JD-24-10
Cleveland, OH

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

FRANZEN GRAPHICS, LLC, and
FRANZEN GRAPHICS-OHIO, LLC

and

Case Nos. 8-CA-37774
8-CA-37839
8-CA-37917
8-CA-38274

LOCAL 546M, GRAPHIC COMMUNICATIONS
CONFERENCE OF THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Karen Neilsen, Esq., Counsel for the General Counsel.
Ronald L. Mason Esq., Matthew Austin, Esqs.
(Mason Law Firm) & *Stephen A. Markus, Esq*.
(Ulmer & Berne, LLP), for the Respondent.

DECISION

Statement of the Case

GEORGE ALEMÁN, Administrative Law Judge. A trial in the above-captioned matter was held in Cleveland, Ohio beginning February 17, 2009, and continued on various dates thereafter until closed on April 2, 2009. The hearing was subsequently reopened on August 12, 2009, on a Motion to Reopen filed by Counsel for the General Counsel, for the taking of additional evidence, and officially closed the same day.[1] The consolidated complaint in this case alleges that the Respondent, in various manner, has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act).

Specifically, the complaint alleges that the Respondent violated Section 8(a)(1) of the

---

[1] The hearing which began February 17, and closed April 2, 2009, was held to hear and resolve allegations contained in a consolidated complaint issued by the Regional Director for Region 8 of the National labor Relations Board (the Board) against Franzen Graphics, LLC and Franzen Graphics-Ohio, LLC (herein the Respondent) on October 31, 2008. The unfair labor charges underlying that complaint (8-CA-37774, 8-CA-37839, 8-CA-37917) were filed by Local 546M, Graphic Communications Conference of the International Brotherhood of Teamsters (herein the Union). Attorneys representing the Respondent during this phase of the hearing were Ronald Mason and Matthew Austin of the Mason Law Firm Co. On April 20, 2009, after the hearing closed, the Union filed a new charge (8-CA-38274), resulting in the issuance of another complaint on June 10, 2009, alleging that the Respondent, following the hearing, had engaged in unlawful conduct similar to that alleged in the previous October 31, 2008, consolidated complaint. On June 10, 2009, Counsel for the General Counsel filed, and the Respondent opposed, a Motion to Reopen the Record to consolidate Case 8-CA-38274 with the October 31, 2008, consolidated complaint, and for a reopening of the hearing to hear evidence on this new allegation. By order dated June 23, 2009, I granted Counsel for the General's Motion. The hearing was thereafter reopened on August 12, 2009, and closed the same day. The Respondent was represented at this phase of the hearing by attorney Stephen Markus.

Act by interfering with the rights guaranteed to employees under Section 7 of the Act, disparaging the Union which represents them; attempting to bypass the Union and deal directly with employees regarding their terms and conditions of employment; encouraging employees to withdraw their support for the Union by, inter alia, decertifying the Union; and implicitly promising them benefits and otherwise attempting to undermine the Union's majority status. It also alleges that the Respondent violated Section 8(a)(3) and (1) of the Act by demoting employee Howard Pfeiler and reducing his wages. Finally, it alleges that the Respondent violated Section 8(a)(5) and (1) by bargaining with no intention of reaching agreement with the Union, insisting that the Union accept allegedly unlawful conditions as the basis for any agreement, and threatened to close its Cleveland, Ohio, facility if the Union did not accept its terms. In a timely-filed answer to the complaint, the Respondent denies the above allegations or engaging in any unfair labor practices.

At trial, all parties were afforded a full and fair opportunity to be heard, to present oral and written evidence, to examine and cross-examine witnesses, and to argue orally on the record. On the entire record in this proceeding, including my observation of the demeanor of the witnesses, and after considering the briefs filed by Counsel for the General Counsel and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

The Respondent, a Wisconsin corporation with its main office and a facility in Sheboygan, Wisconsin, as well as a facility in Cleveland, Ohio, is engaged in the business of providing screen and litho printing services to commercial clients.[2] In the course and conduct of its business operations, the Respondent sells and ships from its Cleveland, Ohio facility goods valued in excess of $50,000 directly to points outside the State of Ohio. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It further admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Facts

1. Background history

The record reflects that the Respondent purchased its Cleveland, Ohio facility from Continental Lithograph in May 2003. Prior to the acquisition, Continental Lithograph had maintained a long-term bargaining relationship with the Union, which represented Continental Lithograph's employees employed in the pressroom, bindery, and pre-press areas, referred to

---

[2] The consolidated complaint alleges that Franzen Graphics, LLC (the Sheboygan facility) and Franzen Graphics-Ohio, LLC (the Cleveland facility) constitute a single-integrated enterprise rendering both liable for any unfair labor practices found herein. In May 2003, the Respondent purchased and acquired its Cleveland, Ohio facility from Continental Lithograph, which had had a long-term bargaining relationship with Local 546M of the Graphic Communications International Union (GCIU). In 2005, GCIU, following a merger with the Teamsters Union, became the Graphic Communications Conference of the International Brotherhood of Teamsters.

as the Litho bargaining unit, as well employees in the Finishing department. Both bargaining units had their own separate collective bargaining agreement.

The Respondent's managerial-supervisory structure includes its president, Craig Franzen (herein C. Franzen), vice-president Jim Hapeman, Cleveland facility manager Beverly Baker, Human Resources Manager Keith Suprick, and Plant Manager Jamie Van Noster, all admitted supervisors and agents within the meaning of Section 2(11) and 2(13) of the Act.

Following its acquisition of the Cleveland facility, the Respondent declined to recognize the Union as the bargaining representative of employees at that facility, prompting the Union to file unfair labor practices against it. A complaint thereafter issued in September 2004, alleging, inter alia, that the Respondent was a successor employer, that it had unlawfully instituted a hiring plan designed to avoid its bargaining obligation as a successor, that it had discriminatorily refused to hire certain employees into the Litho and Finishing bargaining units pursuant to that hiring plan, and had engaged in other alleged unlawful conduct, including a threat purportedly made by C. Franzen at a mass meeting of employees that the Cleveland facility would be nonunion.[3] The allegations in the 2004 complaint were eventually resolved by a settlement agreement entered into by the parties in February 2005, under which the Respondent, while not admitting any wrongdoing, agreed to certain conditions, including a requirement that it not refuse to recognize and bargain with the Union as the exclusive collective bargaining representative of employees employed in its Litho and Finishing departments. The Respondent and the Union thereafter entered into two separate collective bargaining agreements covering each unit, effective February 7, 2005-June 30, 2007. (See, GCX-6; RX-2).

The record reflects that soon after the parties entered into the 2005 settlement agreement, a meeting was held among employees, attended by Union president Craig. Franzen, Baker, Farrand, and Counsel for the General Counsel Neilsen, where they were informed of the settlement and told they were being represented by the Union. Testimony from several employee witnesses who attended this meeting indicate that there was some opposition to the Union being allowed to continue representing them. (Tr. 1230; 1267; 1291; 1321; 1335-1336).

In late February or early March 2007, the Union began preparing for the upcoming expiration of the collective bargaining agreements. To this end, Farrand sent out surveys to the union stewards in the Litho and Finishing units to be circulated among employees. Employee Howie Pfeiler was, at the time, union steward in the Litho unit, while Stephanie Williams was union steward in the Finishing unit. Farrand received the completed surveys back from Pfeiler,

---

[3] Paul Korcuska, a former Continental Lithograph employee, was hired by Respondent in May 2003. In the Fall of 2004, he circulated a petition for Litho and Finishing unit employees to sign expressing opposition to the Union, and asking the Board not to rule in the Union's favor. He recalls giving the petition to Baker but did not know what eventually became of it. Baker, he explained, did not like having a union in the facility. Korcuska also testified to attending a meeting with all other unit employees at which C. Franzen told employees, either before or after he acquired the facility from Continental Lithograph, that the new facility would probably be non-union. Korcuska's latter testimony was corroborated to some extent by Frank Krestel, a former, retired employee, who testified to attending an employee meeting sometime in 2003, around the time C. Franzen was acquiring Continental Lithograph, at which C. Franzen told employees that "the new company would be non-union." (Tr. 1826). I credit Korcuska's and Krestel's undisputed accounts and find that C. Franzen expressed to employees at a general meeting his opposition to his new facility becoming unionized when acquiring it in 2003.

but did not receive any from Williams.

On April 12, 2007, Union Secretary-Treasurer Al Turay wrote separate letters to C. Franzen advising that the contracts in the Litho and Finishing units were due to expire on June 30, 2007, and requesting that C. Franzen meet at a mutually convenient time for the purpose of negotiating new contracts.[4] By letter dated May 3, 2007, the Respondent, through one of its then attorneys, Lester Armstrong of the Kahn Kleinman law firm, informed Turay of receipt of his requests for bargaining, and asked Turay to contact him (Armstrong) or attorney Stephen Moss of the same law firm, to discuss a mutually convenient date and time to meet.[5] (GCXs-11, 12, 13). The record reflects that the parties met some 35 times between June 18, 2007, when the first bargaining session was held, and October 22, 2008, when talks were discontinued. (GCX-31). However, in April 2009, the parties, at the Respondent's request, resumed talks and met on several occasions that month.

2. The negotiations and other related conduct

Much of the testimonial evidence at trial regarding what transpired or was said at these numerous bargaining sessions was provided by Farrand. Attorney Moss, who represented Respondent for only the first bargaining session on June 18, 2007, did not testify. Moss was subsequently replaced by Attorney Mason. Mason, who served as Respondent's principal negotiator and spokesperson after replacing Moss, did testify, having been called as a witness by both Counsel for the General Counsel and the Respondent. However, his testimony, unlike Farrand's, was very general in nature, and lacked the degree and level of specificity found in Farrand's description of the bargaining sessions and related events. Farrand's description of what was said or discussed during the numerous bargaining sessions, for the most part, went

---

[4] On April 2, 2007, ten days before Turay made his bargaining request, a petition to decertify the Union as bargaining representative of the finishing department employees was filed with the Board by employee Denise Hobson. (GCX-7). Hobson subsequently withdrew the petition, explaining she did so because other unit employees who supported the petition felt she was creating a problem because of her lead person status, which the Union contended made her a statutory supervisor. The record does not make clear just how much support there was for Hobson's petition among employees in the Finishing department. Dobson is the sister of Stephanie Williams. Williams was subsequently removed from her union position by the Union's executive board for her involvement with the decertification petition. Nakiedra Bowden replaced Williams as the finishing department's union steward. The Union thereafter filed an unfair labor practice charge (8-CA-37216) alleging, inter alia, that the Respondent had unlawfully assisted and sponsored the decertification filed by Hobson, an alleged supervisor in the finishing department. (Tr. 75). A settlement agreement resolving this particular allegation was subsequently entered into between the Respondent and the General Counsel on July 5, 2007. Under the terms of that settlement, the Respondent admitted no wrongdoing, but did agree to post a notice informing employees that it would "not initiate, encourage, assist, or sponsor the filing of a decertification petition…or assist in their efforts to lawfully withdraw" from the Union. (Tr. 105; GCX-26). Soon thereafter, however, on July 11, 2007, six days after execution of the settlement agreement, a second decertification petition was filed by Wanda Hooks, a finishing department unit employee. (see GCX-27).

[5] The Respondent apparently was represented by the Kahn Kleinman law firm in connection with the unfair labor practice charge filed against it in 2004 which led to the 2005 settlement agreement. (See, GCX-4, p. 3).

unchallenged by Mason or Baker, both of whom testified at the hearing.[6] Farrand's version of what transpired at these bargaining sessions is therefore accepted as accurate and true.

The first bargaining session between the parties, as noted, was held June 18, 2007, at the Union hall. Attorney Moss, C. Franzen, and Beverly Baker were present for the Respondent. The Union's bargaining committee included Farrand, Pfeiler, Bowden, along with Litho employees Victor Sadler and Diane Kopinsky. Proposals were exchanged by the parties at this first meeting. The parties first discussed the Union's proposal for the Litho bargaining unit which sought certain changes in the existing Litho contract, including a change in the name of the Union, and to the overtime, vacation, and wage provisions. Following discussion of the Union's Litho unit proposal, the Respondent presented its own proposal. (See, GCX-19). In its Litho unit proposal, the Respondent sought modification to various provisions in the existing litho agreement. Thus, it sought to modify the employee probationary period, overtime pay, employee health insurance, the subcontracting clause, use of temporary employees, and removal of the 1st pressman position from the bargaining unit, asserting as to the latter that the pressman exercises supervisory authority. The Respondent's proposal also sought elimination of: a notification requirement to the Union of new hires; negotiation over wages for new machinery; paid leave for doctor visits for on-the-job injuries; two provisions in its struck work clause. Finally, the Respondent sought in its proposal to withdraw from the Union's Supplemental Retirement and Disability Fund.[7]

When it came time to discuss the Union's proposal for the finishing department employees, Moss stated that the Respondent was not prepared to respond to the finishing department proposal because of the decertification petition that had been filed. Farrand replied that the parties were still under a contract and remained obligated to bargain with each other, and that the Union expected the Company to bargain with it over the Finishing department proposal. For its part, the Respondent did not present a Finishing department proposal to the Union because of the pending decertification petition.

This initial bargaining session lasted some two hours, after which the parties agreed to meet again on June 28, July 6, and July 17-18, 2007 to continue negotiations. Moss expressed his optimism to Farrand that negotiations could be concluded within that time frame.

However, either on June 27, 2007 or early on June 28, 2007, Farrand received a call from attorney Mason informing him that Moss was no longer representing the Respondent and that he, Mason, had been retained to conduct the negotiations.[8] Mason indicated that he would

---

[6] Except for the very first bargaining session on June 18, Mason was present at all other bargaining sessions. Baker attended most, but not all, of the meetings. (See, GCX-31).

[7] Under the parties' contracts, there were two distinct pension plans. One, labeled for ease of reference at the hearing as the "Inter-Local" plan, involved only employee-made contributions which were deducted from employee paychecks by the Respondent and remitted to the Union; the other, the Supplemental Retirement and Disability Fund (the Supplemental plan), involved a 3% per employee contribution by the Respondent. (Tr. 120).

[8] Counsel for the General Counsel proffered into evidence information on the nature and type of legal work performed by Ronald Mason and his law firm, which Counsel for the General Counsel sought to portray as a "union busting" firm. (GCX-20). Mason admitted that his firm also owns Midwest Management Consultants which employs a Bill Wheeler, who is a registered "persuader" with the U.S. Dept. of Labor. The Dept. of Labor requires those who engage in persuader activities, e.g., activities designed to persuade employees not to unionize, to register with it. (Tr. 1505-1506).

not be available to meet either on June 28, or July 6, but agreed with Farrand to meet on July 17, 2007. When Farrand asked Mason if the Respondent would agree to extend the contracts that were set to expire June 30, 2007, Mason said no, that the Respondent would not be extending the contracts.

Mason testified that he was retained by the Respondent because, at the time, it had two collective-bargaining agreements that needed to be negotiated, as well as pending unfair labor practice charges and a decertification petition that needed to be addressed. (Tr. 1440). When asked by Counsel for the General Counsel why the Respondent had replaced attorney Moss and the Kahn Kleinman firm with the Mason Law Firm, Mason explained that it was because Kahn Kleinman "did not listen to [the Respondent's] objectives to many areas of its representation, including the initial litho proposal." Mason added that this factor, and the fact that "the single proposal for the litho unit that was tendered to the Union" by Moss "fell short of Franzen's legitimate business necessities and expectations, was the major reason why his law firm had been retained. (Tr. 1122).

Mason testified that, after being retained, he and his client, Franzen, developed new proposals that more properly met its needs and which were different from the initial proposal tendered by Moss to the Union at the first bargaining session. Mason claims he had three goals in mind heading into the negotiations: (1) limit the Respondent's overall costs; (2) eliminate its involvement with and contributions to the Union's pension plan, which Mason described as a "horrible" underfunded plan; and (3) operate as an open shop where employees would not be required to pay union dues. Regarding the latter goal, Mason expressed his belief, based on what he learned had transpired at the 2005 employee meeting, that employees were not happy paying union dues. (Tr. 1446-1450; 1454-1455).

As agreed, the parties met again on July 17, 2007. Present for the Union were Farrand, Turay, Pfeiler, Sadler, and Kopinsky. Bowden was scheduled to be present but did not appear. The Respondent was represented by Mason, Matthew Austen also of the Mason Law Firm, and Baker. Mason was the principal speaker for the Respondent. Austen, for the most part, did not speak and generally took notes.

Once the meeting got under way, Farrand gave Mason the Union's counterproposal to the Respondent's June 18, 2007, Litho unit proposal. Mason, however, explained that the Respondent wanted to add some things to the initial proposal Moss had presented to the Union at the 1st session, stating that it made more sense to wait until these additions were made. Farrand and his bargaining team then left the room for a while, during which time Mason put together a proposal entitled "Company Proposals" for the Litho unit which he presented to the Union on their return. (GCX-28). Farrand asked if Mason had a proposal for the Finishing unit and Mason replied he did not. As Bowden, the Finishing department steward was not present, Farrand told Mason they could address the Finishing unit proposal at the next bargaining session. Farrand testified that the practice established during past negotiations was that the parties would bargain for both units at the same time, and that this was what he expected during these negotiations.

The revised Litho unit proposal Mason came back with at the July 17, meeting contained some fairly significant changes that had not been part of the initial proposal given to Farrand by Moss at the June 18, 2007, meeting. (See, GCX-29). The revised proposal, for example, now sought to exclude from the Litho unit as a supervisory position the lead cutter classification, as well as the head or 1st pressman position that Moss had proposed eliminating from the unit in the June 18, proposal. Further, unlike the initial Moss proposal, Mason's revised proposal called for elimination of the union security clause and dues checkoff provision because, Mason

claimed, employees were opposed to paying dues;[9] and the pension withholding requirement under the Inter-Local plan because, as claimed by Mason, the Respondent did not trust union-run pension plans. (Tr. 118; 120; 1456; 1459). After some discussion on these proposals, the bargaining session ended. No agreements, tentative or otherwise, were reached at this first session with Mason. While the parties were scheduled to meet the next day, the Union indicated it needed more time to review the Company's proposal.

The parties next met on August 8, 2007, and, subsequently thereafter, held some 19 bargaining sessions until April 23, 2008, when the Respondent presented its last and final offer to the Union. These session were attended, for the most part, by Mason, Austen, and Baker for the Respondent, and Farrand and Pfeiler for the Union. (See GCX-31). According to Farrand's credited account of these meetings, negotiations at these sessions centered mostly on addressing the changes to the expired contracts contained in the proposal Mason gave to the Union at the July 17, meeting. Although Farrand did offer Union proposals of his own, he credibly testified that, for the most part, Mason either rejected the Union's proposals outright without any discussion, or simply ignored them altogether. Farrand credibly recalled asking Mason on one occasion if he had any response to the Union's proposals, and Mason replying, "If I do not accept your proposal I am rejecting it." (Tr. 408).

Thus, at this August 8, 2007, session and during the sessions leading up to the April 23, 2008, meeting at which the Respondent presented its last and final offer, the focus of discussion and negotiations centered mostly on the Respondent's own proposals with little or no attention given or paid by Respondent to the Union's own proposals. Elimination of the dues checkoff and union security provisions of the expired contracts, withdrawal from the Union pension plan, elimination of the 1st pressmen and lead cutter positions from the bargaining unit, were among the primary concerns discussed, although discussion was had on other matters, such as wages, vacations, bereavement pay, health coverage, but mostly from the Respondent's perspective. (See, GCX-29). Regarding its proposal to eliminate the union security and dues checkoff provisions, Mason took the position that, due to changed circumstances, to wit, the decertification petition that had been filed in the Finishing unit, the Respondent believed employees did not want to pay dues or be compelled to become members. Farrand told Mason that this particular proposal had not been part of Moss' initial June 18, proposal, and that it was regressive and reflected bad faith on the part of the Respondent in reaching a new agreement. Farrand insisted that Mason withdraw the proposal which the latter declined to do.

The parties also discussed the pension fund requirements, with Mason expressing the view that he was not interested in having the Respondent participate in any union pension plan. Mason explained that the Company felt the Union's pension was being grossly mismanaged and wanted out of the fund. Some discussion was had on the Respondent's desire to set rates for the operation of new machinery without any input from the Union, and how overtime should be determined. Other changes being proposed and which were discussed at this meeting, but which had not be included in the Respondent's initial June 18, 2007, proposal to the Union included changes to the seniority rights, use of holiday pay to cover sick leave, and elimination of the first pressman position from the Litho unit.

Farrand did express a willingness to move forward on Respondent's proposal regarding bereavement, but was told by Mason that Farrand could not pick and choose which items to

---

[9] Mason proposed replacing the union security language with the following: "No employee as a condition of employment will be required to either join the union or pay initiation fees or periodic dues to the union as a condition of employment." (Tr. 116)

reject or consider regressive, that if we considered other items in the proposal regressive, then the Union had to consider the other proposals, e.g., bereavement policy, also regressive. (Tr. 188). The parties also discussed how the press machines would be manned, with the Respondent taking the position that it would not negotiate over how or who would man the machines, and the Union pointing out that the prior contract contained language providing what classifications would work on the presses. (Tr. 192).

Farrand asked Mason if he had a proposal to present for the Finishing department. Mason replied he did not because Farrand had purportedly told him at the prior session that they "were going to wait until we saw what happened with the decertification." Farrand denied having said this, and informed Mason that, at the previous session, he had stated only that the Union did not need to see a proposal for the Finishing department at that meeting because the steward for that department was not in attendance. Farrand told Mason that the Finishing department steward was present now and that the Union expected to see and get a response to its own Finishing department proposal. No Finishing department proposal was submitted to the Union that day.

The record reflects, and Farrand's credible testimony reveals, that very little movement was made during the bargaining sessions that followed. At one point during the August 24, 2007, bargaining session, Mason suggested that the parties call in a mediator to help with the negotiations. Farrand, however, opposed the idea as unnecessary because the parties had just begun to negotiate, and many issues remained that needed to be addressed. Farrand was of the view that calling in a mediator at this point in time would not serve much of a purpose.

During these pre-April 23, 2008, sessions, the Respondent inserted the notation "T/A" next to provisions in its own proposal to indicate that it had decided not to change the provision in the expired contract which corresponded to the provision in its proposal. In essence, the "T/A" meant that while the Respondent, in its initial July 17, proposal, may have sought to modify a certain provision in the expired contract, it had decided to withdraw any proposed change and leave the provision in the expired contract intact. However, by inserting "T/A" next to these provisions the Respondent no longer sought to change, it left the impression that the parties had actually negotiated and agreed with the Respondent. Farrand, however, credibly testified that the insertion of "TA" annotation next to provisions which the Respondent had backed away from did not mean that the parties had actually negotiated and agreed to the provision or change in question. Rather, it simply reflected that the Respondent was no longer pursuing the change, and that the Union, in fact, had not bargained or agreed over the matter.

This is not to suggest that no movement whatsoever occurred during the negotiations. Thus, according to Farrand's testimony, during the August 28, 2007 session, the Union agreed to the Company's proposal regarding the payment of wages by check, and its proposal to delete the overtime language in Part VII, Sec. 8 of the prior contract. At an October 23, session, the Union provided a counterproposal to the Respondent's most recent proposal on attendance policy. It appears the parties agreed on certain changes to language in that policy. (Tr. 278) There also appeared to have been some give and take on the issue of unexcused tardies (Tr. 278-279). The Respondent also presented the Union with a proposal which modified its earlier position on the earning of points under the attendance policy, as well as an earlier position it had taken on unexcused absences, (Tr. 283).

Farrand's testimony also reflects that during October 31, bargaining session, the Union agreed to the Respondent's proposal which precluded employees with unexcused tardies from receiving compensation. The Respondent, in turn, presented the Union a proposal which modified language on unexcused tardiness. The Union agreed to language proposed by the

Respondent regarding the accumulation of points to be used in determining when employees would be issued written warnings, suspensions, or termination. Farrand explained that this was only a conditional acceptance of the latter proposal because the Union was still trying to get Respondent's acceptance to certain "overtime credit" language. (Tr. 318-325).

At a December 4, bargaining session, the Union, according to Farrand's credited account, agreed to certain language in Respondent's proposal calling for the parties to meet and "negotiate new rates of pay for any new equipment or new processes." (GCX-73, p. 2; GCX-78, part IV). On January 8, 2008, the Respondent filed a Unit Clarification petition with the Board seeking, consistent with its proposal at the bargaining table, to remove, on grounds that they were supervisors, the 1st pressmen and lead cutter positions from the bargaining unit. Not long, thereafter, however, on January 23, 2008, the Respondent's petition was dismissed by the Regional Director because the Respondent had presented no evidence whatsoever, other than a "bare assertion," that the 1st pressmen and lead cutter possessed "more supervisory" authority or status than others in the unit. (GCX-94). The Respondent was given until February 6, 2008, to appeal the Regional Director's decision, which it did not do. Although it chose not to appeal the Regional Director's ruling regarding its UC petition, the Respondent nevertheless continued to adhere to its proposal at subsequent bargaining sessions that the 1st pressmen and lead cutter were supervisors, notwithstanding the Regional Director's ruling to the contrary.

In the meantime, at a January 11, 2008, bargaining session, the Respondent withdrew the language It had proffered at the above-mentioned December 4, session , prompting Farrand to ask why the language had been changed after the parties had agreed to it. Mason simply answered that it made more sense to delete the agreed-upon language because of some other language elsewhere in the applicable provision. (Tr. 390). There is no indication that Mason ever bothered to ask Farrand to remove or modify the agreed-to language before doing so unilaterally.

At a January 30, session, the Respondent proposed, and the Union agreed, to temporarily place employees at the Cleveland facility under the same health plan used to cover employees at the Sheboygan facility, explaining that this was a temporary fix because the health plan for the Cleveland facility employees was scheduled to lapse by the end of March 2008. The Union, as noted, agreed to this proposal on condition that employees' premiums and coverage remained the same. (Tr. 412). At this meeting, Farrand presented Mason with the Union's proposal containing a wage proposal. Mason had apparently asked Farrand at the prior January 11, 2008 meeting to provide him with the Union's full proposal, including the economic proposal. Farrand explained that while he had been presenting Mason with the Union's proposal since they first began negotiating in 2007, the proposal he presented to Mason on January 30, contained, for the first time, a wage proposal. Farrand credibly recalled asking Mason for a response to the Union's proposal, and being told by Mason that the Respondent had no response and was instead rejecting them.

At a February 13, meeting, the Union again presented its full proposal to the Respondent, but with some changes and deletions. Asked why Farrand would change the Union's proposal if the Respondent had not even been willing to discuss his proposals, Farrand testified that he was simply trying to get the Respondent to start responding to his proposals. He acknowledged that he was taking a risk in doing so but felt it was important to do so in order to "loosen up the negotiations to find a way to open up, to get some kind of response from the Company, to get any opening that we could to try to get to a reasonable and fair agreement." The Respondent, in apparent response to the Union's proposal, did modify its "minimum wage" proposal to four percent, and proposed a $1.00 increase for the cutter position. (Tr. 458; 466).

At the next meeting held February 26, 2008, the Union resubmitted its proposal, but again with changes it made unilaterally without having received any response from the Respondent to its February 13, proposal. For example, in its proposal, the Union reduced the number of "sick days" for employees from three days initially proposed in its February 12, proposal to two. The Respondent, in turn, submitted a proposal modifying their wage increase proposal upward from 4% to 5% to be received by employees only when an agreement was ratified, but without retroactivity. The Union's own wage proposal had called for a 6% wage increase. The Respondent further proposed substituting a 401(k) plan for employees for the Union's pension plan to which it remained opposed. The Respondent also modified an earlier proposal dealing with the loss of seniority for laid off employees after certain months. (Tr. 476). There was discussion between the parties on some other issues, including "wage reopener" language, and discussion on whether the Respondent was willing to withdraw its proposal to exclude the 1st pressmen and lead cutter from the bargaining unit in light of the dismissal of a UC petition that had been filed by Respondent regarding these two positions. Mason declined to do so, explaining he intended to file another UC petition on this issue. (Tr. 488-489).

At a March 12, meeting, the Union again modified its proposals in an effort to get some response from the Respondent. Thus, it withdrew an earlier proposal for an additional holiday, accepted the Respondent's proposed wage increase for the cutter position, withdrew its proposal calling for some recognition award for employees with outstanding attendance, and a proposal that employees receive some form of attendance credit for working a lot of overtime. These concessions had not been sought by the Respondent but, as explained by Farrand, the Union made the concessions in an attempt to motivate the Respondent into addressing its proposals.

The parties met again on March 19, at which time the Respondent submitted another proposal. In it, the Respondent, inter alia, modified the health and welfare language reflecting that it would not offer partial self-insurance coverage. Farrand complained that this was a change from the Respondent's earlier proposal that there would be no change in the coverage or deductible for employees during the term of the contract. According to Mason, this was only intended as a clarification, but Farrand insisted that Mason was backing away from what he had proposed earlier. (Tr. 506). Farrand, at this meeting, again asked Mason if he had any response to the Union's proposal and Mason replied he did not, and that, in his view, the Respondent was getting close to "everything they could move on." Farrand then suggested that perhaps it was time to bring in a mediator, a suggestion Mason agreed with.

On April 23, the parties again with a mediator present. Hapeman attended this meeting but did not remain long. Both parties met separately with the mediator. At one point, Farrand presented the Union's proposals again, and made certain changes to them. (Tr. 510). In turn, the Respondent, after a lengthy caucus, returned and presented the Union with a "Last and Final" proposal. (GCX-23). Hapeman, by this time, had left the meeting. Mason testified that Respondent's decision to present a last and final offer at this point was prompted by the dismissal by the Board of an unfair labor practice charge the Union had filed alleging the Company was not bargaining in good faith, as well as the Regional Director's dismissal of Respondent's UC petition seeking to have the 1st pressmen and lead cutter in the Litho department excluded from the unit as statutory supervisors (Tr. 1462). He asserted that the Company made some concessions in its final offer, including dropping the proposal to remove the 1st pressmen and lead cutter from the Litho unit, hoping employees would find it acceptable once the Union brought it to them for a vote. (Tr. 1452). Mason contends that had the Union bargained with the Company, it might have been possible for the parties to reach an agreement employees would find acceptable, but that "from the beginning," the Union "never agreed to bargain with us over the proposals that we had submitted to them" in either the Litho or

Finishing unit. (Tr. 1453-1454). On receiving Respondent's last and final offer, Farrand told Mason he needed more time to look it over and figure out how to respond to it. The parties agreed to meet again on May 13.

On May 9, prior to the next scheduled meeting, union steward and bargaining committee member Pfeiler was demoted from his second shift 2nd pressman's position to the feeder operator position on the same shift, resulting in a reduction in his wages. Farrand grieved the demotion and sought to take it to arbitration, but was denied the opportunity because, as explained by Mason, the Respondent was not required to do so because the contract, along with its grievance arbitration procedures, had expired.

The parties met again on May 13, at which time the Union discussed some of the items in the Respondent's last and final proposal. Farrand recalled asking Mason to withdraw the Company proposal calling for deletion of the dues deduction and union security provisions, but Mason declined to do so, asserting, for the first time, that this was an economic issue. Farrand disputed Mason's assertion that the union security provision was somehow an economic issue and asked Mason to explain himself. Mason responded that it was an economic issue because "it would be a savings to employees not to pay union dues." When Farrand countered that it would not be a savings to the Company, Mason stated simply that the Company considered this to be an economic issue for them. (Tr. 528). Notably, the "economic issue" explanation proffered by Mason to justify doing away with the dues checkoff and union security provisions was not the reason cited by the Mason during his initial July 17, 2007 meeting with the Union. Rather, Mason's explanation then was that employees did not want to pay union dues.

Farrand recalls discussing other issues at this May 13, meeting, including the supplemental fund, employee vacations, healthcare, and wages. As to the latter, Farrand proposed that the 5% wage increase the Respondent was proposing to give employees upon ratification of a contract be made retroactive or, alternatively, that employees be given a bonus covering the past two years, suggesting the possibility of a 3% bonus. The Respondent, however, rejected all of the Union's proposals made that day. (Tr. 530). Following a break in negotiations, Mason and Baker asked Farrand to present the Respondent's last and final offer to employees at a Union meeting that was to be held in a few days and let them vote on it. At the conclusion of the May 13, meeting, Farrand asked Mason to provide him with a complete contract, not merely its last and final proposal, e.g., GCX-23, containing all the language, so he could review it.

Another meeting was held on May 22, during which Mason provided Farrand with the complete contract requested on May 13. (GCX-118). It appears little was accomplished at this meeting. Farrand recalled asking Mason to agree to extend a "special participation agreement" aimed at continuing the Respondent's involvement in the Union's pension fund. Mason, however, indicated that the Company wanted out of the pension fund and, consequently, was not interested in signing the special participation agreement. (Tr. 536). Another meeting was then set for May 28.

At the May 28, meeting, Farrand provided Mason with a draft of a final agreement (GCX-120, which Farrand prepared by scanning the Company's complete last and final offer (GCX-118) into his computer, and then highlighting on his copy the various typographical and other errors contained on the Company's version. The Company's copy of the final agreement (GCX-118) was, according to Farrand, missing several pages and sections that were contained in the parties' expired agreement (GCX-30). (See, Tr. 540-545). Following a caucus with his bargaining team, Mason returned and provided Farrand with GCX-121, intended to be a corrected version of the Respondent's final copy (GCX-118).

The parties met again on June 12, during which Mason gave Farrand a copy of the Respondent's final proposal with corrections Farrand had previously indicated needed to be made. Farrand, in turn, provided Mason with GCX-123 which pointed out further corrects required on Respondent's last and final proposal. At some point during this meeting, Mason gave Farrand what was intended to be the Company's final corrected contract presumably containing the corrections discussed during the meeting, and asked Farrand to present it to unit members for a vote. (See, GCX-124). The proposal did not contain a schedule regarding employee contributions or an "Attachment A" appended to it containing wage classifications. The record does not make clear what, if anything, Farrand may have said in response to Mason's request that employees be allowed to vote on the proposal given to Farrand that day. Farrand did explain, however, that he chose not to present the proposal to employees for a vote because of pending unfair labor practices before the Board that had not yet been resolved, and because the Respondent's proposal was incomplete in that it "did not have medical information" and an "Appendix A" containing a description of the employee wages (Tr. 563).

A few days later, on June 16, the Respondent sent a letter to employees, signed by C. Franzen and Hapeman along with a copy of its last and final proposal, GCX-124, explaining its position on the status of the negotiations, and pointing out some of the benefits and/or changes from the expired contract contained therein. (See, GCX-125). The Union was not provided with a copy of the June 16, letter, but did obtain one from an employee. A few days later, the Union sent employees a letter of its own in response to the June 18, letter. Thereafter, the Respondent, on June 30, sent employees a second letter in apparent response to the Union's letter. (GCX-127; GCX-128).

At a July 7, meeting, the Respondent provided the Union with an "Appendix A" to its June 12, proposal containing a breakdown by employee of what their current wages and shift differentials were, and what they would be under the Company's proposal. (GCX-131) Although this "Appendix A" was to be a part of the Respondent's last and final proposal, it was not included in the copy of the last and final proposal the Respondent gave to employees on June 12, for their consideration. Farrand objected to the format of the Appendix, explaining that it differed from what was in the expired contract in that it did not list the employee's job classifications, the classification rates, and the rate differential for that classification. Farrand asked that "Appendix A" be prepared in "the normal format which was in the current [expired] contract" containing the above classification data, explaining that without the inclusion of this information included in the Appendix, there would be, unlike in the expired contract, no way of determining from the Respondent's proposed contract what the different job classifications were for the unit employees. (Tr. 573).

Also discussed at this July 7 ,meeting, was language in the Company's final proposal dealing with a 401(k) plan, intended to replace the Union's pension fund, that would have allowed the Respondent to amend the plan from "time to time" without having to bargain with the Union over said changes. When Farrand objected to this language, Mason sought to assure him verbally that the Company was not going to make any changes to the plan. Farrand remained concerned and somewhat skeptical that the Union would, as suggested by Mason, be able to successfully challenge in arbitration any such change made by the Respondent given the express language in the provision waiving the Union's right to bargain over said matters. (Tr. 588-589).

At the next meeting held July 15, Farrand received GCX-137 containing a breakdown by percentage of the insurance costs for employees under the Sheboygan plan they had been placed into temporarily. This chart was to be part of any agreement reached by the parties but

had not been included in the final proposal the Respondent had sent to employees along with its June 16, letter. Farrand had problems with the insurance premium breakdown provided to him because it identified only two distinct plans, e.g., single and family, whereas Farrand believed it should contain a further breakdown into "employee with child" and "spouse and family" categories. Mason explained that it was not included in the Company's last and final proposal because the Company did not want to put the percentages in the contract and would prefer to include the information in a separate letter of understanding. Finally, at this meeting, Farrand expressed opposition to language in the insurance proposal which would allow for changes to be made to the benefits and deductibles during the term of a new contract. He credibly explained that, when the parties agreed that employees should be put on the Sheboygan health plan, he received assurances that the Company would not be able to change the premium during the contract term.

Between July 15, and October 22, 2008, the latter being the last time the parties met in 2008, the parties held five meetings at which little substantive progress was made. At a July 18, meeting, the Union gave the Respondent another proposal to which, Farrand credibly testified, no response, other than it was being rejected, was given. (Tr. 629). On July 24, the Union again presented the Respondent with a proposal. In this proposal, Farrand explained that he was essentially bargaining against himself by offering to accept for employees a $900. signing bonus, along with the 5% wage increase being offered by the Respondent, once the contract was ratified. Farrand had previously proposed that the 5% wage increase be made retroactive but this suggestion had been rejected by the Respondent. With this $900. signing bonus proposal, Farrand hoped to get the negotiations moving again. The Union also agreed to allow the Respondent to withdraw from its pension. Farrand explained that he did so because the parties had gone past a May 1, deadline for entering into a "special participation agreement." Mason, Farrand further credibly explained, indicated he would look at and review the proposal, but a short while later informed Farrand the Union's proposal was being rejected. Mason again insisted that Farrand take the Company's last and final offer to employees for a vote, stating that employees were expressing to him that they found the proposal acceptable. Mason then gave Farrand a one-page document essentially stating that the Company was resubmitting its last and final offer to the Union.

At an August 11, meeting, the Union presented Respondent with a proposal containing two different settlement packages (Package A and Package B). Package A essentially adhered to the terms of the expired contract, while package B contained certain economic and other related proposals. Farrand explained that either of the packages was acceptable to the Union and that an agreement could be reached if the Respondent accepted either of the packages. However, as with the Union's July 24, proposal, Mason took the Union's August 11, proposal, said he would review and consider it, then returned a bit later with a document similar to the one given to the Union on July 24, stating that the Respondent was resubmitting its last and final offer, and urged Farrand to let employees vote on it. Not much further discussion was had at this session, although Farrand recalls Mason suggesting that the parties might be at an impasse in negotiations. (Tr. 641).

On August 25, 2008, a decertification petition was filed with the Board by Litho unit employee, Elijah Lyons. (GCX-130). The Respondent denies having had any prior knowledge of, or involvement with, the decertification petition.

At an August 26, meeting, the Union handed the Respondent another proposal in which the Union withdrew its prior August 11, proposal, and agreed to, among other things, add another year to any contract reached, which was consistent with what the Respondent wanted. Also included in this proposal was language that the Union had proposed at an earlier July 24,

bargaining session. Like the other Union proposals presented to Mason, the latter agreed to review it and get back to Farrand. Mason did so a short while later, rejecting the proposal outright.

On September 10, the parties met again. Farrand again presented the Mason with a limited proposal addressing only the issue of employee vacations. Mason, however, never responded to this proposal, and continued to insist that the Union let employees vote on the Respondent's last and final offer, pointing out that the fact that employees had filed a decertification petition demonstrated they wanted to vote on the proposal. Farrand recalled Mason denying any involvement by Respondent in the decertification process and denying having had any knowledge of the decertification petition as of the prior meeting on August 26. At this meeting, Mason again gave Farrand a one page document essentially reissuing its last and final offer. Farrand credibly testified that, up to this point in the entire bargaining process, the Respondent had not responded to any of the Union's proposals. (Tr. 652-654). Nor had it updated its last and final proposal to include the wage schedule and the health insurance information that had been omitted from the proposal submitted to employees on June 16.

The parties last meeting in 2008 was on October 22. At this meeting , the parties agreed to suspend further negotiations for a period of time, with both sides preserving their right of to request a resumption of negotiations at a later date. (Tr. 1898).

3. The Allegations

(a) Pfeiler's demotion and reduction in pay

Pfeiler, as noted, served as a member of the Union's bargaining committee and was present throughout all the negotiations. On January 1, 2007, Pfeiler became Union shop steward in the Litho unit. He was first employed by Respondent's predecessor, Continental Lithograph, in the pressroom in April,1971, until its closure in 2003, when he was laid off. Pfeiler was subsequently reinstated in 2005 by the Respondent as part of the settlement agreement entered into by the parties in February 2005.

Up until May 2008, the Respondent operated three shifts in the press room, each shift consisting of a first pressman, a second pressman, a feeder operator, and a floor helper. As of May 9, Pfeiler held the position of 2nd pressman on the second shift. The other two 2nd pressmen were employees Rytel, who worked the third shift, and Novel, who was on the first shift. Pfeiler testified, without contradiction, that throughout his years with Respondent, he has, at one time or another, worked at all the various positions. His total experience in the press room consists of some 7-8 years as a 1st pressman, 13 years as 2nd pressman, and 19-20 years as a feeder operator. (Tr. 1157-1158).

Sometime in May, 2008, the Respondent decided to eliminate four Litho unit positions for, as testified to by Baker, economic reasons. Baker explained that due to a downturn in business, the Respondent, beginning sometime around September 24, 2007, began having rotational layoffs, meaning that shifts would be laid off for a week at a time on a rotating basis. The reason for doing it in this manner was to soften the effects of the layoffs so that employees affected by the rotational layoff would, during that period, receive unemployment compensation. (Tr. 1035) According to Baker, the Respondent's business was down some 25-30% due to the loss of work from some of its regular clients, such as Anheuser-Busch, and from the loss of business via a process known as reverse bidding, whereby work would be awarded by a potential client to the lowest bidder. While it continued to maintain three shifts during this period, the Respondent, as noted, began laying off employees on a rotational basis. In May

2008, the Respondent eliminated the third shift press crew, resulting in the permanent layoff and demotion of employees from third to second shift (Tr. 1727-1229). With the elimination of the third shift, the number of employees went down from three to two per classification.

Baker gave testimony on how the decision to eliminate the third shift was made. That decision, she contends, was made by C. Franzen and Hapeman after months of discussion. The decision on which employees to lay off or demote, however, was made by her, C. Franzen, and Hapeman. (Tr. 1137-1138). Baker testified that, in deciding to go from three crews down to two, management understood there would be days when a lot of work would need to be done with less time in which to do it in. Consequently, she explained, the Company needed to have the most productive, effective, and efficient crews in place in order to maximize production. This, Baker further explained, meant that they would need to retain "people that were going to be able to get the jobs made ready fast and get them off the press fast and still have them print correctly and not have damage orders." For this reason, she claims, she and the other managers felt that of the three 2nd pressmen, Rytel and Novel were better than Pfeiler, and chose Pfeiler for demotion. (Tr. 1761).

There are some inconsistencies in Baker's testimony which cast doubt on her stated reason for Pfeiler's demotion. She testified, for example, that the decision to lay off Roman and to demote Pfeiler was made about a week or so (e.g., around April 28) before Roman and Pfeiler were notified on May 9. On cross-examination, however, Baker claimed that the decision on who to lay off or demote was not made until after she and the other managers discussed the matter with the head pressmen, explaining that if they did not concur with the decision, the managers would not have proceeded further.[10] She emphasized that input from the Pfeiler's "head pressman," Paul Korcuska, "was critical to the final decision." (Tr. 1747). Except for her ambiguous reference to "they" in her testimony, Baker did not specifically claim to have spoken with anyone other than Korcuska

Called as a witness by the Respondent, Korcuska confirmed meeting with Baker and Suprick regarding Pfeiler's demotion. He testified, however, that this meeting took place on the same day that Pfeiler was demoted, e.g., May 9, thus contradicting Baker's assertion that the decision to demote Pfeiler was made a week or so earlier, or around April 29. (Tr. 1306). Korcuska denied having had any other meeting or discussion with Baker, Suprick or any other manager regarding Pfeiler's demotion. More importantly, according to Korcuska, the decision to demote Pfeiler appeared to have been made before his meeting with Baker. In this regard, he testified that when he first walked into the meeting and sat down, he was told that the crews were being moved around because one crew was being eliminated, and that Rytel, rather than Pfeiler, would now be his second pressman. When he asked what was going to happen to Pfeiler, Korcuska was told that Pfeiler would now be his feeder operator. Korcuska remarked

---

[10] Baker's testimony is somewhat ambiguous on whether she discussed Pfeiler with the other 1st pressmen, or just with Paul Korcuska, the 1st or head pressman on second shift, the one worked by Pfeiler. Thus, asked on direct examination if she discussed and received recommendations from the 1st pressman on the possible layoff of the 2nd pressman, Baker answered that she and the other managers did discuss with the 1st pressman "our thoughts on who we felt were the best candidates for the 2nd pressman position" to see if *they* agreed with our decisions." On cross-examination, she made a similar ambiguous representation, stating "we needed to talk to the head pressman and see how *they* felt," adding that "if *they* had not agreed with us, we would not have gone forward the way we did," because "*their* input was critical to the final decision." (Tr. 1735; 1747). I am convinced, and so find, that Baker spoke only with Korcuska

that Pfeiler was not going to like it, but Baker and Suprick answered that they were within their rights to move people around. At this point, Korcuska was asked to rate the three second pressmen, and he advised Baker and Suprick that of the three, Pfeiler would be third on his list. On leaving the meeting, Korcuska went over and told Pfeiler that Baker and Suprick wanted to speak with him. He believes it was at this point that Pfeiler was notified of his demotion. (Tr. 1307-1308).

I credit Korcuska over Baker and find that the latter spoke with Korcuska on May 9, and not a week or so earlier, as Baker claimed, and that, when called in by Baker, Korcuska was simply informed that Pfeiler was to be his feeder operator. Suprick, who was present at this meeting with Korcuska, and who presumably could have corroborated Baker's version of events, was not called to testify, leading me to suspect that had he been called as a witness, he would not have supported Baker's account. While Korcuska apparently was asked to rate three 2nd pressmen, his credited testimony makes clear that the decision to demote Pfeiler was predetermined and made before he was asked to rate the three pressmen.

William Rhoades, the 1st pressman on the first shift, was called to testify by the Respondent and also claimed to have provided Baker with his "ranking of the 2nd pressman." This discussion, he contends, occurred during a discussion that was taking place on how the crews would be structured after the termination of the third shift. (Tr. 1258-1260). As stated, Baker never claimed to have spoken with Rhoades regarding Pfeiler's performance. I found Rhoades' above claim unpersuasive and not credible. I note in this regard that in an October 3, 2008 e-mail from Mason to Hapeman and Austen, in which he describes conversations he had with Board agents over the Board's decision to issue the complaint in this case, Mason described how he explained to the Board agent that Pfeiler's demotion was done in accordance with the Company's "layoff procedures," and "the recommendation of the top *pressman*." Mason's reference to the "*pressman*" (singular) supports my finding that Baker spoke only with Korcuska and not with Rhoades. (GCX-193, p. 2). Rhoades' claim that Baker consulted with him regarding Pfeiler's performance is, therefore, unsupported by any record evidence and rejected as not credible.

Pfeiler testified that on reporting for work on May 9, he found the third shift working the first shift, and was told by employee Gary Roman, who had held the position of first pressman on the 3rd shift, that he (Roman) was being permanently laid off. (Tr. 1176). About one hour into his shift, Pfeiler was called into Baker's office where he met with the latter and with Suprick. Pfeiler recalls Baker telling him that the a decision had been made to eliminate the 3rd shift. He mentioned to Baker that he had been told this by Roman, and that he felt it was ruthless what they were doing to Roman. Suprick answered that Pfeiler was being too compassionate, to which Pfeiler replied that he, Suprick, was not being compassionate enough. (Tr. 1177). He then commented that they were ruining Roman's life and asked how they could do this to people, to which Suprick again commented that Pfeiler was being too compassionate. Pfeiler claims that, at this point, Baker told him he was being demoted. He then asked how they could do this since they were going out of seniority, and that he had more seniority than either Matt Novell or Jim Rytel, both of whom would be second pressman on the remaining shifts.[11] Pfeiler

---

[11] The seniority provision of the parties' agreement (Part XIII, Section) which expired on June 30, 2007 (see GCX-6), reads as follows:

> Section 2. Classification seniority, skill and ability within each department shall determine the order of permanent layoff and recall. Where skill and ability are relatively equal, seniority shall govern. Recall shall be in reverse order of layoff.
> Pressroom: The pressroom shall have a progression list to be used for

Continued

pointed out that he possessed first pressman experience, and asked Baker what the decision was based on. Baker purportedly explained that if some situation or trouble were to occur in the press room, the Respondent felt that Novell and Rytel would be better able to address the problem much faster. Pfeiler replied that while said employees might be physically faster than he, with his experience there would be less chance of any trouble occurring. (Tr. 1178)

Pfeiler asked Baker to call the Respondent's principal office to find out if what she was doing was proper, and insisted he was not going to put up with the demotion, and would fight it. Suprick, at that point, told Pfeiler that he wanted to discuss the matter further with Baker, and suggested he go back to the press room and they would call him again a bit later. Pfeiler did so and some 30 minutes later was called back to Baker's office, told that they had contacted the principal office, and that they were sticking with their decision. Pfeiler told them he intended to grieve the matter. Pfeiler's demotion from second pressman to feeder operation resulted in a reduction of wages from $20.96 to $17.77.

Pfeiler did file a grievance and, on June 6, attended a grievance meeting, accompanied by Farrand, with Baker and Suprick in Baker's office. Farrand also had a grievance that had been filed on Roman's behalf which was to be discussed. Pfeiler recalls Farrand telling the managers that the grievances were justified because the demotion was done out of seniority in contravention of the seniority clause of the parties' agreement. Pfeiler contends that neither Baker nor Suprick gave an explanation for the decision other than to say that this is what the Company wants done. After some caucusing, Baker and Suprick told Farrand they were adhering to the decision. Farrand replied that he intended to take the matter arbitration, at which point Suprick replied that they would get back to him on his request for arbitration.

Farrand gave similar testimony regarding his meeting with Baker and Suprick over Pfeiler's and Roman's grievances. He recalled that Roman's grievance was the first one discussed at this meeting, and being told by Suprick that Roman was laid off on the basis of skill and ability. (Tr. 682). When he asked for clarification as to what specifically about Roman's skill and ability led to his selection for layoff, he contends neither Baker nor Suprick provided an answer. Soon thereafter, Baker and Suprick went outside to discuss the matter further, and, on their return a few minutes later, told Farrand that they were standing behind their decision. Farrand replied that he intended to take Roman's grievance to arbitration, and then proceeded to discuss Pfeiler's demotion.

Farrand informed Baker and Suprick that Pfeiler had been demoted out of his seniority order. Suprick replied that the Union was only considering seniority and, when Farrand asked what else there was to consider, Suprick did not respond, or offer any explanation as to why Pfeiler was demoted out of seniority order. (Tr. 683). As with Roman's grievance, Farrand

---

> advancement and permanent layoff. The classification and line of progression for the purpose of advancement shall be in order of rank, as follows: First Pressman, Second Pressman, Feeder Operator, Floor Help. In progression, seniority by classification, skill and ability shall be the primary determining factors. Where skill and ability are relatively equal, seniority shall govern. Employees in a higher classification have seniority over employees in the next lower classification. Should it be necessary for the Company to permanently lay off employees, they shall place the least senior employee in a classification in the next lower classification and this places that employee at the top of the seniority roster in this lower classification. The Company shall retain the right to determine shift assignment.

informed Suprick that he intended to arbitrate Pfeiler's demotion.

On June 18, Farrand was informed by Mason that the Respondent did not intend to arbitrate the grievances because, given the contract's expiration, the Respondent no longer recognized the arbitration provision contained therein. (GCX-165). By letter to Suprick that same day, Farrand advised the former of the information he had received from Mason, and reiterated his request for arbitration. On June 20, Mason replied to Farrand's letter reaffirming his earlier statement that the Respondent would not be arbitrating the grievances as it was not required do so under the Act. (GCX-169). The complaint, as noted, alleges Pfeiler's demotion and resulting reduction in wages was unlawfully motivated by anti-union considerations and, thus, unlawful.

Discussion

When, as here, the motivation for an employer's actions, e.g., Pfeiler's demotion, is at issue, the Board utilizes the test set out in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982) See *NLRB v. Transportation Management. Corp.,* 462 U.S. 393, 395 (1983), to determine if the action taken was lawful or unlawful under the Act. *Hahner, Foreman & Harness, Inc.*, 343 NLRB 1423, 1426 at fn. 8 (2004). Under *Wright Line*, Counsel for the General Counsel bears an initial burden of showing that Pfeiler had engaged in protected or union activity, that the Respondent was aware of his activity, and that said activity was a substantial or motivating reason for the Respondent's action. See, *Manno Electric*, 321 NLRB 278, 283 at fn. 8 (1996). If Counsel for the General Counsel is able to make such a prima facie showing, the burden under *Wright Line* shifts to the Respondent to show that Pfeiler's demotion would have occurred even if he had not engaged in any protected or union activity. Where, however, an employer's stated reason for its actions is found to be pretextual, that is, either false or not, in fact, relied upon, then, by definition, the employer has failed to meet its burden under *Wright Line*, supra. *CSS Healthcare Services, Inc.*, 355 NLRB No. 5 (2010); also, *Metropolitan Transportation Services*, 351 NLRB 657, 660 (2007).

Counsel for the General Counsel, I find, has made a prima facie showing that Pfeiler's demotion was motivated, at least in part, by his pro-Union sympathies. The record makes clear that Pfeiler was a strong union supporter, serving as Union steward in the Litho department, and as part of the Union's bargaining committee throughout the very lengthy negotiations that took place between the parties, conduct and activities which were well-known to the Respondent. Further, as discussed below, the pretextual nature of Respondent's explanation for demoting Pfeiler supports an inference that his demotion was motivated by antiunion animus. See, e.g.,*Frye Electric, Inc.*, 352 NLRB 345, 352 (2008); *Casa San Miguel, Inc.*, 320 NLRB 534, 557 (1995).

The Respondent defends Pfeiler's demotion by asserting that it had been, for some time prior to its decision, experiencing a slowdown in production and that, to compensate for the slowdown, it decided to eliminate the third shift resulting in a reassignment of employees to positions in the remaining shifts pursuant to "bumping procedures." It asserts Pfeiler was lawfully selected for demotion to feeder operator from his position as 2nd pressman over other 2nd pressmen because he had less "skill and ability."

While I do not doubt the Respondent's claim that it was undergoing a slowdown in production and needed to downsize by eliminating its third shift, there is good reason to doubt its assertion that Pfeiler was chosen for demotion based on his overall lack of "skill and ability" as a 2nd pressman. Thus, the only evidence adduced at the trial showing how the decision to demote Pfeiler was made came from Baker, whose overall testimony, including that given

regarding the Pfeiler demotion, was highly suspect and unreliable. Her claim, for example, that the decision to demote Pfeiler was made only after receiving input from 1st pressman Korcuska was, as noted, contradicted by the latter, who not only disputed Baker's claim as to when he and Baker met, but also testified, contrary to Baker, that the decision to demote Pfeiler had already been made when he was asked for his opinion regarding Pfeiler's work performance. Neither C. Franzen nor Hapeman, both of whom Baker identified as being involved in the decision-making process, were called to corroborate Baker's testimony regarding the demotion decision or her version of events, warranting an adverse inference that, if called, their testimony would not have supported the Respondent's position regarding the demotion.

There are yet other factors which appear to undermine the Respondent's asserted "skill and ability" defense. Thus, Pfeiler has never been disciplined or warned for poor performance, a fact readily admitted to by Baker. By contrast, the other two 2nd pressmen, Rytel and Novel, both of whom incidentally had less seniority than Pfeiler, had previously received disciplinary warnings for work performance. For example, in the month of June 2008, only five months prior to Pfeiler's demotion, Rytel received two work-related disciplinary warnings, and a less than glowing "Employee Performance Appraisal." Thus, on January10, 2008, Rytel was issued a verbal warning for failing to pay attention on a particular job (GCX-204), and on January 31, 2008, was issued another verbal warning for using an "incorrect form" on a particular Anheuser-Busch work order costing the Respondent more than $12,000 in losses. (GCX-202). Notably, the January 10, 2008 disciplinary write-up shows Rytel also received a "verbal reprimand" a year earlier, on January 10, 2007. On January 18, 2008, Rytel, as noted, received an "Employee Performance Appraisal" containing the following supervisor's notation regarding Rytel's work ethic: "Does not work aggressively. Consistently loosing (sic) time and material." (GCX-203).

Novel's work record was not as tainted as Rytel's, but nevertheless does show that on January 15, 2008, again just months before Pfeiler's demotion, Rytel received a disciplinary write-up for failing to properly complete a Wal-Mart work order resulting in more than $7500 in damages to Respondent. (GCX-206). Unlike Novel and Rytel, Pfeiler, as noted, had no disciplinary write-ups. In fact, the record shows that the second shift on which Pfeiler worked had the least amount of reported damage in 2007 in comparison to the other two shifts. (See, GCX-201). Baker's attempt at the hearing to downplay the significance of the disciplinary write-ups issued to Novel and Rytel, along with the fact that the shift Pfeiler worked on seemed to outperform the two worked on by Novel and Rytel, was simply not credible. By her own admission, she was guessing in trying to explain why the write-ups were issued to Novel and Rytel as she had no personal knowledge of the incidents which prompted the write-ups. Baker was also vague and somewhat deceptive in response to my questions on whether she had reviewed the employee files before making the decision to demote Pfeiler (see, e.g., Tr. 1764-1766). Baker's entire testimony regarding the Pfeiler demotion is simply not worthy of belief.

In sum, I find no credible evidence to support Respondent's assertion that Pfeiler was selected for demotion because he lacked the requisite "skill and ability," vis-à-vis Novel and Rytel, to maintain the 2nd pressman's position following elimination of the third shift. Thus, not only did Pfeiler have greater seniority over them, but his work record and performance, when compared to that of Novel and Rytel, was unblemished. I am convinced that Pfeiler's selection for demotion was unrelated to any lack of "skill and ability" on his part, and that this proffered explanation by the Respondent is nothing more than a pretext aimed at hiding the true reason for said action, his union activity. Having failed to establish a credible explanation for Pfeiler's demotion, the Respondent, I find, has not sustained its *Wright Line* burden of showing that Pfeiler would have been demoted even absent his Union involvement. Accordingly, I find that Pfeiler's demotion was discriminatorily motivated and unlawful under Section 8(a)(3) and (1) of

the Act, as alleged in the complaint.

(b) Respondent's June 16, and June 30 letters to employees

The Respondent, as noted, submitted its last and final offer to the Union at the parties' April 23, 2009, bargaining session. After doing so, Mason, as well as Baker, asked Farrand to present the Company's final proposal to employees for a vote at a union meeting that was to be held a few days later on Saturday. (Tr. 531). Mason's request to have employees vote on the Company's last and final proposal was repeated at subsequent meetings, which Farrand declined to do because, as stated, the Company's proposal was incomplete.

At the June 15, session, Mason, as noted, again asked Farrand to let employees vote on the Company's proposal. The following day, June 16, the Respondent sent copies of its last and final offer to employees, attached to which was a letter signed by Mason and Hapeman explaining that despite the Company's request to the Union to have employees read and vote on its proposal, the Union has declined to do so.[12] (GCX-125). The letter informs employees that under the Company's proposal, employees would receive a 5% wage increase upon ratification of its proposal, but that it would not be retroactive, that they would not be covered under the Company-wide health insurance plan, and that Union's pension plan would be terminated but employees could contribute to the Company's 401(k) plan. Employees are informed that the Company would be operating as an "open shop" whereby they would not be required to join the Union or pay union dues.

The Company's last and final proposal attached to the June 16, letter to employees was received into evidence as GCX-126. As noted, Farrand's principal objection to Mason's insistence that employees be given a chance to vote on GCX-126 was that said proposal was incomplete. A review of GCX-126 appears to support Farrand's objection. Thus, the minimum wage scale provision of the Company proposal, found in PART IV therein (GCX-126, p. 3), refers in Section 1 to an appendix (Schedule A) to the proposal containing the employees' minimum wage scale. However, there was no such Schedule A attached to GCX-126 when it was sent to employees. A similar attachment identified as a "Schedule B" under PART XVII, containing the Health and Welfare provisions (GCX-126, p. 10), was likewise not included in the Company's last and final proposal given to employees for their consideration. Mason admitted at the hearing that the attachments to the Company's final proposal were not included in the copies provided to employees along with the letter sent to employees. As to the missing Schedule A, Mason explained that he did not forward this to employees because the "calculations" had not yet been made and the parties were still negotiating over the language to be included in the Schedule. (Tr. 1646; 1651).

On June 24, Farrand wrote to employees telling them he had been provided with a copy of Respondent's June 16, letter to them. In his letter, Farrand tells employees that negotiations have been long, but that the Company was not bargaining in good faith. He informed them that the Union has filed unfair labor practice charges against the Respondent for its alleged bad faith bargaining, and expressed hope that the Company would come to its senses and begin to bargain in good faith and negotiate a fair agreement. His goal, he explained to employees, was to get the best possible agreement from the Company to bring back to them for ratification.

---

[12] An exchange of e-mails between Mason and Hapeman, copies of which were received into evidence as GCX-179 and GCX-180, reflects that Mason and Hapeman were working on a draft of the June 16, letter some three weeks earlier, around May 20.

Mason sent employees another letter dated June 30, in an apparent response to Farrand's letter. In his letter, Mason pointed out that it was the Respondent who first sought to have a mediator assist in the negotiations, not the Union as Farrand had implied in his letter. He also told employees that the Respondent had filed unfair labor practices of its own against the Union. He further pointed out that the Company cannot make the Union agree to have employees vote on its proposal as this was an internal union matter between employees and the Union, and that it was they, not the Company, who had control "over this matter." Mason reminded employees of the 5% immediate pay raise they would receive if the Company's proposal got approved, but reminded them that, because the raise was not retroactive, "the longer the Union delays a vote, the longer you miss the pay raise." Mason told employees they had three ways in which "to get all the benefits" in the Company's proposal. He explained that employees could vote to accept the Company's proposal and have it approved by the Union, which he described as the preferred method. Mason further explained that a second way would be if the parties reached an impasse in bargaining, but pointed out that the parties had not gotten to that point yet. Lastly, Mason told them that the third method would be if the Union were to be decertified. He reiterated that the Company had no control over any of these options, and that it was the Company's hope that the Union comes around and allows employees to vote, and that employees vote in favor of its proposal. (GCX-181).

The consolidated complaint alleges, and counsel for the General Counsel contends, that the June 16, and June 30, letters sent by Respondent to employees regarding the status of the contract talks with the Union were unlawful attempts to deal directly with employees and to encourage them to withdraw their support from the Union. The Respondent counters it was merely exercising its free speech right under Section 8(c) to communicate with employees regarding the negotiations and of its last and final offer.

Discussion

Under Section 8(c), an employer has a fundamental right to communicate with its employees concerning its position in collective-bargaining negotiations and the course of those negotiations. *United Technologies Corp.*, 274 NLRB 1069, 1074 (1985). This right, however, is not absolute, for the Board in *United Technologies Corp.*, 274 NLRB 609 (1985), a companion case, cautioned that "there may be some risk that direct communication between an employer and its employees which bears on the bargaining process may be perceived by some as an attempt to undermine the statutory collective-bargaining representative." *Id.* at 610. Thus, the Board will find an employer communication to be unlawful if the communication is coercive or constitutes direct bargaining between the employer and the employees. *Armored Transport, Inc.*, 339 NLRB 374, 376 (2003). The Board reasons that an employer's direct dealing with employees has the effect of undermining a union's status as the employees' exclusive bargaining representative and of inhibiting the parties from reaching agreement. Nevertheless, in order to find that direct dealing has occurred, there must be factors present other than a simple communication from employer to employee. *KEZI, Inc.*, 300 NLRB 594, 600 (1990). Such factors, I find, are present here.

The June 16, letter sent to employees, as noted, was accompanied by a copy of what the Respondent described in its letter as the last and final offer it had submitted to the Union and which it was now presenting to employees, over the Union's objection, in the hope they could convince the Union to bring it up for a vote. The problem with the last and final offer Respondent wanted employees to consider is that, as Farrand credibly explained, it was an incomplete document in that it was missing certain essential appendices. Thus, GCX-126, Part IV, Sec. 1 states that the Company would be paying "not less than the minimum wage scale *appended* to this Agreement." (italics added), while GCX-126, Part XVII, Sec. 1 (Health &

Welfare) states that "The Company shall provide employees…coverage under the existing health insurance plans of which the summary plan descriptions are attached as Schedule B." Neither of the appendices or schedules referenced in the above sections of Respondent's final proposal was provided to employees along with the proposal for their consideration. Mason, as noted, admitted not having included these attachments because the parties were still negotiating their contents.

Clearly, without the missing information regarding their wages and Health and Welfare benefits, employees could hardly have made a proper assessment or an informed decision on the merits of the Respondent's proposal, a fact that could not have escaped Mason's notice. Notably, in their letters to employees, C. Franzen and Hapeman make no mention of the fact that the proposal sent to them is incomplete or that, as admitted by Mason, parts of it were still subject to negotiations. Instead, C. Franzen and Hapeman point to two benefits employees stood to gain under their proposal: an immediate 5% wage increase on ratification and an "open shop" provision under which they would not have to join a union or pay union dues. By highlighting these only these two benefits in its June 16, letter while failing to provide employees with a complete proposal for them to consider, the Respondent, I am convinced, was seeking to have employees pressure the Union into accepting its proposal.

With its June 30, letter, C. Franzen and Hapeman took a more aggressive approach towards the employees in the hope of turning them against the Union. In this letter, C. Franzen and Hapeman again emphasize the 5% wage increase employees stand to gain but only if they ratify the proposal, suggesting at the same time that it was the Union's delay in not allowing employees to vote on the proposal which is preventing them from obtaining their raise. In their letter, C. Franzen and Hapeman implicitly suggest that the Union does not appear to be working on the employees' behalf, and while they do not expressly call for employees to decertify the Union, I am convinced that this was the message C. Franzen and Hapeman were seeking to convey.

Thus, of the three options C. Franzen and Hapeman presented to employees in their June 30, letter on how they could get their raise, only the third option, e.g., decertification, would have been the most viable for employees given the manner in which they were presented. The first option, for example, a ratification vote on their proposal allowed by the Union would not have made much sense to employees given the Respondent's assertion that the Union was opposed to letting them vote. The second option mentioned by C. Franzen and Hapeman on how employees could get the raise, e.g., arriving at an impasse in negotiations, was also not in the cards since the parties had not yet reached an impasse. The only other viable option described by C. Franzen and Hapeman to employees was the decertification process. Although C. Franzen and Hapeman never expressly encouraged employees to pursue this latter course of action, and with Mason at the bargaining helm I seriously doubt they would have done so, I am nevertheless convinced, particularly in light of the Respondent's subsequent unlawful involvement (discussed infra) with the decertification process that followed in August, that the Respondent was seeking through its letters to deal directly with employees regarding its final proposal. By dangling the raise before the employees in both its letters, telling them that the Union was purposefully refusing to let them vote on the final proposal which included the raise, and then implicitly suggesting decertification as possibly the only other course of action employees could pursue to obtain their raise, the Respondent, I find, was hoping to turn the employees against the Union. Accordingly, I agree with Counsel for the General Counsel that the Respondent violated Section 8(a)(1) and (5) of the Act by sending its June 16, and June 30, letters to employees.

(c) The August 25, 2008 decertification petition

On August 25, a decertification petition was filed in Case No. 8-RD-2120 by Litho unit employee, Elijah Lyons. (GCX-130). Lyons testified to being unhappy with the Union, and to speaking with employee Hobson, who had at an earlier time filed a decertification petition, about how she went about it.[13] Hobson purportedly referred him to the Board's website from which Lyons was able to find information on union decertification and to download a copy of the petition. He then began soliciting employees to sign the petition. Lyons testified that he was never asked by Respondent's managers to circulate a decertification petition, or receiving any information from management on how to go about doing so. To his knowledge, the Respondent was unaware of his decertification efforts.

Notwithstanding Lyons' belief to the contrary, there is compelling evidence contained in a series of emails exchanged between Mason and Company managers, both before and after the decertification petition was filed on August 25, showing that the Respondent was not only aware of the decertification drive, but may in fact have actually encouraged and supported its filing. Thus, in an August 5, email to Mason and Austin, Hapeman questions why the Company was still negotiating with the Union if the Company had already given the Union its final offer. Hapeman then queries whether the Company should file an unfair labor practice charge against the Union in order to force a vote on the final offer. He goes on to explain how he knows that "a couple of employees might go down to the NLRB to see what they could do in bringing this to a vote," adding that he had heard that "Howie [Pfeiler] will not discuss anything that is going on with the employees that signed the *decert*." (italics added). (GCX-182). Hapeman further asks Mason if they should "present the decert since Howie and the Union knows this is out there."

The following day, Mason answered Hapeman's queries in an email of his own. In it, Mason, addressing Hapeman's question on the decertification petition, tells the latter that "the best bet is to play this thing out and get one or two more of the people who you hope will vote to decertify to actually agree to sign the petition." He tells Hapeman that it was his understanding that Hapeman was only "about 2 signatures away from a majority" of employees agreeing to decertification. He also explains to Hapeman that with the filing of a decertification petition, Wheeler, the "persuader," would be able to "come into your operation, meet with your people and maybe convince the couple of fence sitters to sign the decert and then we dismiss the petition and withdraw recognition just like we did in the Finishing Dept. Mason concludes his email by telling Hapeman that, "[i]n the end, I think the decision on whether to or not to file …the decert needs to rest with Beverly as she knows her people best and which way will work to get the majority to sign. (GCX-183). As the only "Beverly" mentioned in the record is Beverly Baker, it is reasonable to conclude that Mason was referring to Baker in his email.

Another exchange of e-mails occurred on August 21, four days prior to the filing of the decertification petition, initiated by Baker to Hapeman. (Tr. 187). Baker's e-mail appears to make reference to a letter, a copy of which was received into evidence as RX-8. The record reflects that soon after receiving Baker's email, Hapeman e-mailed attorney Austin attaching thereto a letter, RX-8, which was to be turned in to the Board along with the decertification petition when filed. Hapeman in his email states only that this was "the letter they are turning in," presumably referring to employees who were supporting the decertification petition. (Tr. 185; GCX-185). Hapeman did not testify.

---

[13] Hobson, who worked in the Finishing department, had filed a decertification petition with the Board on April 2, 2007, which she subsequently withdrew. (GCX-7; GCX-176; GCX-177).

Baker testified she first heard through the rumor mill at the plant that employees were engaged in a decertification effort sometime prior to August 21, and that she notified C. Franzen and Hapeman of these rumors. Asked if she knew what C. Franzen and Hapeman did with the information she gave them regarding the rumors, Baker feigned ignorance on the matter, explaining only that she knew C. Franzen and Hapeman "had conversations with Mason about things that I passed off to them," but denied knowing what, if anything else, they may have done with the information. (Tr. 1715). Thus, GCX-182, the August 5, email from Hapeman to Mason, a copy of which was sent to Baker, makes clear that Baker must have known more than she let on as to what was being discussed regarding the decertification "rumors" she passed along to C. Franzen and Hapeman.

Baker claims she first received concrete evidence of the existence of a decertification petition on August 21, when employee Amanda Ozanich visited her at her office and showed her a letter Ozanich was circulating to employees to sign which made mention of the petition. (Tr. 1714). The letter Ozanich purportedly showed her is the same one referenced by Hapeman in his email to Austin and attached to GCX-185 and received into evidence as RX-8. Baker denies receiving a copy of the decertification petition that day, stating that, if she had, she would have passed it on to C. Franzen and Hapeman. On her alleged receipt of the letter from Ozanich, Baker claims she scanned it and e-mailed it to Hapeman, C. Franzen and Suprick.[14] Baker denied asking them to approve the letter, or receiving any message back from Hapeman or C. Franzen stating that the letter had been approved. Record evidence, however, reveals that C. Franzen was indeed seeking Mason's approval on whether employees should take the letter to the NLRB, and that Mason gave said approval in an August 21, email to C. Franzen, Hapeman, Suprick, and Baker. (See, GCX-187). Thus, Baker's claim of not knowing whether C. Franzen had approved the letter she sent to him is misleading and not entirely true.

Further, Baker's above claim as to what Ozanich said and showed her regarding the employees' decertification efforts does not square, and, in fact, is inconsistent, with Ozanich's own testimony. Ozanich did indeed testify to having expressed to Baker on numerous occasions her, and other employees', dissatisfaction with the Union, although her claim in this regard was somewhat vague and lacked specificity. Ozanich also testified to signing a decertification petition shown to her by Lyons. However, Ozanich never claimed to have mentioned the decertification petition to Baker during their alleged numerous conversations. In fact, Ozanich expressly denied mentioning the decertification petition to anyone, which by implication would include Baker. (Tr. 1277). As to the letter, RX-8, Baker contends Ozanich showed her on August 21, Ozanich never testified to showing Baker any such letter. In fact, Ozanich, whom Baker described as the author of RX-8, was never questioned about it on the witness stand, nor for that matter shown the letter, much less asked if she had authored it.

The task of identifying RX-8 was left to employee Lyons. However, his testimony as to who authored the letter was confusing and self-contradictory. Thus, when asked by Counsel for the General Counsel whose handwriting was on the letter, Lyons identified it as belonging to Ozanich. (Tr. 1354). Earlier, however, on questioning by Respondent's counsel, Lyons stated that the letter was written by him, Ozanich, and "other people on the job," explaining that "we wrote the letter, we all sat down and collaborated together to write a letter" to let somebody know "how we feel about the situation." (Tr. 1346). It may very well be that Ozanich actually

[14] Review of the e-mail Baker claims she sent to C. Franzen and Suprick on August 21, shows the letter being sent by Baker to Hapeman only. Neither C. Franzen's or Suprick's name appear as recipients of her e-mail. (See, GCX-186).

penned the letter with input from Lyons and others. However, this would be nothing more than speculation. The Respondent called Ozanich as its witness and could very well have resolved this ambiguity by asking Ozanich what she knew about RX-8, if she had prepared it, and whether she had provided a copy of RX-8 to Baker on August 21, as claimed by the latter. For reasons unknown, it chose not to do so.

Further undermining Baker's claim of having received RX-8 from Ozanich on August 21, is Lyons' assertion that he wrote RX-8 sometime in October 2008, almost two months after Baker claims she received it from Ozanich. (Tr. 1354). In this regard, Lyons testified that after he filed the petition on August 25, "me and the other people at the job just waited for a little while. Then we kind of got sick and tired of waiting and asking questions and nothing happening. So we wrote a letter," referring to RX-8. Lyons' testimony thus suggests that RX-8 was written after the August 25 date on which the petition was filed, and, consequently, could not have been shown by Ozanich to Baker on August 21, as claimed by the latter as it had not, according to Lyons, been written yet. (Tr. 1346).

Given the inconsistencies in Baker's and Lyons' testimony regarding RX-8, and Respondent's failure to have RX-8 authenticated by Ozanich, the one person identified by both Baker and Lyons as its author, or to even question Ozanich about RX-8, I reject as not credible the representations made by Baker and Lyons regarding RX-8, including its authorship by Ozanich. Rather, I find it more likely than not that RX-8 was prepared by someone other than Ozanich. Attorney Mason suggested that the letter may have been given to Baker by employees, but his testimony in this regard was ambiguous and uncertain, leading me to conclude that he simply did not know. (Tr. 1510-1511).

On receiving Hapeman's email and the attached letter, Austin emailed Mason minutes later, forwarding to him a copy of the letter, telling Mason that "Franzen needs an answer TODAY whether this letter is acceptable for the employees to take to the NLRB tomorrow." He asks Mason to "give your approval and I'll will call the client." Mason then emailed C. Franzen, Hapeman, Suprick, and Baker later that day explaining that he has "no problem with the contents of the letter," but cautions that "it is very important that none of the employees tell the NLRB that we are in any way connected with this letter." Mason goes on say "We are truly on the verge of decertification," adding that "[i]f one strong union supporter switches sides, the others will probably follow and the Union will be history." (GCX-187).

There was a further exchange of e-mails between Mason and Respondent's managers after Lyons filed the decertification petition. Thus, on August 26, Hapeman asked Austin for an update on the negotiations that were held that day. Hapeman also emailed Mason later that day to say that the Board's website showed that the decertification petition had been filed, and commented that a complaint had also been filed. He then asked Mason how the negotiations went. Mason replied by email the following morning that the "negotiations went where we expected them to go – nowhere." Mason described how the Union had made an offer and complained that the Company was not bargaining, and that he told the Union that "employees are coming to us wanting to vote on this contract [e.g., the Company's final offer] telling us it is acceptable to them." Mason explained to Hapeman in his email that he had resubmitted the Company's last and final offer to the Union. As to the complaint referred to by Hapeman in his email, Mason explained to Hapeman that the employees had actually filed a charge, not a complaint.

Later that morning, Baker sent an email updating Hapeman, C. Franzen, and Suprick, with a copy to Mason, explaining that employees had, in fact, not filed a charge because the NLRB office on duty told them the filing of a charge would delay the processing of the

decertification petition as an investigation would first have to be conducted on the charge. Baker questioned whether employees had actually accomplished anything other than the filing of the petition. Mason responded to Baker's e-mail a short while later, explaining, inter alia, that, if a charge is filed by an individual rather than the Union, it would not necessarily serve to block the decertification petition because the individual filing the charge "can always ask that the election not be blocked or, if that doesn't work, withdraw the charge." Mason added that, like everything else, if we have the employees filing a ULP charge against the Union, it will help our defense of the ULP charge against the Company by showing that the Union, not Franzen, is wearing the black hat here." He then advised Baker to "go ahead and encourage them that if they want, they can file a charge against the Union and it will NOT delay anything." (GCX-191).

The following day, August 28, Austin e-mails Hapeman, with a copy to Mason, offering certain suggestions in light of the filing of the decertification petition. First, he suggests Hapeman not send out a letter to employees that was being planned. He further recommends that Hapeman bring in the "persuader" Wheeler to talk to the Litho unit employees. Austin explains that while this may prompt the filing of another ULP charge by the Union against whatever Wheeler may have to say, Wheeler might be able to "get a few members to sign the decert petition and sway the numbers in our favor so that when the ULPs are all dismissed, we can cleanly withdraw recognition of the Union like we did in the Finishing Unit." Austin concludes his e-mail by stating that if Hapeman does not want to bring Wheeler in, then we should "lay low until the ULPs are all dismissed and then enter into a campaign, during which Wheeler "will come to your place and give the same speech and hope to sway members to vote for decertification." (GCX-192).

Discussion

The complaint alleges, and Counsel for the General Counsel contends on brief (GCB:59), that the Respondent actively encouraged and assisted Lyons and other employees with the decertification petition and, in so doing, undermined the Union's majority status, thereby violating Section 8(a)(5) and (1) of the Act. I find sufficient record evidence, more particularly the exchange of emails between management officials to support this allegation.

First, it is clear that Baker was fully aware of the existence of a decertification petition long before August 21, when, Baker contends, she was first told of it by Ozanich. Thus, on August 6, two weeks before she claims she received actual knowledge of the decertification petition, Baker received a copy of the email Mason sent to Hapeman and Austin responding to questions Hapeman had raised on various matters, including the decertification petition. (See, GCX-183). Thus, in question 3 in the email, Hapeman asked Mason if the decertification petition should be presented (presumably to the Board) since Pfeiler and the Union already know it is "out there." The email lists Baker as a recipient of the email, establishing rather conclusively that Baker must have known of the decertification petition much earlier than August 21, and simply lied about it on the witness stand.

Also undermining Baker's credibility, and by extension Respondent's denial of any involvement in the decertification process, is Mason's further statement in the email advising Hapeman that "the decision on whether to file or not file the decert needs to rest with Beverly [Baker] as she knows her people the best and which way will work best to get the majority to sign." The email thus makes patently clearly that Baker not only knew of the decertification petition long before she claims she first learned of it, but, more importantly, that she was expected to take the lead in deciding whether or not to file the petition since she knew how best to get a majority of employees to sign it. Although questioned by Respondent's counsel on some of the contents of GCX-183, the August 6, email, Baker was never questioned about, or

asked to explain, if she could, Mason's remark therein that the decision on whether to file the decertification petition rested with Baker. (Tr. 1716).

Mason, however, did testify regarding the statements made by him in GCX-183 on the decertification matter. According to Mason, in GCX-183 he was simply advising Respondent's managers on how to respond to "rumors" they claimed to have heard via the plant's "rumor mill," (and presumably not directly from any employee), about a decertification effort being undertaken by employees.[15] Mason claimed that, as of August 5, all he and Respondent's managers knew of such efforts was what they had heard through this "rumor mill," implicitly denying that, as of the date of his email, August 5, they had actual knowledge that a decertification petition was, in fact, being circulated. As to his comment in GCX-183 that "Baker should take the lead in deciding whether or not" a decertification petition should be filed, Mason's explanation was confusing and not particularly credible. Thus, he explained that "we're sitting here, we're hearing these rumors [about a petition], we don't know what's going to be happening, we don't know what's going to be going forward," but that Baker "would certainly have a feel for what might happen with respect to this, and thought that she would be the best person to be able to ultimately figure out, you know, that should something happen."

Mason's proffered explanation for his comments to managers in GCX-183 is simply not credible and flies in the face of common sense and the actual wording of his comments. Thus, Mason's response to Hapeman's first query in the email, that he, Mason, had heard "that Howie [Pfeiler] will not discuss anything that is going on with the employees that *signed the decert*" (italics added) shows clearly that Mason, in fact, knew of, and was referring to, an actual decertification petition signed by employees, and not to some hypothetical petition he claims to have heard of via the "rumor mill." Equally implausible and devoid of common sense was Mason's rather befuddled attempt to explain away his remark about Baker's role in the decertification petition. As shown above, Mason's explanation can best be described as muddled and confusing. A plain reading of Mason's remark on how the decision "on whether or not to file the decert" petition rested with Baker, makes clear that Baker not only knew of the existence of a decertification petition, but, more importantly, that she was expected to find a way to get a majority of employees to sign it and to ultimately decide when the petition should be filed with the Board. Clearly, the various emails exchanged between Mason and Respondent's managers, particularly GCX-183, makes patently clear that the Respondent, and more specifically Baker, was actively engaged in encouraging and assisting the employees' in their decertification efforts. Mason's further instruction to Baker, that she should go ahead and encourage employees to file an unfair labor practice charge against the Union for not allowing them to vote on the Respondent's final offer, establishes rather convincingly that not only was Baker the primary mover in the decertification efforts, but that she also was attempting create a

---

[15] Mason's assertion that he and other managers were only aware of rumors of a decertification drive is difficult to accept given his position that the Respondent's proposal to eliminate dues checkoff and union security was based on statements Baker and other managers purportedly received from employees regarding their desire not to have union representation. In fact, in response to a question on how Hapeman got all his information regarding employee activity at the plant, Mason explained Baker provided him with said information, testifying that "the employees would come and talk to Beverly [Baker] all the time about anything and everything." (Tr. 1677). Mason, Baker, and the other managers, I am convinced, knew much more about the decertification efforts at the plant than they let on in their testimony. Such information, I am further convinced, came not just from some "rumors" Baker may have picked up as she went about her business in the plant, but directly from employees themselves.

schism between employees and their Union by encouraging them to file charges against their chosen bargaining representative.

The Respondent's, and in particular Baker's, denial of any involvement in the decertification process is simply not credible and undermined by the above emails. Further, while there is no clear evidence in the record that directly links Baker to the creation of RX-8, the handwritten letter Baker claims was shown to her by Ozanich on August 21, I strongly suspect, notwithstanding Lyons' professed involvement in RX-8's preparation, that Baker and/or some other management official, or even Mason himself, may have been involved in its preparation. Baker, as noted, was not being truthful in claiming that Ozanich showed her RX-8 on August 21, lied about not knowing before then that a decertification petition was being circulated,[16] falsely denied knowing what was being done with the rumors about decertification she had passed on to C. Franzen and Hapeman, and lied about the circumstances surrounding Pfeiler's demotion. Her deliberate misrepresentations and falsehoods as to what, and when, she knew of the decertification petition, the various emails showing efforts being undertaken, or to be taken, by her and others regarding that petition, and their involvement in approving RX-8, leads me to conclude that the Respondent, most likely Baker, either prepared or assisted Lyons and possibly others in drafting RX-8, and that it was actively involved in soliciting, encouraging, and promoting the decertification petition being circulated by the Litho unit employees in August 2008. An employer violates Section 8(a)(1) of the Act when it actively solicits, encourages, promotes, or provides assistance in the initiation, signing, or filing of an employee petition seeking to decertify the bargaining representative. *Mickeys Linen and Towel Supply, Inc.*, 349 NLRB 790 (2006). The record evidence, I find, supports a finding that the Respondent here, if it did not initiate, at a minimum it assisted, promoted, and encouraged employees to file a decertification petition in violation of Section 8(a)(1) of the Act.

(d) The bad faith, surface bargaining allegation

The complaint alleges, and Counsel for the General Counsel contends, that the Respondent, from the outset of negotiations and throughout the bargaining process, had no intentions reaching agreement with the Union and engaged in nothing more than bad faith, surface bargaining. The Respondent, on the other hand, argues that it simply engaged in lawful, hard bargaining with the Union in a good faith attempt to achieve its negotiation objectives. I agree with Counsel for the General Counsel.

Section 8(d) of the Act spells out in broad terms the bargaining obligations of an employer and its employees' representative. Section 8(d) requires an employer and its employees' representative to "meet at reasonable times and confer in good faith with respect to

---

[16] During his cross-examination of Farrand, Mason asked Farrand if he recalled Mason telling him during their August 26, 2008, meeting, the day after the decertification petition was filed, that "nobody in the Company knew anything about" the petition prior to its being filed. Farrand did recall Mason asking him this question at that meeting. (Tr. 1030). However, the evidence, as stated, makes clear that Mason, Baker, and other management officials knew full well long before August 25, that a decertification petition was being circulated and that, as found herein, they actually assisted in, or may possibly have instigated, the decertification process. Thus, in claiming to Farrand at this August 26, meeting that he and Respondent's other managers were clueless of the decertification efforts being undertaken by Litho unit employees prior to August 25, Mason, I find, was being not only disingenuous, but also intentionally deceptive, with Farrand in an effort, I am convinced, to persuade Farrand that employees did this on their own without any involvement or assistance from the Respondent.

wages, hours, and other terms and conditions of employment..… but such obligation does not compel either party to agree to a proposal or require the making of a concession. …" Both the employer and the union have a duty to negotiate with a "sincere purpose to find a basis of agreement." *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984). Thus, good faith bargaining presupposes a desire to reach ultimate agreement, to enter into a collective bargaining agreement. *Benjamin Franklin Plumbing*, 352 NLRB 525, 534 (2008).

In determining whether a party has violated its statutory obligation to bargain in good faith, the Board examines the totality of the party's conduct, both at and away from the bargaining table. The Board considers several factors when evaluating a party's conduct for evidence of surface bargaining. These include delaying tactics, the nature of the bargaining demands, unilateral changes in mandatory subjects of bargaining, efforts to bypass the union, failure to designate an agent with sufficient bargaining authority, withdrawal of already-agreed-upon provisions, and arbitrary scheduling of meetings. *Atlanta Hilton & Tower*, supra; *Regency Service Carts*, 345 NLRB 671 (2005). There is no requirement that an employer engage in each of those enumerated activities before it can be concluded that bargaining has not been conducted in good faith. *Altorfer Machinery Corp.*, 332 NLRB 130, 148 (2000); *Longhorn Machine Works, Inc.*, 205 NLRB 685, 691 (1973). Rather, a respondent will be found to have violated the Act when its conduct in its entirety reflects an intention on its part to avoid reaching an agreement. *Id*. at 130, fn. 2.

Applying the above principles to the instant case, I find that the Respondent's overall conduct—i.e., the positions taken by the Respondent throughout bargaining, the manner in which the Respondent advanced those positions, and the Respondent's commission of other unfair labor practices—evinces the Respondent's desire to avoid its statutory obligation to bargain in good faith with the Union. Thus, looking at the totality of its conduct both at and away from the bargaining table, it is readily apparent that the Respondent's goal entering the negotiations in June 2007, was not to reach an agreement with the Union but instead to impede bargaining process and weaken the Union with a view towards having it removed as the employees' collective-bargaining representative.

The seeds for the Respondent's bad faith approach to the negotiations that began in June 2007, were sown some four years earlier when Respondent first acquired the Cleveland facility from Continental Lithograph. As noted, from the very outset, e.g., sometime in 2003, Respondent's president and owner, C. Franzen, made clear to Korcuska, Krestel, and presumably others at an employee meeting that the new facility he was acquiring from Continental Lithograph would be nonunion. As stated, employees formerly employed by Continental Lithograph and subsequently hired by the Respondent had previously been represented by the Union; no record evidence was produced to show or suggest that the employees had been unhappy or dissatisfied with the representation afforded to them by the Union while in Continental Lithograph's employ. Still, C. Franzen's declared opposition to the unionization of the Respondent's Cleveland facility could reasonably have served to negatively influence its employees' view of, or attitude towards, the Union.

C. Franzen's wish, and in all likelihood efforts, to resist the unionization of its facility was apparently thwarted in 2005 when, as part of a settlement agreement entered into by the Respondent to resolve unfair labor practice charges filed against it by the Union, the Respondent agreed to recognize the Union as the exclusive collective bargaining representative of its employees, and thereafter executed agreements with the Union covering said employees. When the contracts were set to expire in June 2007, the Respondent, I am convinced, was still determined to rid itself of the Union and, to this end, planned to use the bargaining process and other methods as the vehicle for doing so. To this end, the Respondent chose attorney Moss as

its negotiator. Presumably, the Respondent was well familiar with Moss and his law firm since the Kahn Kleinman firm apparently represented it in connection with the 2004 unfair labor practices charges previously filed against it.

At the first bargaining session on June 18, 2007, Moss, with C. Franzen also present, gave the Union the Respondent's initial proposal. Undoubtedly, the Respondent must have known what was contained in its initial proposal as it is highly unlikely Moss would have presented the Union with a proposal without first having fully discussed it with, and gotten approval from, C. Franzen. Following the first bargaining session, C. Franzen abruptly dismissed Moss as its negotiator and replaced him with Mason.

The Respondent would have me believe that it replaced Moss because, as claimed by Mason and, to some extent Baker, at the hearing, Moss "did not listen to [the Respondent's] objectives to many areas of its representation, including the initial litho proposal," and because "the single proposal for the litho unit" Moss tendered to the Union "fell short of Franzen's legitimate business necessities and expectations." However, not only does Mason's and Baker's overall lack of credibility render their explanation suspect, but the explanation itself does not withstand scrutiny. As stated, it is highly unlikely Moss would have tendered this first proposal to the Union without having first discussed its contents in detail with C. Franzen and gotten his approval for its submission to the Union. Nor do I believe that Moss, with C. Franzen present at this first bargaining session, would have deviated from whatever negotiating script he and C. Franzen may have agreed to for this first session.

What, then, might have prompted C. Franzen to abruptly dismiss and replace Moss with Mason after only one bargaining session? One possible explanation which, in light of C. Franzen's failure to appear and give his own account, and the lack of any alternative credible explanation, I find quite plausible came from Farrand's credible and undisputed account of what Moss conveyed to him at the close of this first session. Farrand, as noted, testified that at the end of that first bargaining session, Moss, most likely in C. Franzen's presence, expressed optimism that the negotiations could be concluded and an agreement reached within a few weeks. This, in my opinion, is not what C. Franzen either expected or wanted to hear from Moss for, as evident from the Respondent's conduct during the negotiations that followed this first meeting, the Respondent was not seeking to continue or extend its bargaining relationship with the Union via a new contract, but rather hoped to end it. To achieve this goal, the Respondent's game plan, as further described below, was to delay or frustrate the bargaining process long enough by, inter alia, offering proposals that would be predictably unacceptable to the Union, reneging on agreed-upon proposals, rejecting the Union's proposals outright without any consideration or discussion, in the hope that, by doing so, employees would become frustrated with, and turn against, the Union.

By the second meeting, the Respondent, as noted, had obtained new counsel in the person of Ron Mason to handle the negotiations. The Mason Law Firm, as advertised on its website, specializes in providing union avoidance services to both union and nonunionized employers. (GCX-20). Mason described his firm as "a labor law firm helping companies aggressively deal with unions," boasting, on one occasion, to a prospective client that "a decision to use him (Mason) as your lawyer sends a message to employees and the union" alike. (GCX-170).

In keeping with his self-described aggressive antiunion posture, Mason, no doubt with C. Franzen's blessing, assumed a more aggressive role at this second July 17, 2007, session, than had Moss at the initial meeting, first by insisting on holding negotiations at a local airport to facilitate his own personal needs (Mason had his own plane and flew in and out for the

negotiations) rather than at the Union's offices where the first meeting was held. As to the proposal Moss gave to the Union on the Respondent's behalf for its consideration at June 18, 2007, meeting, Mason, at this second meeting (his first with the Union) withdrew and then radically altered it to include changes he knew or would reasonably have known would be predictably unacceptable to the Union. One of the more significant changes proposed by Respondent in this proposal called for the elimination of the dues checkoff and the union security provisions that had been part of the expired agreements. The Respondent in its initial June 18, 2007, proposal had not sought their elimination.

The Respondent defends its proposal to eliminate the dues checkoff and union security provisions by asserting, on brief, that an employer's proposal during negotiations to do away with a union security clause does not, without more, constitute bad-faith bargaining. The Board indeed has held that the existence of a union security provision and dues checkoff clause in a previous contract does not by itself obligate the parties to include it in successive contracts, unless, the Board further pointed out, the reasons cited for its elimination are so unreasonable or illogical as to suggest that it was being proposed in bad faith or with an intent to frustrate agreement *Challenge-Cook Bros.*, 288 NLRB 387, 388 (1988); also, *Logeman Bros.*, 298 NLRB 1018, 1020 (1990).

Here, the different reasons cited by Respondent for proposing the elimination of the dues checkoff and union security provisions suggests that the proposal was not made in good faith. Mason, as noted, initially asserted that elimination of dues checkoff was being proposed because during the 2005 employee meeting at employees were told, after the parties had entered into the settlement agreement, that the Union would be representing them, some employees complained that they did not want to be represented by the Union. (Tr. 1450). While the evidence does show, and some employees in fact testified, that they had no interest in the Union, the anti-Union expressions of dissatisfaction on which the Respondent and Mason were purportedly relying to justify the proposal, as noted, occurred some two years earlier. There is simply no record evidence to show that this anti-Union sentiment was shared by a majority of employees at the facility as of July 2007, when the proposal was first submitted to the Union so as to have justified its submission. As further noted, the Respondent, at the first bargaining session with Moss as its bargaining representative, did not put forth such a proposal, raising the question why, if it truly believed or had evidence to show that its employees did not want to be represented by the Union, the Respondent did not include in its initial proposal a demand for the elimination of the dues checkoff and union security provisions. The obvious answer to this question, I believe, is that the elimination of the dues checkoff and union security provision was conceived and presented by Mason at the second meeting, knowing full well from his extensive past experience in antiunion drives, that the proposal would be strongly opposed by the Union and would have the desired effect of prolonging, delaying, and frustrating the overall bargaining process.

Further undermining Mason's claim, that the proposal to eliminate the dues checkoff and union security provisions was prompted by expressions of employee dissatisfaction with the Union made some two years earlier, is his statement to Farrand several months later at the May 13, 2008, meeting that the Respondent would not withdraw this proposal because it was an economic issue for the Company. Other than explaining that employees would save money by not having to pay dues, Mason, when asked how this would save the Respondent money or why this was an economic issue for Respondent, simply reiterated that the Respondent considered this to be an economic issue without offering any further clarification or explanation.

Clearly, this proffered "economic issue" explanation by Mason, aside from being inconsistent with the reason initially cited by Mason at his first meeting with the Union on July

17, is also nonsensical and strikes me as nothing more than a feeble attempt to further justify the proposal. I am convinced, and so find, that the proposal to do away with the dues checkoff and union security provisions was made in bad faith and for the sole purpose of delaying and frustrating the bargaining process. Notably, despite its repeated refusal to budge on this proposal throughout the numerous bargaining sessions held between the parties for almost two years, the Respondent eventually relented and included said provisions in the new contract executed by the parties in May 2009, after Mason was removed as Respondent's representative and replaced by attorney Markus. That the Respondent eventually chose to end its opposition to the inclusion of dues checkoff and union security provisions in its new contract does not mean that its initial proposal to eliminate said provisions was made in good faith. I find it was not.

Also indicative of Respondent's bad faith, surface bargaining approach towards the negotiations was the Respondent's continued and unjustified adherence to its proposal to remove two positions – 1st pressmen and lead cutter -- from the bargaining unit after its unsubstantiated claim that said positions were supervisory was rejected by the Board.

Generally speaking, in determining whether a party has engaged in bad faith bargaining, the Board typically looks at bargaining tactics undertaken by the party during negotiations rather than on the reasonableness of its bargaining proposals. *APT Medical Transportation*, 333 NLRB 760, 764 (2001). Still, as pointed out by the Board in *APT Medical Transportation*, supra, "there may be cases [where] the substance of a party's bargaining position is so unreasonable as to provide some evidence of bad-faith intent to frustrate agreement."

Here, the Respondent's continued adherence, after its claim that the first pressmen and lead cutter were supervisors was rejected by the Regional Director, and after Mason had assured Farrand he would abide by the Regional Director's determination, to its proposal to remove said positions from the Litho unit was clearly unreasonable. Thus, having failed to prevail on its UC petition, and having chosen not to appeal the Regional Director's ruling, the Respondent nevertheless continued to press this demand during the next six bargaining sessions until the April 23, 2008, session, when it finally withdrew its proposal from the last and final offer submitted to the Union that day. The only explanation proffered by Mason to Farrand for continuing to push this proposal was that Mason could always file a new UC petition. Yet, Mason never did so, leading me to believe that Mason knew full well that he would not be able to prevail. I am convinced, and so find, that, despite the rejection of its claim by the Regional Director, and Mason's assurance to Farrand that he would abide by said ruling, the Respondent continued to push this proposal forward knowing full well it would help delay and prolong the bargaining process.

Further evidence of Respondent bad faith during the negotiations was Mason's refusal to respond, or even consider, any of the proposals submitted by Farrand on the Union's behalf throughout the numerous bargaining sessions. The focus of the Respondent's attention was always on its own proposal, never the Union's. Mason, however, testified that from the very beginning of the negotiations, the Union "never agreed to bargain with us over the proposals that we had submitted to them" with respect to either the Litho or Finishing unit. He claimed that had "the Union bargained with us…we might have reached an agreement the employees would accept." (Tr. 1453-1454). Mason's above representation is simply not true.

First, it was the Respondent, not the Union, that refused to put forward a proposal for the finishing unit at the very start of the negotiations, first with Moss, and thereafter with Mason, claiming that they did not have to do so because of a pending decertification petition among employees in that department. The Union, in fact, presented Moss at the first bargaining

session with its own proposal for the Finishing unit. Moreover, contrary to the Mason's claim that the Union never agreed to bargain, the record makes clear that Farrand accepted certain proposals made by Respondent, including one pertaining to the payment of wages by check, a proposal to delete certain overtime language in the prior contract, to language proposed by the Respondent regarding the accumulation of points relating to disciplinary matters, and to its proposal to preclude employees with unexcused tardies from receiving compensation. The Further, despite its strong opposition throughout the negotiations, the Union agreed, after receiving the Respondent's last and final offer on April 23, 2008, to terminate the Supplemental Pension Plan if the Respondent provided the Respondent would agree to include the same 3% funding that was going into the Supplemental Fund into a 401(k) plan for employees, and added agreed to add language to the Inter-Local Pension Plan to protect the Respondent against liability. The Respondent, however, rejected these latter proposals. All this time, however, it was the Union that was agreeing to the Respondent's proposals, with the Respondent offering no reciprocal consideration or acceptance of any of the Union's own proposals. In effect, the only bargaining that the Respondent was willing to accept was that pertaining to its own contract proposals. The Board has held that the mere willingness of one party in the negotiations to enter into a contract of his own composition ... does not satisfy the good-faith bargaining requirement." *Wal-Lite Division of the United States Gypsum Co.*, 200 NLRB 1098, 1101 (1972).

Further evidence that the Respondent's intent was to create a façade of good faith bargaining while engaging in conduct aimed at undermining it can be gleaned from the "T/A" (tentative agreement) entries Mason inserted in the very first proposal he submitted to the Union on July 17, 2007. Most of these "T/A" entries contain the date "7-17-07" next to them, suggesting that these so-called tentative agreements were agreed to on 7-17-07, the very date Mason appeared as the Respondent's bargaining representative. However, as credibly testified by Farrand, little, if any, negotiation took place that day since the Union, having just received the Respondent's revised proposal from Mason, needed time to review it before responding. It is fairly obvious, therefore, that no such "tentative agreements" were reached between the parties on "7-17-07", as suggested by the "T/A 7-17-07" notations found on the Respondent's July 17, 2007 proposal. Clearly, these "T/A" entries were inserted by Mason to create the illusion that the parties had actually reached agreement on numerous issues when in fact they had not. Rather, as credibly explained by Farrand, the "T/A" notations were placed in the document even though neither party had actually proposed or sought to change the provision in the expired contract referenced by the "T/A" entry. Mason, I find, placed the "T/A" entries in his proposal in the hope of deflecting any subsequent claim by the Union that no actual bargaining took place and that the Respondent had simply engaged in surface bargaining.

Nor was the Respondent's unlawful bad faith tactics restricted to the bargaining table alone for, as discussed and found below, the Respondent engaged in other unlawful conduct, including the demotion of Pfeiler, a key Union supporter, an attempt to circumvent and deal directly with employees, and encouraging and supporting the decertification of the Union, all of which were clearly designed to undermine the Union and the entire bargaining process.

As shown herein, the Respondent's attempts away from the bargaining table to frustrate, undermine, and eventually destroy any employee support for the Union first came in the form of the demotion of Howard Pfeiler who, at the time of his demotion on May 9, 2008, was the only remaining employee member of the Union's bargaining committee. While the Respondent admittedly had legitimate economic reasons for eliminating one of its shifts and reassigning employees to better achieve its production needs, as found above, it offered no plausible or credible explanation for selecting Pfeiler for demotion over other less senior, and arguably less qualified, employees. Pfeiler, as found herein, was discriminatorily and unlawfully selected for

demotion because of his active support for the Union and his involvement in the negotiations, as well as to send a message to other unit employees that such support for the Union could have adverse consequences. Pfeiler's demotion could only have had a deleterious effect on how employees viewed the Union and may have, with help from Baker, convinced them that decertification of the Union would be viewed favorably by the Respondent and hopefully shield them from a similar fate.

The Respondent's efforts to undermine employee support for the Union away from the bargaining table, however, did not stop with Pfeiler's demotion, for, a month later, the Respondent attempted to bypass the Union and deal directly with employees by sending them two letters, one on June 16 with a copy of its last and final proposal attached, the other on June 30, urging them, over the Union's objection, to accept its last and final proposal and to force the Union into allowing them a vote on the proposal. As previously indicated, the last and final proposal submitted by Respondent with its June 16, letter was incomplete and failed to include two essential appendices, the absence of which, I am convinced, would have prevented employees from properly assessing, and making an informed decision on, the merits of the proposal and its acceptability. In its subsequent June 30, letter, the Respondent, as it did in the June 16, letter, dangled a 5% wage increase before the employees, but made clear that they could only obtain the increase in one of three ways, e.g., compel the Union to let them vote on the proposal which the Union declined to do because it was incomplete, following an impasse in bargaining which the parties had not yet reached, or, lastly, through decertification of the Union. As stated below, employees could reasonably have understood from the tone of Respondent's June 30, letter that the path of least resistance for employees interested in getting the 5% wage increase was decertification. As found above, the Respondent's letters taken together, and when viewed in light of Respondent's bad faith bargaining and its unlawful discharge of Pfeiler, clearly constituted an unlawful attempt by the Respondent to bypass the Union and negotiate directly with employees regarding the former's last and final offer. More importantly, the letters, and in particular the June 30, letter, was, I find, a continuing attempt by the Respondent, begun at the bargaining table and extending away from it through the discharge of Pfeiler, to cause employee disaffection with the Union and encourage them, through decertification if necessary, to reject the Union as their bargaining representative.

Finally, on August 2008, the Respondent attained what it had been seeking, the filing of a decertification petition by employees in the Litho unit. Mason, at the hearing, insisted that the Respondent had nothing to do with decertification process and, indeed, professed that he, Baker, and other Company managers were unaware that a decertification petition was being circulated among employees until after it was filed. The credible evidence of record, as fully discussed above, reveals otherwise. Thus, it shows that Mason, Baker, and others not only knew that employees were engaged in decertification efforts long before the petition was filed, but had actually encouraged and supported it, with Baker apparently being the primary conduit for such information and for providing employees with the assistance needed in their decertification efforts.

Thus, notwithstanding Mason's denial at the hearing, I find that the decertification process was part and parcel of Mason's overall "union busting" strategy of delaying and prolonging the negotiations long enough to allow Baker, and possibly other Company managers, to surreptitiously engage in conduct that would further undermine employee support for the Union, including encouraging and supporting them in their decertification efforts.

In sum, I find that the Respondent's conduct and dealings with the Union both at the bargaining table and away from it were clearly calculated to impede bargaining and weaken the Union with a view to having it removed as the employees' collective-bargaining representative,

rather than to reach agreement. Accordingly, I find, as alleged in the complaint and as argued by Counsel for the General Counsel, that the Respondent's conduct amounted to bad faith surface bargaining and violated Section 8(a)(1) and (5) of the Act.

(e) The alleged April 2009 threat of plant closure

On April 7, 2009, Farrand received notification from Mason, through federal mediator Flesher, of the Respondent's intent to reopen the negotiations. Farrand gave Flesher some available dates and meetings were thereafter scheduled for April 14 and 23, 2009. Farrand then called Mason to find out what was up, and Mason told him that there were some pretty important matters that needed to be discussed, but that he did not want to do so over the phone, and sought the meeting instead. The parties in fact met on April 14. In attendance for the Respondent were Mason, C. Franzen, and Baker. Farrand, Pfeiler, and Steve Nobels, President of the District Council, were present for the Union.

Mason began the meeting by expressing concern that the pension fund's fiscal year was coming to a close at the end of April, and that the Company's withdrawal liability to the fund amounted to around $250,000. Mason explained that they needed to find a resolution to this problem before the end of April "or else the Company would be closing the facility." (Tr. 1902). Mason then proposed the parties enter into what he described as an "agreed impasse," meaning that the Union would agree that an impasse had been reached which would allow the Company to implement its last and final offer, and thereby withdraw from further participation in the pension fund. Farrand testified that this offer essentially was the same as the one the Respondent made during the June 12, 2008, bargaining session.

Mason described this arrangement as a "win/win" scenario as it would allow the Union to maintain its position regarding the Company's proposal to eliminate the union security/dues checkoff requirement, the Company would be permitted to withdraw from the pension fund but still be a unionized company, and employees would not be obligated to pay union dues. When Farrand indicated he was not familiar with the "agreed impasse" concept, Mason indicated that he had used it before in other negotiations. Farrand asked Mason that if the Company closed, would the Respondent's equipment be moved to the Sheboygan plant, and Mason indicated that the equipment would be sold and not moved elsewhere. Regarding other work that could be done, Mason indicated that that work would be moved elsewhere, although he did not specify where. Farrand, however, understood this to mean that the work would be sent to Sheboygan. When Farrand asked how this proposal differed from the one Mason had presented to him on October 22, 2008, Mason answered there was no difference other than the concept of the "agreed impasse." (1904-1909).

After some caucusing by the parties and discussions with Flesher, Mason indicated that the Company was willing to agree to continue withholding inter-local pension contributions and leave intact the Sunday overtime provision in the expired contract. Nobels pointed out that the Company was just offering things that were already in the contract, and Mason simply replied that they were putting it back on the bargaining table. Mason, at one point, indicated that acceptance of the "agreed impasse" or of the Company's modified proposal was conditioned on the Union withdrawing the unfair labor practice charges pending before the Board. At the close of this meeting, Mason informed Farrand that he needed to know within 3 days time, e.g., by April 17, whether the Union would accept either option, e.g., the "agreed impasse" or the Company's modified contract proposal or else the plant would be closed. (Tr. 1917). As Mason did not testify, I credit Farrand's account of this meeting. Thus, I find that Mason informed Farrand that unless the Union agreed to accept Respondent's final offer or entered into an "agreed-upon impasse" and withdrew its unfair labor practice charges, the Respondent would

close its facility by the end of April.

Counsel for the General Counsel contends, on brief (p. 61), that Mason's threat to close the facility by the end of April if the Union did not accept its proposal was unlawful, as was its demand that the Union withdraw all unfair labor practice charges pending against Respondent and either accept its final proposal or enter into an "agreed-upon impasse" agreement to avoid a plant closure. I find merit in Counsel for the General Counsel's contention.

Discussion

As found above, at the parties' April 14, 2009 meeting, Mason notified the Union that unless it either agreed to Respondent's final proposal, or accepted an "agreed-upon impasse" and withdrew its unfair labor practice charges, the Company would close its facility by the end of April. As Counsel for the General Counsel correctly points out on brief, demands during negotiations for the dismissal of unfair labor practice charges or for the acceptance by a party of an "agreed-upon impasse" agreement constitute non-mandatory subjects of bargaining as they are unrelated to any employee term and condition of employment. *Inner City Broadcasting Corp.*, 270 NLRB 1230, 1233 (1984). As stated in *Inner City Broadcasting*, supra, it is unlawful to use economic coercion to force agreement to a non-mandatory subject. The Respondent here did precisely that when Mason conditioned non-closure of the facility on the Union's agreement to withdraw all charges pending against the Respondent and to either accept the latter's final contract proposal or agree to enter into an "agreed-upon impasse" agreement. Said conduct was clearly unlawful and a violation of Section 8(a)(5) and (1) of the Act. It further violated Section 8(a)(5) and (1) since, by engaging in such conduct, the Respondent was trying to avoid its obligation to bargain in good faith with the Union. Finally, the Respondent's threat to close the facility if the Union did not accept its final proposal was coercive and amounted to an independent violation of Section 8(a)(1) of the Act. *Yearbook House*, 223 NLRB 1456 (1976).

(f) The single-integrated enterprise question

The complaint alleges, Counsel for the General Counsel contends, and the Respondent denies, that Franzen Graphics, LLC in Sheboygan, Wisconsin and Franzen Graphics–Ohio, LLC are an single-integrated enterprise and, thus, jointly liable for any alleged violations found herein. I find merit in the allegation.

A single-employer relationship exists when two or more employing entities are in reality a single-integrated enterprise. *Essex Valley Visiting Nurses Association*, 352 NLRB 427, 440 (2008); *AG Communications Corp.*, 350 NLRB 168, 169 (2007). The Board looks at the following four criteria in determining whether a single-employer relationship exists: (1) common ownership; (2) common management; (3) functional interrelation of operations; and (4) centralized control of labor relations. Not all of these criteria, however, need be present for single-employer status to be found. Single-employer status ultimately depends on all the circumstances of a case and is characterized by the absence of an arm's-length relationship found among non-integrated companies. The Board has generally held that the most critical factor is centralized control over labor relations. *Id*.

The record establishes, and the Respondent readily admits on brief (RB:2), that the two facilities share common ownership and management. Thus, Franzen-Ohio is a wholly owned subsidiary of Franzen Graphics in Wisconsin with the same president and owner (C. Franzen), Vice President (Hapeman) same HR director (Suprick), and same Chief Financial Officer/Controller (Ed Miller). each location can sell jobs for the other location ; decision on layoffs and demotion at Franzen-Ohio made by C. Franzen, Hapeman, and Suprick. There also

appears to be a functional interrelation of operations, for Baker testified that the salespeople, who are situated at the Sheboygan facility, can sell job orders that will be produced at the Cleveland facility or vice-versa, e.g., work orders obtained in Cleveland can be produced at the Sheboygan facility. Finally, it would appear that labor relations matters at the two facilities are highly integrated, as evident by the fact that the decision regarding the layoff and demotion of employees, including Pfeiler, were handled by owner C. Franzen, Vice-President Hapeman, and Cleveland plant manager Baker. The evidence convinces me, and I so find, that Franzen-Ohio and Franzen Graphics in Wisconsin, at all times relevant herein, operated and functioned as a single-integrated enterprise.

Conclusions of Law

1. The Respondent, Franzen Graphics, LLC and Franzen Graphics–Ohio, LLC, is a single-integrated enterprise and an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Local 546M, Graphic Communications Conference of the International Brotherhood of Teamsters, is a labor organization within the meaning of Section 2(5) of the Act, and the exclusive collective bargaining representative of the Respondent's Litho department employees in the following bargaining unit:

> All employees covered by the jurisdiction clause of the parties' collective bargaining agreement in its plant located at 952 E. 72nd St., Cleveland, Ohio facility, or any subsequent location in the Cleveland and surrounding area in the event such plant is relocated. (See, RX-11).

3. By failing and refusing to bargain in good faith, and engaging in surface bargaining, with the Union, by attempting to bypass the Union and deal directly employees through its June 16, and June 30, 2008, letters, by assisting or otherwise encouraging employees in the Litho department to file a decertification petition, by threatening to close its Cleveland facility unless the Union accepted its last and final proposal or accepted its "agreed impasse" offer, the Respondent violated Section 8(a)(1) and (5) of the Act.

4. By demoting employee Howard Pfeiler from second pressman to feeder operator because of his involvement with the Union, the Respondent violated Section 8(a)(1) and (3) of the Act.

5. The Respondent's above-described unlawful conduct are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

While the Respondent shall be required to cease and desist from engaging in bad faith, surface bargaining with the Union, the standard remedy of requiring the Respondent to, on demand, bargain with the Union until an agreement or valid impasse is reached is not necessary here as the record makes clear that, on May 19, 2009, the Respondent entered into a collective bargaining agreement with the Union, effective from July 1, 2007-March 31, 2012, covering the Litho unit employees.

However, to remedy its unlawful demotion of Howard Pfeiler, the Respondent shall be required to, within 14 days of the Order, offer Howard Pfeiler reinstatement to his former position or to a substantially equivalent position if his former position no longer exists, without prejudice to his seniority or other rights and privileges he previously enjoyed. It will also be required to make Pfeiler whole for any loss of earnings and benefits he may have suffered as a result of his unlawful demotion, in the manner described in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Further, the Respondent shall, within 14 days from the date of the Order, remove from its files any and all references to Pfeiler's unlawful demotion and, within 3 days thereafter, notify him in writing that this has been done and that his unlawful demotion will not be used against him in any way. Finally, the Respondent will be required to post an appropriate notice to employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

Order

The Respondent, Franzen Graphics, LLC and Franzen Graphics–Ohio, LLC, Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 546M, Graphic Communications Conference of the International Brotherhood of Teamsters concerning rates of pay, hours of employment, and other terms and conditions of employment of employees in the following bargaining unit represented by the Union:

> All employees covered by the jurisdiction clause of the parties' collective bargaining agreement in its plant located at 952 E. 72nd St., Cleveland, Ohio facility, or any subsequent location in the Cleveland and surrounding area in the event such plant is relocated.

(b) Bypassing the Union and dealing directly with employees in the above bargaining unit regarding their wages, or other matters affecting their terms and conditions of employment.

(c) Assisting or otherwise encouraging employees to decertify the Union as their bargaining representative.

(d) Threatening to close its facility unless the Union accepts its last and final contract offer or accepts its "agreed impasse" offer.

(e) Demoting or otherwise discriminating against any employee because of their involvement with or support for the Union.

---

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

(f) 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 the Board's Order, offer Howard Pfeiler full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Howard Pfeiler whole for any loss of earnings and other benefits suffered as a result of the discrimination against [him] [her] in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful demotion of Howard Pfeiler, and within 3 days thereafter notify him in writing that this has been done, and that the demotion will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Cleveland, Ohio copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 June 18, 2007.

(f) 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.

Dated, Washington, D.C., April 26, 2010.

George Alemán
Administrative Law Judge

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

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to bargain collectively and in good faith with the Union, Local 546M, Graphic Communications Conference of the International Brotherhood of Teamsters which represents our employees in the following bargaining unit:

> All employees covered by the jurisdiction clause of the parties' collective bargaining agreement in its plant located at 952 E. 72nd St., Cleveland, Ohio facility, or any subsequent location in the Cleveland and surrounding area in the event such plant is relocated.

WE WILL NOT bypass the Union and deal directly with employees in the above-described unit regarding their wages, or other terms and conditions of employment.

WE WILL NOT unlawfully assist or encourage employees in their attempt to decertify the Union as their bargaining representative.

WE WILL NOT threaten to close our facility unless the Union accepts our final contract proposal or accepts an "agreed impasse" offer.

WE WILL NOT demote or otherwise discriminate against any of you for your involvement with or support for Local 546M, Graphic Communications Conference of the International Brotherhood of Teamsters, any other union.

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 this Order, offer Howard Pfeiler full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Howard Pfeiler whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful demotion of Howard Pfeiler, and **WE WILL**, within 3 days thereafter, notify him in writing that this has been done and that the demotion will not be used against him in any way.

FRANZEN GRAPHICS, LLC and
FRANZEN GRAPHICS-OHIO, LLC
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1240 East 9th Street, Federal Building, Room 1695
Cleveland, Ohio 44199-2086
Hours: 8:15 a.m. to 4:45 p.m.
216-522-3716.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 216-522-3723.