees, the General Counsel contends there is no evidence that Quebecor laid off employees involuntarily but did on occasion lay employees off for lack of work which type of layoffs are provided for in Quebecor's initial terms and conditions of employment. There is no evidence that the Union requested bargaining over this layoff provision prior to the February 1997 layoffs. The motion to amend the amended consolidated complaint to reflect the solicitation of volunteers for these layoffs is pending before the administrative Law Judge. Counsel for the General Counsel and Respondent Quebecor have already submitted an executed informal settlement into the record which resolves the soliciting of volunteers for layoffs violation.

Charging Party's Position

The Charging Party contends that as unfair labor practice strikers, the strikers were entitled to immediate reinstatement to their prestrike jobs and classifications on their unconditional offer to end the strike and return to work. AmerSig was obligated to displace junior strikers and replacement employees to recall the strikers to their positions, citing *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 278 (1956); and *NLRB v. W. C. McQuaide, Inc.*, 552 F.2d 519, 528-529 (3d Cir. 1977). Strikers whose seniority entitled them to positions higher than their prestriker positions are entitled to reinstatement to those higher positions, citing *Mooney Aircraft*, 164 NLRB 1102, 1103 (1967); and NLRB Casehandling Manual (Part One) Compliance Section 10527.2 (1993).

The Charging Party contends that AmerSig knowingly chose not to recall the strikers to their prestrike jobs, but to treat them as permanently replaced economic strikers. AmerSig's attorney briefed its board of directors concerning the difference between unfair labor practice and economic strikers and informed them that if the Board found them to be unfair labor practice strikers, AmerSig would be liable for backpay from November 23, 1996, until the strikers were reinstated. Relying on their attorney's prediction that AmerSig would prevail in the case, the directors elected to disregard the striker's statutory rights as unfair labor practice strikers and accordingly knowingly assumed liability to make the strikers whole for their loss of earnings from November 23, 1996, until their reinstatement to their prestrike jobs, in the event the strikers were found to be unfair labor practice strikers. Immediately after receiving the striker's unconditional offer to return to work, AmerSig assured the nonstriking and replacement employees in writing that their employment would not be affected thereby and on December 5 and 6, 1996, AmerSig wrote to the strikers and the Unions telling them that all of the strikers had been permanently replaced. On December 27, 1996, Judge Grossman found the strikers to be unfair labor practice strikers and accordingly AmerSig's

treatment of the strikers as economic strikers, and its refusal to accept their unconditional offer to return to work on November 23, 1996, violated Section 8(a)(3) and (1) of the Act.

The Charging Party also contends that AmerSig's January 8, 1997 "offers of reinstatement" without actually recalling the strikers to their jobs were not valid offers and did not remedy its violation of the Act. Regardless of what the strikers did to get back their jobs including completion of questionnaires in December, telephoning AmerSig after receiving the January 8 "offers," driving to the plant gates, or attending an 8-day "orientation" at a remote hotel, the unfair labor practice strikers were not allowed to return to their prestrike jobs in the 8 weeks after making their unconditional offer to return to work. Consequently, as of the sale of the Atlanta facility to Quebecor on January 22, 1997, AmerSig had not met its obligation under the Act to recall the unfair labor practice strikers and its violation of Section 8(a)(3) remained unremedied at the time the plant was sold to Quebecor.

It is undisputed that "no one" who received the January 8 "offers of reinstatement" was ever allowed to return to work at AmerSig. AmerSig never intended to actually reinstate the strikers to their prestrike jobs. The AmerSig "script" devised by Marc Fors, AmerSig's President, and Roddy Biggert (AmerSig's former attorney), was:

(1) If a striker who received the 'offer of reinstatement' told American Signature that he had to give 2 weeks' notice to his interim employer, the Company said OK, and never contacted the striker again. *A striker who needed to give two weeks notice was never reinstated to his pre-strike job.*

(2) If the striker said he could return to work immediately, American Signature sent him to the Raddison Hotel for an eight-day 'orientation' which was scheduled to end after the plant was sold, to Quebecor. *A striker who could return to work immediately was never reinstated to his pre-strike job.* Whatever a striker did, and as hard as he might try, there was no avenue available by which he was allowed to actually return to work.

The Charging Party argues further that AmerSig's communications to the replacement employees confirm it never intended to return the strikers to their jobs. On Monday, November 26, 1996, immediately after receiving the November 23 unconditional offer to return to work, it posted a notice in the plant assuring the nonstrikers and replacement employees that their employment would not be affected by the unconditional offer to return to work. On January 9 and 10, 1997, after the mailing of the January 8 offers of reinstatement, AmerSig held in-plant meetings of the nonstrikers and replacement employees and again assured them their employment at AmerSig would not be affected. AmerSig never took any action to return the former strikers to their jobs or to alert the nonstrikers and replacement employees that it would be doing so. Nor did it ever terminate any replacement employees.

AmerSig's "good faith" or "bad faith" is irrelevant to the objective fact that the unfair labor practice strikers were never recalled to their jobs. The evidence is overwhelming that the 8-day "orientation" was as the Union claimed at the time "a bla-

tantly phony attempt to terminate its legal obligations to reinstate the former strikers at the same time that (American Signature) is continuing its illegal refusal to reinstate these employees, in fact.” The returning strikers were senior employees with decades of experience and there was no need for them to be “trained” on jobs which they had performed for many years. AmerSig had already recalled several strikers to their prestrike jobs in December 1996 without any orientation or training and without any problem. There was no evidence that the jobs of the former strikers had changed significantly during the strike. When Quebecor began operations 1 week later, it recalled many unfair labor practice strikers without any training or orientation and without any adverse effect on production. The substance of the 8-day orientation confirms it was simply a device to keep the strikers out of the plant until it was sold. The entire first day of the orientation was spent filling out forms, a procedure which took less than an hour for the returning strikers in December. The next 3 days of the orientation were spent sitting in a hotel room while trainers talked about equipments that the strikers had operated for years. On one occasion the strikers were sent by AmerSig on a useless field trip to visit a plate manufacturer although it had never before done so. AmerSig’s assertion that it required an offsite orientation because it did not know how many strikers would return should be rejected as in fact only 15 former strikers and 3 discriminatees were able to return to work immediately. Harmon admitted that once AmerSig learned of this small number, there was no reason those 15 employees should not have been returned to work that day. Nor can AmerSig’s claimed fear of its concern of the physical return of the strikers justify its refusal to honor their statutory rights. There were no confrontations or other problems when strikers returned in December and early January. In making this argument AmerSig admits that the 8-day orientation was designed to keep the strikers out of the plant. Any argument that AmerSig had no choice but to recall strikers to jobs that did not exist because of the limited time period between Judge Grossman’s decision of December 27 and the sale of the plant on January 22 should be rejected as this situation was the sole result of its own illegal actions. It chose not to hire the 33 union activists when Heller took over the Atlanta facility in November 1992. This illegal action resulted in the unfair labor practice strike. After consultation with its attorney, AmerSig made the deliberate decision *not* to accept the unconditional offer to return to work. If it had reinstated the strikers in November 1996 it would not have found itself “jammed” when it sold the plant in January 1997.

The Charging Party contends that the Board’s case law confirms that the January 8 letters were not valid offers of reinstatement citing *Fabsteel Co. of Louisiana*, 231 NLRB 372 (1977), *enfd.* 587 F.2d 689 (5th Cir. 1979), where the Board adopted the ALJ’s holding that, “[A] respondent obligated to remedy unfair labor practices of a predecessor in the process of litigation, including the reinstatement of unfair labor practice strikers, acts at its peril if it does not reinstate such unfair labor practice strikers,” 231 NLRB at 379. In that case the Board also held that a belated “offer of reinstatement” (by the predecessor employer) was ineffective. The offer had to be to the strikers’ actual jobs which were then under the control of the

Golden State successor. The “offer of jobs away from the employing enterprise which is continuing does not constitute an offer of reinstatement which effectuates the purpose of the Act.” 231 NLRB at 380. In *Weco Cleaning Specialists*, 308 NLRB 310, 319 (1992), the Board held that letters purporting to offer reinstatement to employees who had not been hired by a successor employer, when in fact it had no jobs available, was a clumsy attempt to cut off backpay and was not a valid offer. In *IMCO/International Measurement Corp.*, 277 NLRB 962, 968 (1985), the Board adopted the ALJ’s finding that the employer’s “offer of reinstatement” to an unlawfully discharged employee was not valid when the evidence showed that the Employer had gone through the formalities of a job offer but in practice had rebuffed the discharged employee’s efforts to seek reinstatement at every opportunity. The Charging Party also asserts there is a substantial body of Board precedent holding that once strikers make an unconditional offer to return to work, their employer cannot condition their reinstatement citing *Domsey Trading Corp.*, 310 NLRB 777, 794 (1993), where it was held improper for an employer to condition reinstatement of strikers on filling out applications. The Charging Party contends that as there was no production reason why the strikers in the instant case could not have been immediately reinstated to their jobs, conditioning their return to their prestrike jobs on their attendance at the “orientation” at the hotel for 8 days did not constitute a valid offer of reinstatement.

The Charging Party thus urges the conclusion that as a result of AmerSig’s refusal to honor the striking employees’ November 23 unconditional offer to return to work, none of the strikers were reinstated to their prestrike jobs and that the January 8 letters to the strikers were not valid offers of reinstatement and that as of January 22, 1997, when Quebecor purchased the assets of AmerSig, AmerSig had not fulfilled its legal obligation to reinstate the unfair labor practice strikers to their prestrike positions.

The Charging Party contends that Quebecor’s refusal to reinstate the unfair labor practice strikers violated Section 8(a)(3) and (1) of the Act as Quebecor was a *Golden State* successor. The obligation of a purchaser of a business to remedy a seller’s unfair labor practices was established in *Perma Vinyl Corp.*, 164 NLRB 968 (1967), *enfd.* sub nom *United States Pipe & Foundry Co. v. NLRB*, 398 F.2d 544 (5th Cir. 1968), and approved by the United States Supreme Court in *Golden State*. In *Perma Vinyl*, the Board held that a purchaser of a business assumes the seller’s obligation to remedy unfair labor practices if (1) it operates the facility in essentially the same form as the seller, and (2) it had notice of the seller’s unfair labor practices. In *Golden State*, the Supreme Court enforced the Board’s order against the purchaser, finding it was a successor under the Act and was required to remedy the seller’s unfair labor practices, and that the purchaser and the seller were jointly and severally liable for any backpay. The Charging Party also contends that the Board has routinely applied the *Golden State* doctrine to situations involving unreinstated unfair labor practice strikers citing *Proxy Communications of Manhattan*, 290 NLRB 540 (1988), where the Board found that *Proxy* was a successor to *Federated* both under *Burns* (with respect to the bargaining obligation) and under *Golden State* (with respect to the obliga-

tion to reinstate the unfair labor practice strikers upon their unconditional offer to return). The Board stated in *Proxy* at 290 NLRB 543:

An emphasis on victimized employees is especially [important] in this case where the victimized employees were on strike as a result of Federated's unfair labor practices—thus entitling the strikers to reinstatement on their unconditional offer to return to work. Further, the Respondent was aware of these facts and still decided to hire all of the striking employees' replacements. This shows that the Respondent essentially continued unaltered the job situations of Federated's strikers and, thereby, their legitimate expectations that Federated's unfair labor practices would be remedied.

The Charging Party argues in its brief that the *Golden State* criteria are met in this case as Quebecor had knowledge of AmerSig's unfair labor practices and continued AmerSig's operations without substantial change. The Charging Party cites the several communications from the Union to Quebecor fully informing it of the pending unfair labor practices against AmerSig, including the ALJ's decision. The Charging Party cites the September 27, 1996 letter from GCIU International president, James J. Norton, to Pierre Peladeau, president of Quebecor advising him of the outstanding National Labor Relations Board charges and complaints against AmerSig, the November 23, 1996 mailing and faxing to Peladeau and James A. Dawson, president of Quebecor's United States subsidiary, copies of the unconditional offer to return to work by Local 8-M President Hal Landis and Local 96-B President James Osborne. The Charging Party also notes that on December 4, 1996, Union Attorney Thomas D. Allison sent Peladeau and Dawson copies of the unfair labor practice charge in Case 10-CA-29813, involving AmerSig's refusal to reinstate the former unfair labor practice strikers. The Charging Party also notes that the asset purchase agreement, signed by Quebecor and Heller on September 27, 1996, specifically refers to the cases pending before the Administrative Law Judge as does the new unfair labor practice charge filed on December 4, 1996. Furthermore, on December 30, 1996, and January 6, 1997, AmerSig and the Unions sent copies of the ALJ's decision to Quebecor. The Charging Party notes that the parties stipulated at the hearing that, after it purchased the assets of AmerSig on January 23, 1997, Quebecor continued to carry on the business without interruption or substantial change in method of operation, employee complement, or supervisory personnel. The Charging Party thus concludes that under *Golden State*, Quebecor assumed AmerSig's legal obligation to reinstate the unfair labor practice strikers. The Charging Party argues that nothing in the record provides any basis for Quebecor to claim that it had any meaningful assurance from AmerSig or the Union that AmerSig's unfair labor practices had been remedied.

With respect to the layoff of bargaining unit employees by Quebecor, the Charging Party objected at the hearing to the General Counsel's motion to amend paragraph 34(b) of the complaint to allege that Quebecor had implemented a policy of voluntary layoffs and the effort to settle that allegation with a posting and no backpay to the laid off employees. I reserved

judgment on this motion. I grant the General Counsel's motion only with respect to the amendment of the complaint.

The Charging Party contends in reliance on the evidence established at the hearing that Quebecor involuntarily laid off bargaining unit employees on February 3 and 4, 1997, selecting a few employees to remain and clean the machines. When Local 96-B inquired about these layoffs, Quebecor initially denied it but admitted on April 24 that employees had been laid off. (Tr. 253-254, 298-299, 419-421.) Employee Ruth Long testified at the hearing that the layoffs had occurred. (Tr. 380-381, 387-388.) Quebecor thereafter laid off employees in both bargaining units again without notice to or bargaining with the Unions despite their requests for notice and bargaining (GC Exh. 33; CP Exh. 21). At the hearing Quebecor produced documents for the first time in response to the Union's subpoena, which showed it had engaged in additional layoffs since January 22, 1997 (Tr. 559; CP Exh. 36).

The Charging Party argues that it is well established that the layoff of employees is a mandatory bargaining subject, and that an employers' failure to notify and bargain about layoffs is a violation of Section 8(a)(5) and (1) of the Act citing *First National Maintenance v. NLRB*, 452 U.S. 666, 667 (1981). Improperly laid-off employees are entitled to backpay for the periods of their unilateral layoffs citing *Adair Standish Corp.*, 292 NLRB 890 (1989), *enfd.* 912 F.2d 854 (6th Cir. 1990). Quebecor's argument (that the terms and conditions of employment which it unilaterally implemented on January 22, 1997, gave it the authority to lay off employees) should be rejected. Even if the layoffs were voluntary as asserted by Quebecor (a claim which the evidence does not support) the layoffs and the selection of employees for layoffs are still mandatory bargaining subjects and Quebecor's unilateral actions were still a violation of Section 8(a)(5) and (1) of the Act. In *Farina Corp.*, 310 NLRB 318, 320 (1993), the Board held that once a union represents its employees, the employer is obligated to notify and bargain with the union regarding layoffs and until there is a collective-bargaining agreement governing layoffs, the employer is obligated to bargain over any decision to lay off as well as the effects of the decision. In the absence of a contract conferring the right to lay off employees, layoffs are not a management prerogative in a bargaining unit having union representation.

Quebecor's unilateral layoffs of bargaining unit employees, without notice to or bargaining with the Local Unions, violated Section 8(a)(5) and (1) of the Act and the unilaterally laid-off employees are entitled to backpay. In view of Quebecor's illegal refusal-to-provide information concerning the names and duties of all bargaining unit employees since January 22, 1997, and the dates on which they were laid off, all of the laid-off employees should be entitled to backpay.

Quebecor refused to provide relevant information requested by the Unions, in violation of Sections 8(a)(5) and (1) of the Act. An employer is obligated to provide information required by a bargaining representative for the proper performance of its duties. The information must be relevant and of use to the Union's duty to represent, *NLRB v. Acme Industrial, Co.*, 385 U.S. 432, 435-436 (1967). "[I]nformation directly related to wages, hours[,] or other terms and conditions of employment of unit

employees is ‘presumptively relevant’ to the Union’s representative duties; such information is prima facie required to be produced and the employer bears the burden of showing a lack of relevance.” *Operating Engineer Local 12*, 237 NLRB 1556, 1558 (1978.) An “unreasonable delay in furnishing requested information is as much a violation of the Act as an out-and-out refusal to supply such information.” *Teamsters Local 921 (San Francisco Newspaper)*, 309 NLRB 901, 902 (1992). Furthermore “subsequent compliance with a request for information does not cure the unlawful refusal to supply the information in a timely manner and belated compliance with a request for such information does not render moot a complaint of an unlawful refusal . . . to supply the requested information.” *Local 921 (San Francisco Newspaper)*, supra. In the instant case, it is undisputed that Quebecor repeatedly refused to provide information requested by Locals 8–M and 96–B which was directly related to their representation of bargaining unit employees.

Quebecor refused to provide the names, classifications, hire dates, seniority dates, race, sex, addresses, telephone numbers, and rates of pay of bargaining unit employees. This information is directly related to the Unions’ representation of employees. See *Valley Programs*, 300 NLRB 423 (1990), and cases cited therein. Although the Unions initially requested this information on January 22, 1997 (GC Exh. 14), the day Quebecor purchased the Atlanta facility and regularly repeated it (GC Exhs. 15–19, 23, 25, 27, 34, 38; CP Exh. 16) Quebecor did not respond to these requests until April 1997 when it provided some of the information but refused to produce classifications, seniority dates, and to correct clearly erroneous information. Although the Unions continued to request updated information about bargaining unit employees, after April 1997 (GC Exhs. 25, 27–28, 34) it never provided any further information concerning bargaining unit employees (Tr 317–318, 426–432, 449–452). Accordingly, Quebecor’s long delay in producing this basic information, and its subsequent refusal to produce updated information violated Section 8(a)(5) and (1) of the Act.

The Unions repeatedly asked Quebecor to state why it was refusing to hire or reinstate the former unfair labor practice strikers and discriminatees (GC Exhs. 14–19, 27–28; CP Exhs. 17–18) but Quebecor never responded to this request for information, which was clearly relevant to the Union’s representation of the bargaining unit employees. See *Brooklyn Union Gas, Co.*, 296 NLRB 591, 595 (1989), Quebecor’s refusal to provide this information violated Section 8(a)(5) and (1) of the Act.

It is undisputed that Quebecor has employed a large number of temporary employees as its own employees to perform bargaining unit work. The Unions repeatedly requested information concerning temporary employees performing bargaining unit work, including their names, wage rates, hire dates, and job descriptions (CP Exh. 16; GC Exhs 27, 34). Quebecor never responded to these requests. This information is clearly relevant and its refusal to provide it violated Section 8(a)(5) and (1) of the Act. *Beverly Enterprises*, 310 NLRB 222, 227 (1993).

On February 20, 1997, the Unions requested of Quebecor the contract documents relating to its purchase of AmerSig and Quebecor delayed over 5 months in responding to this request until July 30, 1997, when it provided only the asset purchase

agreement without the many exhibits and schedules which are part of the agreement and bear directly on issues related to bargaining unit employees (Tr. 315, 319; CP Exhs. 19–20, 41–42). These documents, exhibits, and schedules were necessary to protect the interests of the employees and to determine whether Quebecor was a new business or a successor. *Weswood Import Co.*, 251 NLRB 1213, 1227 (1980), *enfd.* 681 F.2d 664 (9th Cir. 1982); *Daniel I. Burk Enterprises*, 313 NLRB 1263, 1269 (1994). Quebecor’s long delay in providing any of this information and its continuing refusal to produce the exhibits and schedules to the asset purchase agreement violated Section 8(a)(5) and (1) of the Act.

The Unions repeatedly requested the names of bargaining unit employees who were laid off and the dates of layoffs. Although Quebecor finally admitted it had laid off members of Local 96–B, it never produced their names or the dates of layoffs (Tr. 319). Quebecor produced some but not all of the names and dates of members of Local 8–M (GC Exh. 33). Records of additional layoffs of employees in both bargaining units were discovered at the hearing. Quebecor’s refusals to provide this information, which is directly related to the terms and conditions of bargaining unit employees, violated Section 8(a)(5) and (1) of the Act. *Miami Rivet of Puerto Rico*, 318 NLRB 769, 771 (item 4) (1995).

Quebecor initiated a practice of giving free Atlanta Braves’ baseball tickets to bargaining unit employees whose machines achieved high production levels. Local 96–B considered this a unilateral change in terms and conditions of employment and that Quebecor was discriminating against former strikers in their distribution and asked for the names of employees who received these tickets. Quebecor refused the request and thereby violated Section 8(a)(5) and (1) of the Act.

Quebecor’s refusal to provide seniority lists after the partial distribution of them to the Union on April 1 and 24, 1997, despite repeated requests (GC Exhs. 25, 27–28, 34; Tr. 259, 317–318, 426–432, 449, 452), was violative of Section 8(a)(5) and (1) of the Act. *Burk Enterprises*, supra.

AmerSig’s Position

Respondent AmerSig contends that it did not violate Section 8(a)(1) and (3) of the Act by failing and refusing to reinstate the strikers and discriminatees in Case 17–CA–16090 as the unconditional offers of reinstatement issued to the strikers and discriminatees on January 8, 1997, were valid and tolled AmerSig’s obligations under the Act. AmerSig admits that it failed to reinstate those employees determined to be unfair labor practice strikers in Case 17–CA–16090, et al. from November 23, 1996, to January 7, 1997. AmerSig contends that the General Counsel and the Charging Party presented no credible evidence to support their contention that AmerSig’s unconditional offers of reinstatement were invalid, unlawfully motivated, or a result of some retaliatory conspiracy between AmerSig and Quebecor.² AmerSig contends that once its board of directors decided to comply with the ALJ’s Order in Case 17–CA–16090, its efforts were focused on immediately reinstating the strikers and discriminatees to their prestrike jobs and in less than 6 days

² AmerSig’s motion for a directed verdict is denied.

from the Order, it issued unconditional offers of reinstatement to all strikers and discriminatees and scheduled an orientation for returning strikers and discriminatees to facilitate their enrollment on to its payroll and into its benefit programs and to provide them with an introduction to the many changes in machinery and equipment configurations that had occurred during their 3-1/2 year absence from the plant. There were significant changes in the plant operations during the strike. Equipment in the plant had changed during the strike and most of the strikers were not employed in the printing industry during the strike. AmerSig relies on the testimony of Roy Bivins, a journeyman press operator who testified that when he was hired by Quebecor in January 1997, he relied on his leadman over a 3-month training period on a new press. AmerSig contends it was prepared to reinstate all 135 strikers and discriminatees on January 14, 1997, to put them on the payroll effective immediately, enroll them in all benefit plans, and to return them to their prestrike positions. Thus, it scheduled the orientation at the hotel to accommodate a large group. Although only 17 strikers and discriminatees returned to work, it is hindsight to contend that this smaller number of employees could have been integrated into the plant without the scheduled orientation. Once the January 8, 1997, unconditional offers of reinstatement were made, AmerSig's remedial obligations ended. Any other conclusion would place the strikers in a better position than they would have been, if they had been immediately reinstated on their unconditional offer to return to work.

AmerSig contends its offers of reinstatement were clear, unequivocal, and unconditional. It contends that neither Local 8-M President Hal Landis nor Local 96-B President James Osborne received an offer of reinstatement as they were full-time presidents. Landis admitted this at the hearing and that he would not have returned to work at AmerSig even if offered reinstatement. Osborne also testified that at the time of the strike he was a full-time president and at no time had he notified AmerSig of his desire to return to work.

AmerSig also contends that its conduct subsequent to the unconditional offers of reinstatement did not taint the validity of these offers. The requirement that the returning strikers and discriminatees attend an orientation prior to being placed in plant jobs did not taint the unconditional offers of reinstatement. There were new equipment, new processes, and a considerable length of time that the strikers had not been in the plant all of which demonstrates valid reasons for the orientation. AmerSig relies on *Oregon Steel Mills*, 300 NLRB 817 (1990), where the Board held that orientation for returning strikers did not taint the unconditional offers of reinstatement where, during the strike, the employer had cross-trained the workforce, installed new equipment, and implemented new employment policies.

AmerSig also argues that the timing of its unconditional offers of reinstatement did not invalidate the offers. The January 8 letter announcing the acquisition of AmerSig by Quebecor which accompanied the unconditional offers of reinstatement did not taint those offers because the Company was offering reinstatement to jobs which would not exist in a few weeks. This letter was simply a statement of fact and did no more than fully inform the strikers and discriminatees of the business

circumstance at AmerSig. If AmerSig had not fully informed them of the pending transaction and simply terminated them when the transaction closed, this conduct would have been deemed unconscionable and retaliatory. Finally, had AmerSig immediately reinstated the strikers and discriminatees 2 months earlier, their status as unfair labor practice strikers would have had no bearing on Quebecor's acquisition of AmerSig's assets. An employer's liability for unfair labor practice infractions is tolled on the employer's going out of business. *Pacemaker Driver Service*, 290 NLRB 405 (1988); and *Collateral Control Corp.*, 288 NLRB 308 (1988).

AmerSig argues further that the remedy sought in this case exceeds that required by the Act and places the strikers and discriminatees in a more favorable position than they otherwise would have been. Relying on *Golden State*, the General Counsel and the Charging Party assert not only that the strikers and discriminatees were not unconditionally offered reinstatement by AmerSig on January 8, but also that AmerSig's liability, if any, continues beyond the time when it ceased operations and extends jointly and severally to AmerSig and Quebecor. In *Golden State* the Court made a very narrow determination that under certain circumstances where a bona fide purchaser of a business acquires the business with knowledge of an unremedied unfair labor practice charge the purchaser may be held jointly and severally liable for remedying the unfair labor practice. In *Golden State* the Court accepted the Board's rationale in *Perma Vinyl Corp.*, 164 NLRB 968 (1967), enf. sub nom. *United States Pipe & Foundry Co. v. NLRB*, 398 F.2d 544 (5th Cir. 1968), that such a remedy is appropriate under certain circumstances and to guard against the purchaser benefiting from the unfair labor practices of the seller. In *Golden State*, the equitable balance required the reinstatement of the employee at issue because the alternative would be the employee being out of work while his colleagues remained employed by the successor. The equitable balance relied on by the Court in *Golden State* does not exist here. The Board's remedial mission is compensatory in nature providing for backpay and reinstatement and is not punitive. The objective is to place the employees in the same circumstances as if the unfair labor practice had not occurred. *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177 (1941); and *Republic Steel Corp. v. NLRB*, 311 U.S. 7, 10 (1940). The unfair labor practice strikers at issue here are entitled to unconditional reinstatement from the time they made an unconditional offer to return to work, and absent such timely reinstatement, backpay and benefits until reinstated to their prestrike jobs. *Associated Grocers*, 253 NLRB 31, 34 (1980); and *Drug Package Co.*, 228 NLRB 108, 113-114 (1977).

Under *Burns* and its progeny it is well settled that a successor employer is free to set initial terms and conditions of employment and is not bound by the collective-bargaining agreements and obligations of its predecessor unless it makes clear its intent to retain all of the predecessor's bargaining unit employees. However, if the successor hires a majority of the predecessor's bargaining unit employees, it is obligated to recognize and bargain with the employee's bargaining representative over terms and conditions of employment. In *Burns*, the Court specifically noted that a successor is not obligated to remedy every unfair labor practice of the predecessor because,

under the Act, the successor is not obligated to hire any of the predecessor's employees. Under *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981), and its progeny, it is clear that an employer may cease its operations at any time, and outstanding remedial obligations do not extend beyond the cessation of the business.

Applying the foregoing fundamentals to the instant case militates against any liability continuing beyond January 22. The unfair labor practice strikers, if reinstated, would not have been entitled to employment beyond the time that AmerSig operated the plant. Any obligation of Quebecor to these employees attached only after it had determined the composition of its work force, and if Quebecor had hired a majority of AmerSig's employees (strikers, discriminatees, crossovers, and replacements) to bargaining unit jobs, Quebecor's only obligation would have been to recognize and bargain with the Charging Party. Quebecor stipulated to its status as a *Burns* successor. Thus, if AmerSig's offers of reinstatement were not valid, the make-whole remedy for strikers and discriminatees would be limited to backpay for the time period AmerSig could have returned them to work. After that time AmerSig could not control their employment destiny. Extending *Golden State* protections to the strikers in this case will have the ultimate result of placing them in a better position than if the purported unfair labor practice had not occurred, specifically requiring Quebecor to hire them under circumstances under which Quebecor would have otherwise had no obligation to hire them. Since Quebecor had no knowledge that AmerSig had not remedied its unfair labor practices to extend liability beyond January 22 would provide these strikers and discriminatees with a remedy greater than that contemplated by the Act. Quebecor did not benefit from the unfair labor practices of AmerSig. It simply exercised its right to set initial terms and conditions of employment and hire a work force. AmerSig cooperated with Quebecor in posting notices of Quebecor's interview location and arranged for those attending the orientation to have sufficient time to apply to Quebecor. Quebecor informed all of AmerSig's former employees of its application process and invited them to apply for work. Their status as strikers or discriminatees had no bearing on Quebecor's decision to offer employment to those who applied.

Quebecor's Position

Quebecor in its brief argues that the complaint against it should be dismissed because the General Counsel failed to plead that Quebecor had notice of AmerSig's unfair labor practices. This motion was denied by me at the hearing and is reasserted in its brief. It is again denied as the complaint adequately put Quebecor on notice that it was a *Golden State* successor and implicit therein is the requirement that it had notice of AmerSig's unfair labor practices. Moreover the testimony and exhibits submitted at the hearing adequately established that Quebecor was put on notice of AmerSig's unremedied unfair labor practices, its failure to reinstate the employees on their unconditional offer to return in November 1996 and the Union's contention that AmerSig's offer of reinstatement in January 1997 was a sham.

Quebecor further contends that the General Counsel has not proven the elements necessary to establish *Golden State* liability, asserting again that the General Counsel has not established a necessary element of his cause of action (that Quebecor had knowledge of an "unremedied" unfair labor practice of its predecessor AmerSig). Quebecor contends that insofar as it was aware, it knew that AmerSig had informed the affected employees that the ALJ's decision, including the reinstatement order would be fully complied with, and that unconditional reinstatement offers pursuant to that order had been made to all former strikers and discriminatees as of January 9, 1997. It contends that even if an otherwise valid reinstatement offer states an unreasonable reporting date the employee still has an obligation to respond and to inquire as to flexibility concerning the return date and the failure to respond tolls backpay. *Esterline Electronics Corp.*, 290 NLRB 834, 835 (1988). AmerSig's offer of reinstatement meets this test. On January 8, 1997, AmerSig sent overnight as well as certified letters to all former strikers and discriminatees, unconditionally offering employment to their former positions, shifts, and the current rate of pay for those positions. All former strikers and discriminatees had the opportunity to be reinstated immediately by AmerSig. Those who responded were reinstated to their former positions, shifts, and rates of pay pursuant to the ALJ's Order as of January 14, 1997. All individuals who responded that they wished immediate reinstatement and who reported for work as instructed on January 14 were immediately reinstated to their former positions, were immediately placed on AmerSig's payroll, and were immediately provided all employee benefits. Those individuals who responded that they could not attend the orientation because of prior commitments or personal desires to give current employers notice were told about Quebecor's impending purchase of AmerSig, and were told they were welcome back to AmerSig when their commitments ended, as long as AmerSig was in business. The time allowed employees to accept the reinstatement offers and report by January 14, 1997, was reasonable. To extend the time for reinstatement beyond that date would have placed AmerSig in the position of not being able, on its own account, to reinstate, since the sale of its assets was pending. To effectuate compliance with the assurance it was accomplished, AmerSig had to immediately reinstate. AmerSig did everything it could to comply by reinstating and so informed Quebecor. Accordingly Quebecor had no knowledge of "unremedied" unfair labor practices.

Quebecor was not required to hire any former striker or discriminatee as contended by the General Counsel and the Charging Party. Quebecor knew AmerSig had offered reinstatement to all these persons and had a right to rely on that compliance with the ALJ's Order as satisfaction of any potential hiring obligation. If Quebecor as a *Burns* successor had given preference to these individuals, it would have discriminated against other individuals because of their membership or lack of membership in a labor union. Rather, it hired without regard to the applicant's former status, basing its decision on the best qualified applicants. It hired a combination of strikers, discriminatees, returned strikers, referred to as "crossovers," and replacement employees.

Quebecor did not violate the Act by failing to bargain about employee layoffs because those layoffs were made consistent with Quebecor's initial terms and conditions of employment. Generally, a successor employer is free to set the initial terms on which it will hire the employees of a predecessor citing *Burns*. All Quebecor employees were hired under initial terms and conditions of employment set by Quebecor. These terms and conditions provided that Quebecor may lay off employees for a period of up to 7 days without regard to seniority and without prior notice. On February 2 and 3, 1997, Quebecor shut down the Atlanta facility and laid off most of its employees. The General Counsel alleges that Quebecor violated the Act by failing to bargain about these layoffs.³ Osborne testified that the Unions' first demand to bargain about layoffs occurred April 8, 1997. The layoff did not violate the Act as it was consistent with Quebecor's initial terms and conditions of employment. *Hilton Mobile Homes*, 155 NLRB 873 (1965).

Complaint allegations that Quebecor violated Section 8(a)(5) and (1) of the Act by failing to furnish the Unions with seniority lists, a statement of the reasons for not hiring former strikers and discriminatees subject to Judge Grossman's decision, the names of all temporary employees working in the Atlanta plant, documents relating to the sale of AmerSig's assets to Quebecor, and a list of all unit employees who have been laid off since Quebecor began operations, should all be dismissed.

Analysis

I find that AmerSig violated Section 8(a)(3) and (1) of the Act by refusing to reinstate the unfair labor practice strikers represented by Locals 8-M and 96-B, GCIU to their prestrike classifications and shifts following their November 23, 1996 unconditional offer to return to work.

Initially, AmerSig received the unconditional offers to return to work on November 23, 1996, and failed and refused to reinstate the unfair labor practice strikers based on the advice of its attorney that they were not unfair labor practice strikers. This advice was clearly incorrect as evidenced by the ALJ's decision which AmerSig did not appeal and AmerSig assumed the risk of its failure to reinstate when it failed to comply. I find that the January 8 offers of reinstatement were a sham designed to keep the former strikers out of the plant in order to favor the replacement workers and crossovers then working in the plant in their opportunities for employment with Quebecor, thus, also assuring Quebecor, a more compliant work force with respect to employee rights under Section 7 of the Act as well as employees who had been performing on the job for a considerable period of time up to the sale of the assets to Quebecor. This certainly benefited Quebecor in that it would be placed in a favorable position with a ready work force on site as well as a pool of former strikers to choose from. I find that AmerSig's relegation of the former strikers to the orientation at the offsite hotel with coverage of several irrelevant subjects with respect to their duties supports a finding that the real reason for the orientation was to keep its in plant work force in place without

³ The Unions also argue that Quebecor failed to bargain collectively about a "layoff" occurring on January 22, 1997. However, it is undisputed that Quebecor did not hire its work force and begin operations until January 23, 1997.

disruption and to hold the former strikers at bay in their quest for reinstatement. This also placed the former strikers at a disadvantage in their opportunities for hire by Quebecor. If the former strikers had been reinstated in November 1996, they would have been on the job for almost 2 months which would have placed them in their proper positions. AmerSig's failure and refusal to reinstate them in November and its belated offer in January did not remedy the unfair labor practices. By so doing AmerSig violated Section 8(a)(3) and (1) of the Act. I find the cases cited by the General Counsel and the Charging Party are controlling.

I further find that Quebecor is a *Golden State* successor and as such is liable to remedy the unfair labor practices of AmerSig including the duty to reinstate the former strikers and discriminatees which I have found AmerSig failed to do. Quebecor was aware of the Union's contentions that the unfair labor practices had not been remedied and assumed the liability to remedy them just as it assumed the benefits of the unfair labor practices. In this instance Quebecor took advantage of the benefits of AmerSig's unfair labor practices and must remedy them by reinstating the former strikers to their prestrike positions. Quebecor's failure and refusal to reinstate the unfair labor practice strikers violated Section 8(a)(3) and (1) of the Act.

Quebecor's unilateral layoff of bargaining unit employees without affording Locals 8-M and 96-B notice and an opportunity to bargain violated Section 8(a)(5) and (1) of the Act. Quebecor had an obligation to reinstate the former strikers which AmerSig had failed to do and to bargain with the Unions on their behalf concerning the layoff. Since the former strikers had not been reinstated by AmerSig, Quebecor had no right to set the initial terms and conditions of its bargaining unit employees. For the same reasons Quebecor violated Section 8(a)(5) and (1) of the Act by its delay and failure and refusal to provide the aforesaid information requested by the Unions all of which I find to have been relevant to their duty to represent the unit employees. I find the cases cited by the General Counsel and the Charging Party are controlling.

CONCLUSIONS OF LAW

1. The Respondent AmerSig Graphics, Inc., and AmerSig Southeast, Inc. d/b/a American Signature, Inc., is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Quebecor Printing Atlanta, Inc., is a successor of American Signature and an employer within the meaning of Section 2(2), (6), and (7) of the Act.

3. Graphic Communications International Union, AFL-CIO and its Locals 8-M and 96-B collectively the Unions are each a labor organization within the meaning of Section 2(5) of the Act.

4. As of January 23, 1997, Quebecor had 203 employees in bargaining unit jobs, 88 of which were in the Local 8-M bargaining unit which represented pressroom and preparatory department employees and 115 of which were in the Local 96-B bargaining unit which represented bindery and mailing department employees.

5. American Signature violated Section 8(a)(3) and (1) of the Act by refusing to reinstate the following unfair labor prac-

tice strikers represented by Locals 8–M and 96–B, to their prestrike classifications and shifts following their November 23, 1996 unconditional offer to return to work:

Local 8–M Strikers

Hollis Bagwell, Mildred Blake, Janice Bolton, John Bolton, Roger Brantley, Lenore Buice, John Carson, David Constans, Bobby Craddock, Stan Cunningham, Morris Darnell, Randy Dewberry, Lex Dockery, Melvin Dukes, Leon Furgusson, Elizabeth Freeman, Nancy Frix, Alan Green, George Gieves, Virginia Hannah, William C. Haynes, James Hogsted, Mary Ingram, Tommy Johnson, Byran Laird, Charles Ledford, Debra Meacham, Gertrude Morton, Mildred Newsome, Ann Nuckles, James Osborne, Nancy Overcash, Jerry Parks, Jackie Pressley, Lori Richards-Spraggs, JoAnn Slaton, Van Spraggs, Walter J. Tipton, Betty Toole, C. Wayne Torbush, Howard P. Ward, John B. Watson, Patricia A. Williams, Betty Williamson

Local 96–B strikers

Davis L. Adams, Carroll H. Allen, John C. Allen, Kenneth R. Baker, William E. Baldwin, Charles P. Banks, Herbert L. Barber, Harold V. Barnes, James R. Bivins, Jr., Terry Boss, Robert H. Braddock, Jr., Billy J. Brannon, Harold G. Bray, Felix J. Brittain, Franklin D. Brogdon, John D. Brown, Marcus R. Buice, Phillip R. Buice, Kenneth L. Carver, Ancil D. Chambers, Alvin B. Chewing, Buddy E. Cooper, Richard Darnell, John M. Dixon, Clifford L. Dunson, Bruce W. Elzey, T.L. Fortenberry, Donald T. Fox, Creighton T. Fuller, Kenneth Gates, Ostor C. Griffith, Gary N. Griswell, Donald E. Harvey, Robert C. Hice, Benny F. Hickey, Loyed J. Hillard, Buddy Holt, Donald L. Jenkins, Erwin D. Jones, Jack E. Keen, Michael W. Kelley, Billy G. Lummus, James H. Mabry, David E. Manis, Michael Martin, Joe A. McWilliams, Henry R. Meyer, Jr., Clinton R. Mulkey, Ronald J. New, David K. Noland, James R. Noland, Jr., Tommy C. Parrott, Howard W. Payne, Dewayne E. Richmond, Ricardo Rogers, Jarrell Scott, Glenn A. Shuler, Willie R. Simmons, Spencer Smith, Eugene Spraggs, Larry S. Stanley, Jarred L. Starnes, Wade B. Stephens, Oscar A. Stovall, James D. Street, Darrel E. Timpson, Lester L. Torbush, Robert L. Turner, Kermit W. Warcop, Phillip Weaver, Felix G. Whiten, Andrew E. Williams, Ralph E. Williamson, David L. Wooten, Michael A. Yancey, Ronnie B. Zastrow

6. Quebecor is a successor to American Signature with an obligation to reinstate the above-named unfair labor practice strikers after its purchase of the assets of American Signature on January 22, 1997, and its failure to reinstate them violated Section 8(a)(3) and (1) of the Act.

7. Quebecor's unilateral layoff of bargaining unit employees without affording notice and an opportunity to bargain to Locals 8–M and 96–B, GCIU violated Section 8(a)(5) and (1) of the Act.

8. Respondent Quebecor has violated Section 8(a)(5) and (1) of the Act by failing and refusing since about January 22, 1997, to furnish the Unions with relevant information requested by them as follows.

(a) The names, classifications, hire dates, seniority dates, race, sex, addresses, telephone numbers, and pay rates of bargaining unit employees employed by Quebecor.

(b) A statement of the reasons why Quebecor has not hired or returned to their former positions of employment, all of the unfair labor practice strikers and discriminatees referred to in the Administrative Law Judge's December 27, 1996 Decisions and Recommended Order in Cases 17–CA–16090, et al.

(c) The names of all temporary employees working at Quebecor's Atlanta, Georgia facility, including their wage rates, hire dates, and job descriptions.

(d) Documents related to the sale of AmerSig's assets to Quebecor including all schedules attached thereto.

(e) A list of all unit employees who have been laid off since Quebecor began operations at the facility.

9. Respondent Quebecor has violated Section 8(a)(5) and (1) of the Act since about May 11, 1997, by failing and refusing to furnish the Unions with seniority lists for the bargaining units and has violated Section 8(a)(5) and (1) of the Act since about January 23, 1997, by laying off employees in the bargaining units without proper notice to the Unions and without affording the Unions an opportunity to bargain with Quebecor with respect to this mandatory subject of bargaining.

10. The aforesaid unfair labor practices in conjunction with American Signature's status as an employer and Quebecor's status as its successor and an employer affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in violations of the Act, it will be recommended that they cease and desist therefrom and take certain affirmative actions designed to effectuate the purposes of the Act and post the appropriate notice and mail the appropriate notice to the employees.

It is recommended that Respondents' AmerSig and Quebecor jointly and severally make the aforesaid employees whole for any loss of earnings and benefits suffered as a result of their failure and refusal and/or delay to reinstate them to their former positions of employment. It is recommended that Respondent Quebecor offer these employees full reinstatement to their former positions of employment, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and jointly and severally, make them whole for any loss of earnings and benefits suffered as a result of its failure and refusal, and/or delay to reinstate them to their former positions of employment or as a result of the layoffs of employees and that it rescind the layoffs of the bargaining unit employees. It is further recommended that Quebecor furnish the Union with the information it

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has requested as the collective-bargaining representative, of the unit employees. Backpay shall be in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as com-

puted in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]