

threats. As for the alleged offer of a wage increase, I have found that it was made to the employees but with the explanation that it had previously been offered to their union representative and with the appeal that they try to convince their union representative to accept it. In the context of the facts and circumstances surrounding the proffered raise, I find that Dove did not thereby violate the Act.³⁶ Finally, concerning Dove's alleged offer to reimburse employees for time lost while on strike, I have accepted Taub's testimony that, in reply to a question by an employee as to his intentions, Taub stated, in effect, that the money involved was of too little consequence to prevent settlement of the matter. This, in my opinion, is not an offer of a benefit that the Act prohibits.

In view of the foregoing, and as I have found that the General Counsel has failed to sustain any of the unfair labor practice allegations of the amended complaint, I shall recommend dismissal of the amended complaint in its entirety.

RECOMMENDATION

Upon the basis of the foregoing findings and conclusions, and upon the entire record in the case, I recommend that the amended complaint issued herein against Israel Taub d/b/a Dove Flocking and Screening Co., and Sanford Embroidery Company, Inc., be dismissed in its entirety.

³⁶ However, I do not base my determination on Dove's asserted justification that there was an impasse in bargaining. It is obvious that there was never any bargaining between Dove and Local 91 in the statutory sense of the terms, at any time.

Wolfer Printing Co., Inc. and Amalgamated Lithographers of America, Local 22, Charging Party and Offset Workers, Printing Pressmen, and Assistants' Union, Local 78, Party of Interest. *Case No. 21-CA-5287. December 27, 1963*

DECISION AND ORDER

On September 20, 1963, Trial Examiner James R. Hemingway issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Party of Interest filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the Party of Interest's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner.¹

¹The Recommended Order is hereby amended by substituting for the first paragraph therein, the following paragraph:

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board, hereby orders that Respondent, Wolfer Printing Co., Inc., its officers, agents, successors, and assigns, shall:

TRIAL EXAMINER'S DECISION

Upon a charge filed on April 4, an amended charge filed on April 8, and a second amended charge filed on May 13, 1963, by Amalgamated Lithographers of America, Local 22, herein called Local 22, against Wolfer Printing Co., Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, herein respectively called General Counsel and Board, caused to be issued on May 21, 1963, a complaint against Respondent, alleging violations of Section 8(a)(1), (2), and (3) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.*, herein called the Act. Offset Workers, Printing Pressmen, and Assistants' Union, Local 78, herein called Local 78, was joined as a Party of Interest.

The complaint, in substance, alleges that on February 2, 1951, Local 22 was certified by the Board as the collective-bargaining representative of all Respondent's offset production employees at the latter's Los Angeles, California, plant, excluding all other employees and supervisors as defined in the Act, and that since its certification, Local 22 had entered into successive collective-bargaining agreements with Respondent, the last of which expired on March 31, 1962; that during all times material herein, Local 78 had been the contractual representative for purposes of collective bargaining of certain employees of Respondent excluding those of the unit described; that on about January 18, 1963, Respondent and Local 78 extended their current collective-bargaining contract to cover the employees in the above-described unit of offset workers; that said agreement with Local 78 contained a clause requiring as a condition of employment that employees become members of Local 78; that at no time on or before the date on which the Respondent and Local 78 extended the collective-bargaining contract to the offset workers had Local 78 represented an uncoerced majority of the employees in the unit of offset workers; and that since about January 18, 1963, Respondent has required employees in the above-described offset unit, as a condition of employment, to become and remain members of, and to pay initiation fees, dues, and other moneys to, Local 78. Pursuant to notice, a hearing was held in Los Angeles, California, on July 11, 1963, before Trial Examiner James R. Hemingway. The Respondent failed to enter an appearance at this hearing, but the General Counsel, the Charging Party, and the Party of Interest all entered appearances. The General Counsel and the Party of Interest, Local 78, adduced evidence. Full opportunity was afforded to the parties to examine and cross-examine witnesses and to introduce other evidence bearing upon the issues.

From my observation of the witnesses, and upon the entire record in the case, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

By a written stipulation, the Respondent, Local 78, and the General Counsel stipulated, and I find, that Respondent is a corporation engaged at its plant in Los Angeles, California, in the business of printing and lithography. During the year immediately preceding July 11, 1963, Respondent, in the course and conduct of its business operations, purchased and received paper products valued in excess of \$50,000 from firms located within the State of California, among which are Ingram Paper Company and Blake, Moffitt & Towne, which firms purchased and received said goods directly from points outside the State of California. It was further stipulated, and I find, that the Respondent is engaged in commerce within the meaning of the Act, and, I find, it will effectuate the policies of the Act to assert jurisdiction.

II. THE LABOR ORGANIZATIONS INVOLVED

Locals 22 and 78 is each a labor organization admitting to membership certain of Respondent's employees.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

1. History of bargaining

At the time of the hearing, it was testified, Local 78 had had 40 years of contract relations with the Respondent. The testimony did not indicate what unit of employees was covered by the contract during this period, but presumably by 1950 the contract of Local 78 covered the offset workers, because in December 1950¹ the Board issued a Decision and Direction of Election containing a footnote stating, "Contrary to the employer's contention, the current contract between the employer and Los Angeles Printing Pressmen and Assistants' Union, No. 78, herein called the Pressmen, covering the employees involved herein as well as other employees, is not a bar to this proceeding because it contains union security provisions not authorized under the Act." In its Decision, the Board found that all offset production employees at the employer's Los Angeles, California, plant, but excluding all other employees and supervisors as defined in the act, constituted an appropriate unit for the purposes of collective bargaining and directed an election to determine whether or not the employees in said unit desired to be represented by Local 22.² As a result of said election, Local 22 was, on February 2, 1951, certified by the Board as the collective-bargaining representative of all the employees in the aforesaid appropriate unit.

From that time until about March 1962, Local 22 had continuous contract relations with the Respondent, with 1- or 2-year contracts covering the employees in the aforesaid unit of offset workers. In August 1961, Local 78 and the Respondent entered into a contract expiring on July 31, 1963, which contained the following paragraph:

It is understood that this contract applies to the pressrooms operated by the employer, and that the jurisdiction of this contract extends over all printing presses under the jurisdiction of this agreement, including, but not limited to gravure, offset and letter press printing presses, and associated devices, including all work in connection with offset plate making, including camera operations, all dark room work, stripping, layout, opaquing, and platemaking. Stripping does not include paste make-up prior to the camera operation. The pressrooms shall be understood to be employing employees who are members of this Union and in which the Union has been formally recognized by the employer as the exclusive collective bargaining representative for such employees. This provision insofar as it pertains to offset work shall not apply in cases where the employer has such work under an existing collective bargaining agreement with another labor organization.

Such language was used because the contract was drafted for areawide use.

2. The plant and operations of employees in the unit

Before November 1961, the Respondent occupied two adjacent buildings connected by a doorway in the wall between them. The letterpress department was located in what is referred to as the main building, the offset department was in the adjoining building, and the bindery was located about three-fourths in the adjoining building and one-fourth in the main building. In the offset department there were a two-unit web offset press and two color presses. About 18 employees worked in the offset department in preparatory work or on the presses. These employees were divided into the customary classifications for offset work—operator, pressmen, joggers, platemakers, strippers, and cameraman.

3. The fire and subsequent events

On November 8, 1961, the Respondent's adjoining building was totally destroyed by fire, and the main building suffered water damage to letterpresses and to the

¹ The date is ascertained by the case number, there being no year date on the Board's Decision and Direction of Election.

² Local 78 chose not to participate

portion of the bindery department which was in the main building. Although extensively damaged, the remains of the web offset press was salvaged along with one of the two color presses. However, no work was done toward rebuilding either press until after the beginning of March 1962. Meanwhile, since the Respondent had certain commitments in offset work, it made arrangements for the use of equipment of other companies and sent its offset employees to such companies to finish work already undertaken. Farmed-out employees remained on the Respondent's payroll.

In March 1962, W. R. Goode, a stockholder in the Respondent,³ bought the Wayside Press. The record does not disclose what contractual arrangements were made between Goode and the Respondent but some of Respondent's employees from the offset department, the letterpress department, and the bindery worked at Wayside for varying lengths of time under the supervision of William Yeager, the Respondent's general manager, who had been in charge of both letterpresses and offset work at Respondent's plant and who was put in charge also at Wayside. At the time of the purchase of the Wayside Press, Local 78 had a contract with Wayside, and this was assumed by the purchaser, Goode. Since Local 78 had a union-shop contract at Wayside, the Respondent's offset employees, who were employed there, apparently without question joined Local 78. Local 78 and Yeager appeared to assume that the contract at Wayside covered employees of Respondent who worked there. The offset pressman, Ben Bernert, who had been placed at Wayside Press to work on the offset press there, joined Local 78, although he retained his membership in Local 22. For a time, the Respondent completely shut down its plant and its work was performed by Wayside Press or by its farmed-out employees.

Following the purchase of Wayside Press by Goode, the Respondent commenced to rebuild and enlarge the offset press salvaged from the fire, which meanwhile had been moved into the Respondent's main building in an area where there had been letterpresses. By July 1962, the Respondent was making test runs on the offset press which, in rebuilding, had been enlarged from a two-unit to a three-unit press. Until about September 1962, the Respondent continued to do offset work at Wayside, but in that month the three-unit web press at the Respondent's building was ready to be tried out in production. Yeager shut down operations at Wayside Press and started operations at Respondent's plant. For a time Respondent did not have enough offset work to produce constantly and the web press continued to need adjustments. Yeager estimated that between September 1962 and January 18, 1963, the web press was in productive operation about 30 percent of the time but gradually increasing. In December 1962, the Respondent hired an additional pressman, a member of Local 78. The Respondent apparently had lost its former cameraman, but it did not hire a new one until after January 18, 1963.

B. Assistance to Local 78; discrimination

On January 18, 1963, the Respondent had in the offset department five non-supervisory employees: Ben Bernert, the pressman who had gone from the Respondent to Wayside Press; Ray Maxwell, the pressman who had been hired in December 1962; Frank Borja, a former janitor and maintenance man who had helped repair the offset press and who was being taught the job of joggling (taking the papers off the press after they were printed and stacking them); Nick Chianello, a stripper and platemaker; and Otto Packard, another jogger trainee. When the press was not in production, the joggers assisted the pressmen. In this way they prepared themselves for advancement to the job of pressman.

As of January 18, 1963, Respondent and Local 78 signed an addendum to their 1961 contract, extending coverage thereof to the rebuilt and enlarged offset press and fixing the rates of various offset employees.⁴ This additional agreement provided for a crew of five men, including one operator, one first pressman, one pressman, and two joggers or jogger trainees. Nothing was said in this addendum about employees who did preparatory work for the offset press, including such jobs as cameraman, stripper, and plater. Nevertheless, about this time Yeager told Chianello, the stripper-platemaker, that he was planning to sign a contract with Local 78 and that Chianello should join that union in order to keep his job.⁵ On January 18, 1963, Ray Maxwell, the newly hired pressman, was a member of Local

³ Members of the Goode family own all the stock in Respondent

⁴ In its brief, Local 78 says that the agreement was signed on January 1, but it is dated January 18.

⁵ In the early part of 1962 Yeager had told Chianello that he planned to reopen as an open shop.

78; Ben Bernert, the pressman who had joined Local 78 while he worked at Wayside Press, was a member of both Local 78 and Local 22; Chianello was a member of Local 22 only; while Packard and Borja were members of no union. Subsequently, sometime in the first half of February, Manager Yeager brought Frank Calderone, president and business agent of Local 78, to the room where the preparatory work for the offset press was performed and introduced him to Chianello and Kernes, the recently hired cameraman. Yeager told them that Calderone had come to sign up the shop and that they should join the union (Local 78). The evidence indicates that, as a result, Borja and Packard joined Local 78 about March 4, 1963. Chianello also joined Local 78 in March, although he retained his membership in Local 22.⁶

C. Arguments and conclusions

Local 78 does not argue that a unit limited to lithographic or offset workers is not an appropriate one, but rather argues that a comprehensive unit of offset workers and letterpressmen is equally appropriate and that, when the three-unit offset press was installed in the letterpress department, this constituted a new piece of machinery of a type not covered by the prior contract of Local 22, whereas provision was made therefor by its own collective-bargaining contract, which provided for recognition of all offset pressmen and preparatory workers, among others, and for an agreement on staffing of new equipment or machinery. Such argument, in the first place, seems to presume that the unit was limited to machines rather than to employees. Local 78 is thinking in terms of its jurisdictional claims rather than in terms of appropriate units. It is not contended by Local 78 that the employees working on Respondent's reconstituted and enlarged web press are not "offset production employees at the employer's Los Angeles, California plant," the unit found appropriate by the Board. The addition of an extra unit to the web offset press may have affected the responsibilities of the offset pressman, but it did not change the essential character of the work of any of the offset employees. I find, therefore, that the changes made in the web press did not affect the scope of the appropriate unit. Furthermore, Local 78 was obviously not limiting its claim of contract coverage to those employees who were working on the web press itself, for it also required the employees doing preparatory work—the stripper, plater, and cameraman—to join Local 78 under the union-shop clause in its contract. Changes in the web press in no way changed the nature of the work of such preparatory employees. The fact that the web press was moved to the main building likewise provides no support for the argument of Local 78.⁷ The defined unit was the offset production workers at Respondent's Los Angeles plant. The web press was in that plant, albeit in a different room after it was rebuilt, but there was no requirement that it be in a separate location. The change in the location of the web press was not to facilitate an interchange of offset and letterpress employees; it was made solely because that part of the Respondent's plant where the web press had been located was destroyed by fire and had never been rebuilt. Offset employees and letterpress employees still were not interchanged to any extent, regardless of the room they were in. Consequently, I conclude and find that the changes in the size of the web press and its location did not operate to affect the Board's determination of the appropriate unit.

Local 78 argues that, after the fire, the only offset work done was done at Wayside Press, which was under contract to Local 78 and that, when Respondent resumed operations in September 1962, it was, in effect, transferring the Wayside Press operations to its own building and that the contract between Local 78 and Respondent was extended to cover the offset operations as by accretion. This is a specious argument. Respondent, itself, had no ownership interest in Wayside and, so far as the evidence shows, never was a party of the Wayside Press agreement. Only a stockholder in Respondent had such an interest in Wayside. Although Local 78 apparently succeeded in requiring Respondent's employee Ben Bernert to Join Local 78 under a claim that its contract at Wayside required it, I am not at all convinced that Local 78 had a legal right to do so, for Bernert never became an employee of Wayside Press; he continued to be an employee of Respondent, merely using the facilities at Wayside, which then was doing work for Respondent. When Manager Yeager closed down the operations at Wayside, the offset press at the latter plant

⁶ The General Counsel did not offer evidence concerning Kernes' membership, although it may be presumed that he either was already a member of Local 78 or that he joined pursuant to the requirements of the Respondent's contract with Local 78.

⁷ See *Standard Printing & Lithographing Co.*, 114 NLRB 1439.

was not moved to Respondent's plant. Bernert merely returned to the Respondent's plant to continue his work for Respondent as in the past. I find no basis for a finding that Local 78 acquired rights over the offset workers by accretion.

Of the offset workers at Respondent's plant in January 1963, Bernert was the only one who had been located physically at Wayside. Chianello, a stripper at Respondent's plant before the fire, was placed by Respondent for a short while at a plant of another employer (California Inking Company) where Respondent was using facilities. Then he was unemployed until about April 1962 when he returned to Respondent. Chianello had been a member of Local 22 and did not join Local 78 until required to do so in March 1963 pursuant to the addendum signed by Respondent and Local 78. Before the fire, Borja had been a janitor, repairman, and maintenance man at Respondent's plant. When Yeager began to rebuild the fire-damaged web press in June 1962, he used Borja to help on the mechanical work. Then, as the press began operating, Yeager used Borja as a jogger. Borja had not been a member of any union before he was required, in March 1963, to join Local 78. Until the Respondent hired a new offset pressman (a member of Local 78) late in 1962, Bernert was the only member of Local 78 among the offset workers, and he had retained his membership in Local 22 also. The only other offset worker at Respondent's plant in January 1963 was Packard, a jogger trainee who was not a member of either Local 22 or 78. Local 78 makes no claim to representation of the offset workers by virtue of any designation or membership of the offset workers.

The nearest thing to support for the claim of Local 78 stems from the fact that its contract, extant from August 1, 1961, to July 31, 1963, and, by another addendum, extended to March 1, 1964, expressly covered offset work except "where the employer has such work under an existing collective bargaining agreement with another labor organization." Inasmuch as the contract of Local 22 expired in March 1962 and was not renewed, the contract of Local 78, in language at least, was broad enough to cover offset workers. Local 78 argues that a unit embracing both letterpress and offset workers is an appropriate one and that, therefore, in the absence of a contract with Local 22, its contract extended to cover the Respondent's offset workers. Perhaps such a unit could better be described as not necessarily inappropriate. A unit embracing both types of employees—offset and letterpress—has been found appropriate in some cases, but in the absence of certain special circumstances,⁸ the Board more often finds a separate unit of offset production employees to be appropriate,⁹ because this gives the offset workers, whose work is essentially different from, and separate from, letterpress production, an opportunity to determine for themselves whether or not they wish to be separately represented for the purpose of collective bargaining. And this is what the Board did when the issue arose at the Respondent's plant in 1951.

But the language in the contract of Local 78 describing the employees covered thereby cannot be the basis for a claim to extension of its union-shop contract to Respondent's offset workers. At the time the contract was entered into, that language was inapplicable because Respondent had a contract with Local 22 covering its offset workers.¹⁰ So far as concerns the contract of Local 78 with Respondent, the clause describing the bargaining unit is to be read as though the language relating to coverage of offset workers had been deleted completely. It does not just remain dormant until the end of an existing contract with another union and then immediately attach to the offset unit. If this were possible here, when Local 22 was representing the offset workers, it would always have had to renew its contract before the expiration of its old one lest the union-security contract of Local 78 would absorb the offset workers while Local 22 was negotiating a new contract. This would be manifestly unworkable. In any event, however, it is the function of the Board to ascertain the appropriate unit, and by the language used in their contracts, competing unions cannot usurp the Board's functions.¹¹

⁸ See *Pacific Press, Inc.*, 66 NLRB 458; *Weyerhaeuser Company*, 142 NLRB 1169.

⁹ E.g., *Danner Press of Canton, Inc.*, 91 NLRB 237; *Desaulniers and Company*, 115 NLRB 1025; *Printing Industry of Delaware*, 131 NLRB 1100; *Allen, Lane & Scott, et al.*, 137 NLRB 223; *Greater Syracuse Printing Employers' Association*, 140 NLRB 217; *The Meredith Publishing Company and The Meredith Printing Company*, 140 NLRB 509.

¹⁰ The language of the contract speaks as of the time the contract is made. See *The Plimpton Press*, 140 NLRB 975.

¹¹ *Albert Love Enterprises, et al., d/b/a Foote & Davies*, 66 NLRB 416; *Illinois Malleable Iron Company and Appleton Electric Company*, 120 NLRB 451. Although the Seventh Circuit Court of Appeals refused to enforce the Board's Order in the latter case (296 F. 2d 202), the Board's decision in that case expresses the doctrine of the Board everywhere except in the Seventh Circuit.

Local 78 claims that it was justified in adding the offset workers to its contract coverage because Local 22 had not renewed its contracts and had not been in communication with Respondent between March 1962 (when its contract expired) and the time in January 1963 when Local 78 and Respondent signed the addendum covering the offset workers. Although such fact, if true, might support an argument that the 12-year old certification of Local 22 had lost its force and that the employees in the unit might be noncoercively signed up by Local 78, it does not support an argument for absorption of those employees into a larger unit. Although Local 22 may no longer be the certified representative, that does not mean that it has no interest in representing the offset workers. It must be remembered that, at the time of expiration of the contract of Local 22 in March 1962, the Respondent's offset department was, as a consequence of the fire, not functioning. Even when Respondent began doing some production work on the offset press in September 1962, the department was still not fully reconstituted. To get back into production on a scale comparable to its production before the fire, Respondent still needed additional employees. It does not appear that Respondent was fully staffed before it signed the addendum agreement with Local 78, extending the latter's contract to offset workers. The second pressman was not hired until December 1962 and the cameraman was not hired until after January 18, 1963. This could explain the delay in Local 22's showing of interest. The record does not reveal the exact date when Local 22 again approached Respondent relative to the offset workers. Yeager could not remember whether it was in January or March 1963, but in view of all the circumstances, I am unable to conclude that the silence of Local 22 in the interim constituted an abandonment of interest in representing the Respondent's offset workers. Although Local 22 had lost its majority, it also was free to sign up new members among the offset workers and to claim recognition if it got a majority or to petition for an election. The appropriate time for it to petition for an election would have been when the Respondent had its expected normal complement of offset workers.

However, even if it be conceded that the Board might have deemed the Respondent's staffing sufficiently progressed to entertain a petition for an election before January 18, 1963, this does not mean that Respondent and Local 78 were free to usurp the Board's functions and to decide that it was time to change the appropriate unit. The General Counsel does not argue that Local 78 was, in January 1963, not, itself, free to solicit membership of the offset workers and to petition for an election or, if it signed up a majority of the offset workers, to claim recognition on their behalf for that unit, but he does claim that it was not free to enlarge the unit found by the Board to be appropriate merging it into one represented by itself, and, by force thereof, extending its existing union-shop contract for letterpressmen to the offset workers, requiring them to become members of Local 78 with no opportunity to express a choice.¹² With this contention I concur, and in view of the long history of collective bargaining between Respondent and Local 22 for contracts covering the offset workers, a history which the Board customarily considers in its determination of the appropriate unit.¹³ Respondent and Local 78, both, had cause to believe that the Board would not see fit to disturb its finding as to the appropriate unit, at least not without giving the offset employees a chance to vote as to whether or not they wished to be represented by Local 78.¹⁴ But whether or not Respondent had reason to believe that the Board would so decide, I find that, so long as the appropriate unit had not been altered, Respondent was not justified in extending Local 78's contract to the offset workers. By doing so without giving its offset workers an opportunity to choose whether or not they wished to join Local 78, Respondent lent support and assistance to Local 78 and interfered with, restrained, and coerced its offset workers in their exercise of rights guaranteed in the Act in violation of Section 8(a)(2) and (1) thereof.¹⁵ Such conduct would constitute a violation of the Act even if the Local 78 contract, extended to the offset employees, had contained no requirement of membership therein as a condition of employment, but extension of the union shop clause by Respondent to a unit of employees a majority of whom had not designated Local 78 as their collective-bargaining representative violated Section 8(a)(3) of the Act as well as Section 8(a)(1) and (2) thereof.¹⁶

¹² See *Albert Love Enterprises, et al., d/b/a Foote & Davies*, 66 NLRB 416; *The Plumpton Press*, 140 NLRB 975.

¹³ *T O Metcalf Company*, 139 NLRB 838; *Weyerhaeuser Company*, 142 NLRB 1169.

¹⁴ See *The Zia Company*, 108 NLRB 1134.

¹⁵ *Atlantic Freight Lines, Incorporated*, 117 NLRB 464.

¹⁶ *Atlantic Freight Lines, Incorporated*, 117 NLRB 464; *The Item Company*, 113 NLRB 67.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Respondent set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since I have found that Respondent has engaged in certain unfair labor practices, I shall recommend an order that it cease and desist therefrom and take certain affirmative action deemed necessary to effectuate the policies of the Act.

In addition to requiring that Respondent cease and desist from recognizing Local 78 as the collective-bargaining representative of the offset workers, I shall recommend an order that Respondent cease and desist from giving effect to its contract with Local 78 insofar as it has been extended to employees in the unit of lithographic or offset employees. This, however, will not require that Respondent terminate or change any wages, hours, or working conditions now in effect. Since Respondent, by its acts of entering into a union-security contract with Local 78, and by the actions of Yeager, has coerced its offset employees into joining Local 78 as a condition of continued employment and has thereby discriminated in regard to their hire and tenure of employment, I find that, to effectuate the policies of the Act and to establish an atmosphere in which the offset employees may freely exercise the right to select or reject a bargaining representative, the Respondent should return conditions as nearly as possible to those which prevailed before the signing of the January 18, 1963, addendum to its contract with Local 78. I shall therefore recommend an order that Respondent notify all offset workers in the unit that they need not be or become members of Local 78 as a condition of employment and that Respondent reimburse all employees in the aforesaid appropriate unit who, on January 18, 1963, were in its employ or were thereafter hired, for all sums of money paid by them to Local 78 as a consequence of having, by virtue of said agreement, thereafter to join Local 78, including all initiation fees, dues, assessments, or other exactions, together with interest on such sums at the rate of 6 percent per annum computed on a quarterly basis.¹⁷

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Locals 22 and 78 are labor organizations within the meaning of Section 2(5) of the Act.
3. A unit composed of offset production employees at Respondent's plant, but excluding all other employees and supervisors, as defined in the Act, constitute, and at all times material hereto have constituted, a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.
4. By assisting and lending support to Local 78 by signing and thereafter maintaining a union-shop agreement with Local 78, covering employees in the aforesaid appropriate unit at a time when Local 78 had not been designated as collective-bargaining agent by a majority of the employees in said unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (2) of the Act.
5. By requiring employees in said appropriate unit to join Local 78 and maintain membership therein, as a condition of employment, pursuant to such unlawful agreement, Respondent has discriminated in regard to the hire and tenure of employment of such employees within the meaning of Section 8(a)(3) of the Act.
6. By the conduct set forth in paragraphs 4 and 5, above, and by telling employees in said unit that they would be obliged to become and remain members of Local 78 as a condition of employment, Respondent has engaged in unfair labor practices within the meaning of Section 8(a) (1) of the Act.
7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

¹⁷ *Revere Copper and Brass, Inc.*, 138 NLRB 1377; *Gem International, Inc., and its affiliates, et al.*, 137 NLRB 1343; *Bernhardt Bros. Tugboat Service, Inc.*, 142 NLRB 851; *Koehler's Wholesale Restaurant Supply*, 139 NLRB 945; *Quality Coal Corporation, et al.*, 139 NLRB 492. Not included will be those who were members of Local 78 on January 18, 1963, or when thereafter hired.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, I recommend that the National Labor Relations Board order that the Respondent, Wolfer Printing Co., Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Recognizing Local 78 as the collective-bargaining representative of the employees in the aforesaid appropriate unit unless and until Local 78 shall have been certified by the Board as the collective-bargaining representative of such employees.

(b) Giving effect to its agreement, dated January 18, 1963, with Local 78, or to any other agreement thereafter made under which Local 78 is recognized as the exclusive collective-bargaining agent for said employees, unless and until Local 78 shall have been certified by the Board as the exclusive collective-bargaining representative of such employees.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Rescind its agreement with Local 78, dated January 18, 1963, together with any other agreements reached since that date purporting to cover the offset production employees at its Los Angeles, California, plant.

(b) Notify all offset production workers that they need not join or maintain membership in Local 78 pursuant to the aforesaid agreement as a condition of employment.

(c) Reimburse all offset production employees at its Los Angeles, California, plant, not already members of Local 78 on January 18, 1963, or not members thereof when thereafter hired, for all moneys paid by said employees as an incident to becoming or remaining members in Local 78 in the manner set forth in the section above entitled "The Remedy."

(d) Post at its Los Angeles, California, plant, copies of the attached notice marked "Appendix."¹⁸ Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after having been duly signed, 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 assure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the aforesaid Regional Director, in writing, within 20 days from the date of service of this Trial Examiner's Decision, what steps the Respondent has taken to comply herewith.¹⁹

It is recommended that unless, within said 20-day period, Respondent shall have notified said Regional Director, in writing, that it will comply with the foregoing Recommended Order, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

¹⁸ In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "A Decision and Order"

¹⁹ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT recognize Offset Workers, Printing Pressmen, and Assistants' Union, Local 78, as the exclusive collective-bargaining representatives of the offset production employees at this plant unless and until it has been certified by the National Labor Relations Board.

WE WILL NOT give effect to our agreement of January 18, 1963, with said Local 78, pertaining to the offset production employees, and we will not require that said employees be or become members of Local 78 as a condition of employment pursuant to the provisions of the aforesaid agreement with Local 78.

WE WILL reimburse all offset production employees who were not already members of Local 78 by January 18, 1963, or were not members thereof when thereafter hired, for all moneys paid by them to Local 78 as initiation fees, dues, assessments, or other exactions required to be paid by them in order to become and remain members of Local 78 pursuant to our aforesaid agreement with Local 78.

All our offset production employees are free to join or to refrain from joining Local 78 or Amalgamated Lithographers of America, Local 22, or any other labor organization of their choice, except to the extent that such right may be affected by an agreement, made as authorized in Section 8(a)(3) of the Act, which requires membership in a labor organization as a condition of employment.

WOLFER PRINTING CO., INC.,
Employer.

Dated----- By-----
(Representative) (Title)

This notice must remain posted for 60 days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 849 South Broadway, Los Angeles, California, Telephone No. 688-5204, if they have any questions concerning this notice or compliance with its provisions.

Barney Wilkerson Construction Company and Local Union No. 460, United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the United States & Canada, AFL-CIO; Painters Local Union No. 1793, Brotherhood of Painters, Decorators & Paperhangers of America, AFL-CIO; District Council of Painters No. 36, Brotherhood of Painters, Decorators & Paperhangers of America, AFL-CIO; and Local 2224, United Brotherhood of Carpenters & Joiners of America and District 50, United Mine Workers of America, Party to the Contract. Case No. 21-CA-4835. December 27, 1963

DECISION AND ORDER

On April 30, 1963, Trial Examiner E. Don Wilson issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and briefs in support thereof.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Fanning and Brown].