

Worrell Newspapers, Inc. and Bristol Printing and Graphic Communications Local No. 259, International Printing and Graphic Communications Union. Case 5-CA-8090

September 27, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND PENELLO

On June 29, 1977, Administrative Law Judge Jennie M. Sarrica issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in response to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge, to modify the Remedy,² and to adopt her recommended Order, as modified herein.

In her recommended Order, the Administrative Law Judge ordered Respondent to sign the collective-bargaining agreement agreed to between the Union and Respondent on July 13, 1976, and to give retroactive effect to its terms and conditions. However, the terms of that agreement establish an effective life of 1 year from February 1, 1976, to January 31, 1977, and the contract term obviously will have expired prior to the issuance of this Decision. Under these circumstances, in order to fully remedy the unfair labor practices found herein, we will order Respondent to sign that agreement at the request of the Union. We will further order that if the Union does not request Respondent to sign the agreement that Respondent, upon request, bargain in good faith with the Union with respect to the terms and conditions of a contract and, if an agreement is reached, embody it in a signed agreement.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Worrell Newspapers, Inc., Bristol, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, as herein modified:

232 NLRB No. 65

1. Substitute the following for paragraph 2(a) of the recommended Order:

"(a) Upon request, sign a collective-bargaining agreement containing the terms and conditions of employment agreed to between Respondent and the Union on July 13, 1976, give retroactive effect to its terms and conditions, and make its employees whole for losses, if any, they may have suffered as a result of its refusal to sign such an agreement, with interest."

2. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly:

"(b) If no such request is made, bargain collectively in good faith with the Union, upon its request, as the exclusive representative of the employees in the appropriate unit, over the terms and conditions of a new collective-bargaining agreement and, if an agreement is reached, embody it in a signed agreement.

3. Substitute the attached notice for that of the Administrative Law Judge.

¹ In adopting the Administrative Law Judge's findings and conclusions in this case, we do not adopt her interpretation, expressed in fn. 18 of her Decision, of *Lucas County Farm Bureau Cooperative Association, Inc.*, 218 NLRB 1150 (1975), as that Decision was reversed in part by the Board in a Supplemental Decision and Order, 218 NLRB 1155 (1976).

² In accordance with our decision in *Florida Steel Corporation*, 231 NLRB 651 (1977), we shall apply the current 7-percent rate for periods prior to August 25, 1977, in which the "adjusted prime interest rate" as used by the Internal Revenue Service in calculating interest on tax payments was at least 7 percent.

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

WE WILL, upon request, sign a contract with Bristol Printing and Graphic Communications Local No. 259, International Printing and Graphic Communications Union, containing the terms and conditions of employment agreed to between us on July 13, 1976.

WE WILL give retroactive effect to its terms and conditions and make our employees whole for losses, if any, which they may have suffered as a result of our refusal to sign a contract.

WE WILL, upon request, bargain with the Union over the terms and conditions of a new agreement if the Union does not request that we sign the agreement, and, if an agreement is reached, we will sign a new contract.

WE WILL NOT refuse to bargain collectively with the aforementioned Union for the unit described herein with respect to rates of pay, wages, hours of work, and other terms and conditions of employment. The bargaining unit is:

All pressroom employees, including those employees involved in opaquing, enlarging, reducing and screening of half tones, cameras used for plate making, the plate burner, the plate processor and all functions from the cameras preparatory for the making of offset plates, except stripping, but excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to engage in, or to refrain from engaging in, any or all the activities specified in Section 7 of the Act.

WORRELL NEWSPAPERS,
INC.

DECISION

STATEMENT OF THE CASE

JENNIE M. SARRICA, Administrative Law Judge: This is a proceeding under Section 10(b) of the National Labor Relations Act, as amended (29 U.S.C. 151, *et seq.*), hereinafter referred to as the Act. Based on charges filed on July 26, 1976,¹ a complaint was issued on September 14 presenting allegations that Worrell Newspapers, Inc., hereinafter referred to as Respondent, committed unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act. Respondent filed an answer denying that it committed the violations of the Act alleged. Upon due notice the case was heard before me at Bristol, Tennessee, on October 28 and 29. Representatives of all parties entered appearances and had an opportunity to participate in the proceeding.

Based on the entire record, including my observation of the witnesses, and after due consideration of briefs filed by Respondent and the General Counsel, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

Respondent, a Tennessee corporation, maintains its principal office in Bristol, Virginia, where it is engaged in the publication of a morning newspaper called The Bristol Herald Courier. During the preceding 12 months, a representative period, Respondent had gross revenues exceeding \$200,000 and regularly printed advertisements of products which are nationally advertised and sold in interstate commerce, published nationally syndicated articles and news stories, and shipped newspapers to points outside the Commonwealth of Virginia.

Respondent admits, and I find, that at all times material Respondent is, and has been, an employer as defined in Section 2(2) of the Act, engaged in commerce and

operations affecting commerce as defined in Section 2(6) and (7) of the Act, respectively.

II. THE LABOR ORGANIZATION

It is admitted and I find that Bristol Printing and Graphic Communications Local No. 259, International Printing and Graphic Communications Union, hereinafter referred to as the Union, is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issue*

The determinative issue presented in this case is whether Respondent and the Charging Party reached an agreement upon the terms and conditions of a collective-bargaining agreement which Respondent refused to sign.

B. *Background*

It is admitted that, at all times material herein, Respondent has recognized the Union as the representative of employees of Respondent in a unit appropriate for collective bargaining consisting of all pressroom employees, including those employees involved in opaquing, enlarging, reducing and screening of half tones, cameras used for platemaking, the plate burner, the plate processor, and all other functions from the cameras preparatory for the making of offset plates, except stripping. Respondent and the Union have had a collective-bargaining relationship which dates from 1938. At least since 1954, with the exception of the years 1968-69, when the parties executed a 2-year contract, there have been successive 1-year contracts. The most recent contract expired on January 25, 1976.

C. *The Operative Events*

By letter dated November 21, 1975, Respondent gave the Union a contract termination notice. On December 15, the Union stated its desire to negotiate a new contract and presented Respondent with its contract proposals. By letter dated December 20, 1975, Respondent's senior vice president, Herman Giles, made Respondent's counterproposal that the current contract be renewed without change and indicated Respondent's willingness to discuss the proposals contained in the Union's letter.

The first negotiating meeting was held on January 8. Publisher Giles was not present for Respondent, but gave instructions to Jack W. Smith, a private management consultant under retainer with Respondent for the past 7-1/2 years, who acted as Respondent's spokesman. Smith was accompanied by Floyd Jones, Respondent's accounting manager. He responded to the Union's itemized proposals with criticism and commentary in accordance with Giles' instructions, and presented Respondent's wage counteroffer of an increase for journeymen-pressmen. In rejecting the Union's various proposals, and consistent

¹ All dates herein are in 1976 unless otherwise specified.

with its written proposal for the renewal of the existing contract without change, it was clear and the parties so understood that Respondent was proposing the continuation of existing benefits. It also was made apparent that neither Smith, as Respondent's spokesman, nor Jones possessed the authority to depart in negotiations from the instructions they had brought to the meeting from Giles.² Thus, at this first meeting Henry D. Little, president of the Local Union and spokesman for the union negotiating committee, advised that the wage counteroffer was inadequate and insisted that Giles attend future bargaining sessions.

Giles attended the second bargaining session held on January 13. According to Giles, he informed the union committee that:

If we can go through these things and get them settled, we'll do it, but there's a lot of garbage in this contract that needs to come out, but we're not going to go into it if we can reach an agreement.³

Giles, who had been on the scene since 1954, admitted he did not identify any particular contract language as "garbage," and that frequently, in the course of negotiations over the past 7 years, he has made similar references to "garbage." The last major revision in contract language took place 5 years before the current negotiations and for some time prior to that the contract language covering the joint standing committee, the arbitration clause language, and the arbitration agreement in the contract have remained the same.⁴ Giles explained that when he used the term "garbage" in negotiations he simply meant "its language I don't like." Little testified that Giles started the January 13 meeting with an offer to sign their expiring agreement with a journeyman wage increase and reiterated Respondent's wage offer. Little averred that Giles did not say that a lot of things in the contract had to be changed, nor did he mention that a lot of "garbage" had to come out. The witnesses agree that no specific proposal of contract language revision was ever suggested at this meeting. Giles then proceeded with the Union's list of proposals, explaining with respect to each how certain existing benefits applied and what was already available thereunder, as well as what changes he was willing to make and which proposals were being rejected together with the reasons therefor. Agreement was reached on improvements in facilities relating to the installation and repair of showers and a change in the scheduling and timing of the New Year's Eve holiday. Otherwise, all of the Union's proposals were rejected. Giles testified that no response was made by the Union to his replies on their rejected proposals. In

² Giles verified that at no time did Smith or Jones have any authority or discretion to make concessions or increase Respondent's offers during negotiating sessions without his personal approval.

³ Smith testified that at the January 13 meeting Giles stated that "If we could forget about getting an agreement, we would go along with the same agreement. If not, there would have to be a lot of garbage come out of the agreement." Jones recalled that it was at the January 14 meeting that Giles stated that before they signed another contract they "would need to get some garbage out of the language." There were no questions and no discussion raised by this comment and Smith could not recall the context of the "garbage" statement, but testified that it was not in response to anything from the Union, and Giles gave no explanation as to what was meant by his

discussions relating to the issue of wages, it was suggested that there was a need for a change in the apprenticeship scale and Giles proposed a general figure with a promise to work up and return with specific figures and percentages. No change was made in Respondent's wage offer for journeymen at this meeting.

Giles brought to the third negotiating meeting, held the following day, January 14, an increased journeyman wage offer and the figures for the proposed apprenticeship scale. The Union accepted this scale for apprentices. In the course of negotiations Giles again raised the journeyman pay proposal by offering a night differential. He also suggested that they needed to get further away from the Christmas season than the mid-January anniversary date for their contract. He proposed a term effective from February 1, 1976, to January 31, 1977. The Union accepted this offer.⁵ Finally, Giles again raised the journeyman wage offer and told the Union this was his final offer. The Union requested that the parties hold another negotiating meeting to give the Union an opportunity to determine whether to bring in an International representative. A date for such meeting was left open, pending the Union's determination in this respect and, if it decided upon assistance, to ascertain the availability of such a representative. Giles informed the union committee that he had presented his final offer and personally would not attend any further meetings, but that Smith and Jones would be available.

At a union membership meeting which followed, it was decided to seek the assistance of an International representative in the hopes of obtaining a higher wage offer and to give such representative the power to invoke the "interest arbitration" clause of the contract to arbitrate wages if necessary. In furtherance thereof, a fourth meeting was held with Respondent on January 19,⁶ at which International Representative Baron Watkins joined the union committee. Smith and Jones represented the Respondent. Smith, as Respondent's spokesman, reiterated the final wage offer presented by Giles at the earlier meeting. In the course of wage discussions, Watkins inquired whether the Company would be interested in a contract of longer duration, and Smith obtained a recess for the purpose of caucusing with Giles. When Smith returned he reported that Giles was not interested in anything but a 1-year contract. The Union indicated its willingness to stay with the 1-year agreement previously agreed to and the subject was dropped. Watkins and Smith continued their discussion of Respondent's journeyman wage offer and Smith reaffirmed Giles' last offer as Respondent's final offer. Watkins then stated that the Union was invoking the contract arbitration clause and, after leafing through the

statement. The negotiators were fully aware of Giles' offer to sign the contract "as is," as well as the other specific offers and proposals.

⁴ These were the subjects of alleged discussions initiated by Respondent just prior to the hearing herein which I ruled to be in the nature of settlement efforts and irrelevant to the conduct causing the complaint.

⁵ Little testified that the Union responded by stating that this created no problem, whereas Giles could not remember any specific comment by the union negotiators and testified that the Union's acceptance of his proposal may have been by its silence. There is, however, agreement that the Union accepted this change in the contract anniversary date.

⁶ I accept January 19 as the correct date and find that testimony referring to a meeting of January 20 had reference to this same meeting.

contract and commenting something to the effect that "It was not worth a green sheet,"⁷ Smith told Watkins to put the Union's intentions in writing.⁸

By undated letter from Little to Giles received by Respondent on January 23, the Union put in writing its request for arbitration of the differences of the parties on the wage issue, and requested that the Respondent name its representatives to such arbitration board in accordance with their contract.⁹ Giles replied for Respondent, by letter dated January 28, informing the Union that Respondent viewed its termination notice as effectuating the expiration of the contract on January 25, 1976, and stated Respondent's position that, therefore, the arbitration clause was not available for determination of their wage disagreement. On February 11, Little wrote a letter to Giles advising that, in the Union's view, Respondent's position that the agreement to arbitrate had expired was erroneous and referring their disagreement on the applicability of the "interest arbitration" clause interpretation to the joint standing committee established by the contract for an interpretation of their agreement. On February 12, Giles replied, stating Respondent's position that since the contract had expired the provision of the joint standing committee had likewise expired.

On or about February 16, after receipt of Respondent's February 12 letter, Little, accompanied by another member of the union bargaining committee, went to the office of Giles and asked for the names of the Company's representatives for the arbitration board. They informed Giles that the Union had chosen their two members and urged Giles to select the Company's members so that the parties could proceed to arbitration. Giles told them they had no contract and, therefore, had nothing to arbitrate, so there was no need for a board.

By letter dated March 10, Giles wrote Little the following letter:

The parties to the collective-bargaining agreement met several times in good faith in an effort to agree upon a successor contract. Unfortunately an impasse developed and no collective-bargaining agreement exists. There has been no official communication between the parties since January 19, 1976.

We do not think that all of the employees in the pressroom should be deprived of the increase in scale

⁷ Green sheet has reference to an arbitration submission.

⁸ In this respect I do not credit the testimony of Jones that Watkins then stated there were several unresolved issues and the parties had reached an impasse, or Smith's testimony that Watkins indicated they might buy the Company's position on insurance but definitely would not go for a 1-year contract, and, when presented with the Respondent's final offer, said it was too bad that other issues were still on the table and there appeared to be a hopeless deadlock. Instead, I credit the testimony of Little that the Union's other proposals were not mentioned at this meeting which was convened for the purpose of discussing the open-money issues; that the subject of the contract duration was limited to the inquiry concerning the Company's interest therein; that there were no deadlock comments; and that, although the Union had not at this time specifically withdrawn its rejected proposals, the Company had never changed its position of rejection of those proposals. I also credit Little's testimony that when Smith returned after caucusing on the extended contract duration inquiry he reported Giles' reply that 1 year was working just fine and that was what had been discussed, and that Little stated the Union would go along with that, as well as Little's denial that Watkins ever said the Union would not accept a 1-year contract duration. These findings are consistent with the sense of the subsequent letter from the Union invoking the "interest arbitration" clause.

offered by the publisher. Consequently, it is our intention to unilaterally put into effect the increase and the other improvements we offered to all of the pressmen effective with the pay period beginning March 14, 1976. Should you desire to discuss this matter, please advise Mr. Jack W. Smith, SESCO Management Consultant, telephone 764-4127.

A copy of this letter was hand-delivered by the plant superintendent to Little on March 10, and a copy was posted by Respondent on the bulletin board that day. The letter was received through the mail by Little several days later. By this time the improvements in facilities agreed to in January negotiations had been installed. As indicated in its letter, Respondent effectuated its last offer wage increase for journeymen effective March 14 and, at the same time, increased the apprentice wages according to the scale agreed to by the parties.

Thereafter, on May 19, after further legal consultation and advice, the Union held a membership meeting at which it was agreed to accept the Company's contract proposals as already implemented, rather than pursue the legal issues with respect to arbitration. In furtherance of this decision, Little and Union Secretary-Treasurer Gerald Schneider went to the office of Giles and stated that the Union would accept "the contract" that the Company had already implemented and that they were there to sign "the contract." They asked Giles, "Will you sign the contract?"¹⁰ Giles replied that he was not interested in signing; that he was not going to sign "that" contract or "any" contract, and that "If he signed anything it would not be this contract." According to Giles, he also told the union representatives that "We went through all these negotiating sessions and you got an opportunity to agree and you didn't agree. I'm not going to sign it, and if I did sign it, it wouldn't be this contract." Little and Schneider attempted to persuade Giles of the importance of having a written contract. Giles said he was obligated by law to talk to the union representatives and he would talk all year, but he was not going to sign anything. The union representatives stated they were unable to understand why he would not sign the contract as it was he who had proposed it for the most part and who had implemented it, and the discussion turned to why they felt they needed a contract.¹¹

⁹ The first paragraph of this letter reads as follows:

With further reference to your letter of December 20, 1975, as well as with respect to the negotiations in which we have been engaged subsequent thereto, please be advised that we accept your offer, with one reservation, to renew for 1 year, commencing January 25, 1976, our current collective-bargaining agreement.

¹⁰ In years past, the Company has always prepared the written agreement with copies for the Union after agreement was reached and the Union signed such copies. When Little and Schneider approached Giles, they had no prepared document.

¹¹ Giles testified that he asked the union representatives why they wanted a contract "since the employer treats them right." In his testimony, Giles explained that when he said he was not going to sign "that contract" he meant the contract Little and Schneider were talking about; that he told them he was content as things stood. The record testimony establishes the discussion then turned to Giles' expressed personal dislike of the International, his review of the history of labor problems at other publishers in

(Continued)

On July 9, with knowledge that Giles was out of town on vacation but with Giles' March 10 referral of the Union to Smith for any further discussions, Little contacted Smith by telephone and requested that Smith set up a meeting for the purpose of signing an agreement. Smith advised Little that he had no authority to sign an agreement or to schedule a meeting but consented to try to reach Giles and to contact Little or see him on Monday, July 12. When Little heard nothing from Smith by the end of his work shift on July 12, he went to the office of Jones to ascertain if a meeting had been arranged. Jones knew nothing of the conversation with Smith but arranged a telephone conference between the three of them for July 13. At this time, the Union had a 1-year proposed contract drawn up in accordance with the changed benefits agreed upon and implemented. In the conference telephone call, Little reviewed, one by one, the Union's proposals which the Company had not accepted and informed Smith that the Union was dropping those proposals. He also informed Smith that the Union was withdrawing the unfair labor practice charges it had filed against Respondent, in the interim after Giles had said he would not sign, and that the Union was dropping the arbitration request in order to get a signed contract. Little told Smith that the Union accepted the contract as the Company proposed it and had implemented it, and asked Smith to sign. Smith stated that he did not have the authority to sign a contract. Little asked Smith for a statement of intent until Giles returned from his vacation. Smith replied that he had no power to sign anything but that he would try to contact Giles. Little asked Smith for a definite date and was given July 19. Smith did not contact Little on July 19. Instead, Jones called Little to his office on that date and told Little he could not do anything.

According to Giles, while he was on vacation he learned by telephone of the details of the conference call conducted by Little, Smith, and Jones, regarding signing a contract, and he told Jones to leave everything alone until he got back. Upon his return on July 26, Giles called Little to his office and informed Little of his awareness of the attempts to obtain a signed contract. Giles testified he told Little, "Nobody can sign that contract but me. . . . Now we've discussed this and we haven't agreed on this contract and I'm not going to sign it. As far as I'm concerned the matter is closed." Giles also told Little that he had been through negotiations and had given all kinds of information to the National Labor Relations Board, adding, "You fellows had an opportunity." He did not tell Little that he was willing to discuss it further. Instead, he said the matter was at an "end, finished," and "closed." Giles did, however, add that they need not worry because the Company was going to look after them and treat them well. Little denied that Giles stated they had failed to reach an agreement.

which the International was involved, and his assertion that, because of more recent involvement with The Washington Post, the International was going broke.

¹² The General Counsel points out that, whether or not the Union's partial acceptance letter misstated the parties' agreement as to the beginning date of the 1-year contract, there is no dispute as to what dates were agreed upon in bargaining, and irregularities of this nature do not justify a refusal to sign. See *Trojan Steel Corporation*, 222 NLRB 478, 483 (1976).

On August 12, 1976, Little sent to Smith by registered mail a drafted contract which the Union requested the Company to sign, with a covering memo identifying the contract as the one which was discussed in their July 13 telephone conversation.

D. Analysis and Conclusions

The General Counsel contends that by its refusal to execute the collective-bargaining agreement since on or about July 13, 1976, Respondent violated Section 8(a)(1) and (5) of the Act. He asserts that the evidence establishes agreement to a new contract containing the terms and conditions of the old contract, with a new 1-year duration period from February 1 to January 31, and encompassing the other changes admittedly agreed upon during January. His position is that, at the time of the last bargaining session, the only open question was the amount of the wage increase for journeymen, as the employer had presented a final offer on this issue, and that offer was never specifically withdrawn by the employer. Therefore, he postulates, it was a continuing offer which remained open for acceptance while the parties disputed over its arbitrability under the expiring contract and which was accepted by the Union. Further, the General Counsel argues that, even assuming that the inquiry by the Union at the last bargaining session concerning the employer's interest in a multiyear contract amounted to a negotiation for a contract of longer duration, the employer's rejection thereof and the Union's reiteration of its earlier commitment to the 1-year agreement effectively eliminated contract duration as a pending issue.¹² Alternatively, the General Counsel urges that even assuming *arguendo* that the Union's actions in seeking arbitration constructively terminated its power of acceptance of Respondent's January 19 final wage offer, Respondent's unilateral implementation, on March 10, 1976, of that wage offer, as well as the other revised contract terms previously agreed upon, unequivocally demonstrated a continuing offer which the Union was free to accept at any time, and on this basis the Union was free to accept the employer's continuing offer after March 10.

It has long been settled law that where the employer and the union have reached agreement as to the terms and conditions of employment covering the represented employees, either party is required by law, upon the request of the other, to sign a written collective-bargaining agreement embodying such understanding.¹³

Respondent asserts that no agreement was reached. It relies on a general statement of contract law that rejection of an offer terminates that offer so that it is no longer available for future acceptance.¹⁴ Respondent contends that here, when the Union did not accept its final wage offer but instead sought to invoke the "interest arbitration"

¹³ See *H. J. Heinz Company v. N.L.R.B.*, 311 U.S. 514 (1941); Sec. 8(d) of the Act; and *Adams Potato Chips, Inc. v. N.L.R.B.*, 430 F.2d 90 (C.A. 6, 1970).

¹⁴ Board precedent is in agreement with this principle. See *Oxmoor Press, a Subsidiary of the Progressive Farmer Company*, 207 NLRB 376 (1973), where the union's failure to withdraw a proposal after the employer had rejected it was found not to constitute a basis for an assertion that the union had agreed to that proposal.

clause, the Union thereby rejected Respondent's final contract offer.¹⁵ Thus, its first line of defense is that the act of seeking an alternative avenue for reaching an agreement other than the bargaining table is tantamount to a rejection of the contract proposal last offered at the bargaining table.

It is well recognized that some areas of general contract law simply do not accommodate themselves to the special mandatory bargaining scheme established by the statute governing labor relations. Many approaches away from the bargaining table are pursued in order to influence the resulting agreement, and resort to such alternative or simultaneous action does not constitute abandonment or rejection of the proposals on the table.¹⁶ Common among these are ratification votes, International approval, legal consultation, strikes, and even impasse.¹⁷ I see nothing in the "interest arbitration" concept which suggests that a submission thereto constitutes a rejection of the proposals being submitted. Accordingly, as the employer at no time withdrew its proposal, I hold that the final wage offer was an open and continuing one.

In this respect, Respondent asserts that under "horn-book" principles, an offer remains open only for a reasonable time and thereafter lapses, and that the Union's "6-month delay" in accepting the contract was plainly unreasonable. Cases cited by Respondent do not require the conclusion it urges.¹⁸ These cases reveal no set pattern of specific time limitation for acceptance of offers, nor do they indicate, other than by a statement of the particular circumstances, what factors are determinative.¹⁹ The passage of time in the instant case must be considered in the context of the steps and procedures the Union was attempting to pursue,²⁰ and the difficulty thereafter encountered in ascertaining and contacting a representative whom the Respondent acknowledged as having the authority to receive the Union's reply. For, just what is reasonable always depends upon surrounding circumstances. This is not a case where an offer or contract proposal was ignored for an unconscionable span of time which could lead the party making the offer to believe the offer was not being considered. Instead, the employer was immediately made aware that the Union would seek to invoke procedures to make this final offer more palatable. When this approach was resisted, the Union advised the

employer of its selection of members of the joint standing committee to resolve their dispute on the applicability of the "interest arbitration" agreement. Thereafter, the employer's final offer became an existing condition of employment through the employer's unilateral action. It could hardly be said in these circumstances that any of the parties viewed it as an offer which was dying on the vine. I conclude that the events herein do not support a finding that the employer's final offer lapsed with the passage of time.

Respondent also suggests that the disagreement of the parties which developed after the final wage offer was made regarding the interpretation of their expiring contract gave rise to another area in which there was no agreement with respect to the new contract and became an open-bargaining issue. I reject this contention. In my view the disagreement of the parties in this respect was one of legal interpretation affecting their respective rights under their expiring contract and not a matter placed in issue on the bargaining table for the new contract. No contract proposals in this regard were presented by the employer to the Union before the Union accepted the employer's offer to renew the old contract with changes thereafter agreed upon, an offer under which the parties operated throughout their negotiations.

The Union advanced the theory that, in substance, the contract which Respondent refused to sign was made up of Respondent's own proposals which the Union had accepted, and for this reason it was not privileged to refuse to sign. I find it unnecessary to scrutinize the evidence covering the give and take of the bargaining to determine the origin of each proposal agreed upon, since the refusal to sign the final agreement is unlawful regardless of motive.²¹ Accordingly, I find that the parties reached agreement when the Union advised of its acceptance of the employer's final wage offer, and that Respondent unlawfully refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act, by refusing, on and after July 13, 1976, to sign the agreement proffered by the Union.²²

¹⁵ Reliance is misplaced on the *The Lane Construction Corporation*, 222 NLRB 1224 (1976), involving contract-bar issues, where there had been an "unqualified rejection" which the union attempted to change after a question concerning representation was raised. Similarly, *T. M. Cobb Company*, 224 NLRB 694, 699 (1976), is distinguishable from the situation here in that the parties had reached an agreement both were obligated to sign, but the union refused and reopened one of the issues. It was found that the employer was thereupon free to withdraw or modify its previous proposal on the ground that the parties are privileged by mutual consent to reopen their negotiations. Nor does *Loggins Meat Co., Inc.*, 206 NLRB 303 (1973), lend support to Respondent's position that the Union here rejected its final offer, for, in that case (at 308), the offer was withdrawn prior to notification of acceptance. That case does cite precedent (at 307) for the principle that "while the technical rules of contracts" do not necessarily control all decisions in labor-management cases, "the normal rules of offer and acceptance, are generally determinative of the existence of a bargaining agreement."

¹⁶ See e.g., *N.L.R.B. v. Insurance Agents' International Union, AFL-CIO*, 361 U.S. 477 (1960).

¹⁷ See e.g., *Idaho Fresh Pak, Inc.*, 215 NLRB 676 (1974).

¹⁸ *John Nickels & Leonard Whitney, d/b/a Big John Food King*, 171 NLRB 1491 (1968), involved an offer of retroactivity in exchange for a

stated condition which was subsequently rejected. The employer's statement immediately thereafter that the offer was still open was found not to survive the fulfillment of the condition by outside forces in the order of time. In *Lucas County Farm Bureau Cooperative Association, Inc.*, 218 NLRB 1150 (1975), the Board held that the employer's last offer, after it was initially rejected, either continued or was effectively revived or reinstated by the employer's subsequent conduct and statements, and was accepted within 2 weeks of the last reinstatement of it. *Associated Printers Inc.*, 225 NLRB 619 (1976), did not turn on the time lapse alone, but on the number of "crucial intervening events" so that reintroduction of matters on which there had been prior tentative agreement was not found to constitute a repudiation or bad faith.

¹⁹ Cf. *Transport Company of Texas*, 175 NLRB 763 (1969).

²⁰ Necessary to those steps were the obtaining of legal advice and counsel regarding the Union's rights as well as the advisability of pursuing these various legal courses and, finally, the presentation of an analysis of the Union's options to the membership for their choice of action.

²¹ *Pioneer Broadcasting Company*, 202 NLRB 1005 (1973).

²² In view of my holding herein, I find it unnecessary to pass upon the General Counsel's alternative contention that the employer's actions in placing its final wage offer into effect made that proposal a continuing offer.

CONCLUSIONS OF LAW

1. Worrell Newspapers, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Bristol Printing and Graphic Communications Local No. 259, International Printing and Graphic Communications Union, is a labor organization within the meaning of Section 2(5) of the Act.
3. All pressroom employees, including those employees involved in opaquing, enlarging, reducing and screening of half tones, cameras used for platemaking, the plate burner, the plate processor and all other functions from the cameras preparatory for the making of offset plates, except stripping, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. At all times material herein, the Union has been, and now is, the exclusive representative of the employees in said unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
5. By refusing on or about July 13, 1976, and at all times thereafter, to execute a collective-bargaining agreement including all the terms and conditions to which the parties had agreed, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), and Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent violated Section 8(a)(5) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act. As I have found that Respondent violated its obligation under the Act, by refusing to execute the agreement reached by the parties, I shall recommend that Respondent be ordered upon request to sign such an agreement, to comply retroactively to its effective date with its terms, and to make whole the employees for losses, if any, which they may have suffered by reason of Respondent's refusal to sign such an agreement, in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

²³ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

ORDER²³

The Respondent, Worrell Newspapers, Inc., Bristol, Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - (a) Refusing to sign a collective-bargaining agreement incorporating terms and conditions of employment agreed upon between it and Bristol Printing and Graphic Communications Local No. 259, International Printing and Graphic Communications Union, or otherwise refusing upon request to bargain collectively with said Union as the exclusive representative of the employees in the appropriate unit described in paragraph 3 in the section of this Decision entitled "Conclusions of Law," above, with respect to rates of pay, wages, hours of work, and other terms and conditions of employment.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to engage in or refrain from engaging in any or all of the activities specified in Section 7 of the Act.
2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:
 - (a) Upon request, sign a collective-bargaining agreement containing the terms and conditions of employment agreed to between Respondent and the Union on July 13, 1976, give retroactive effect to its terms and conditions, and make its employees whole for losses, if any, they may have suffered as a result of its refusal to sign such an agreement, in the manner set forth in the section of this Decision entitled "The Remedy."
 - (b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay, if any, due under the terms of this recommended Order.
 - (c) Post at its Bristol, Virginia, place of business copies of the attached notice marked "Appendix."²⁴ Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.
 - (d) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

²⁴ In the event that 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."