Arland Printing Co., Inc. *and* **New York Paper Cutters' and Bookbinders' Union No. 119, International Brotherhood of Bookbinders, AFL-CIO**

Arland Printing Co., Inc. *and* **Ann Szostak.** Cases 29-CA-1638 and 29-CA-1639

March 4, 1970

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS BROWN AND JENKINS

On November 28, 1969, Trial Examiner George Turitz issued his Decision in the above-entitled consolidated proceeding, finding that Respondent had engaged 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. He also found that Respondent had not engaged in other unfair labor practices alleged in the consolidated complaint. The General Counsel filed timely exceptions to the Trial Examiner's Decision with a brief in support thereof.

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

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 Decision, the exceptions and the brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, as modified herein.

The General Counsel's only exceptions are to the Trial Examiner's failure to find independent violations of Section 8(a)(1). The Trial Examiner found that, immediately prior to the representation election of November 1, 1968, Respondent's secretary-treasurer, Eisenberg, approached unit employee Boar and stated that if the Union came in, Boar would be the first to go. Eisenberg asked Boar why he listened to the girls and said that eventually he would get rid of them. Eisenberg said that if it were a question of money, Boar should have come to him. We do not agree with the Trial Examiner that these remarks were not violative of the Act.

The Trial Examiner concluded that Eisenberg's remark to Boar that he would be the first to go was a prediction of Union action rather than action by the Respondent and not coercive, in view of the Union's policy of classifying various jobs as male or female. However, while the Union may or may not have such a policy, a matter not established by the evidence, there is nothing to indicate that such a policy would have affected Boar's employment or that it was mentioned at that time. Eisenberg himself at no time offered this explanation as a defense. Eisenberg's question about why Boar listened to the girls constitutes unlawful interrogation concerning Boar's Union sentiments. This is particularly so in view of the Trial Examiner's analysis of Eisenberg's remark as implying that he, Eisenberg, considered the women responsible for bringing in the Union. In this context, the statement of intention to "get rid of" the girls can only be construed as a threat to eliminate them because of their Union activities and a message that a similar fate may befall other Union adherents. Finally, Eisenberg's remark that if money were a problem, Boar should have seen him, can only be viewed, in the totality of the conversation, as an unlawful inducement to refrain from Union activities by inviting Boar to deal directly with Respondent and by promise of benefit that could be derived from such direct contact. The Board has held that such a promise could lead the employee reasonably to understand that such benefits would be achieved without the intervention of a bargaining representative and therefore that the selection of such a representative was an unnecessary expense and futile.[1]

Accordingly, we hold that Respondent violated Section 8(a)(1) of the Act when it threatened Boar with possible discharge, coercively interrogated him about his Union beliefs, and made promises of benefits, all to discourage his Union activities.

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 Trial Examiner, and hereby orders that Respondent, Arland Printing Co., Inc., New Hyde Park, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, with the following modifications:

1. Delete the present paragraph 1(c) and insert the following paragraphs 1(c) and 1(d):

"(c) Discouraging membership in New York Paper Cutters' and Bookbinders' Union No. 119, International Brotherhood of Bookbinders, AFL-CIO, or any other labor organization, by threatening employees with loss of employment or wages or other reprisals for engaging in protected activity, by coercively interrogating employees concerning their union activities, or by promising financial and other benefits to employees if they refrain from supporting the union.

"(d) In any like or related manner interfering with, restraining, or coercing its employees in the

[1] Cf *Viking of Minneapolis, Division of Telex Corporation*, 171 NLRB No 7, *Flomatic Corporation*, 147 NLRB 1304, 1305, enfd in relevant part 347 F 2d 74 (C.A. 2)

exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959."

2. In the notice to the Trial Examiner's Recommended Order insert the following paragraphs after the first and second indented paragraph:

WE WILL NOT discourage you from becoming members of New York Paper Cutters' and Bookbinders' Union No. 119, International Brotherhood of Bookbinders, AFL-CIO, or any other labor organization, by questioning you coercively concerning union activities, threatening you with discharge or other reprisals for such activities, or offering financial or other benefits to you to induce you to refrain from union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed in Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

IT IS HEREBY FURTHER ORDERED that the complaint herein be, and it hereby is, dismissed insofar as it alleges violations of the Act not found herein.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

GEORGE TURITZ, Trial Examiner: Upon a charge filed by New York Paper Cutters' and Bookbinders' Union No. 119, International Brotherhood of Bookbinders, AFL-CIO ("the Union"), in Case 29-CA-1638 on April 17, 1969, and served on April 18, 1969, upon Arland Printing Co., Inc. ("Respondent" and, at times, "the Company"), and upon a charge filed on April 21, 1969, in Case 29-CA-1639 by Ann Szostak ("Szostak") and served that day upon Respondent, the General Counsel of the National Labor Relations Board ("the Board"), through the Regional Director for Region 29, on June 30, 1969, issued an Order Consolidating Cases, Complaint and Notice of Hearing against Respondent. Respondent filed its answer to the Complaint in which it denied all allegations of unfair labor practices. A hearing was held at Brooklyn, New York, on September 2 and 3, 1969, before the Trial Examiner named above. The General Counsel and the Union were represented by their respective counsel at the hearing; Respondent was represented by its secretary-treasurer.

Upon the entire record and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, Arland Printing Co , Inc., is a New York corporation having its principal office and place of business in the City of New Hyde Park, State of New York, where it is engaged in the business of commercial job printing and related services. In the course of its operations at its New Hyde Park plant Respondent annually purchases and causes to be transported and delivered to said plant in interstate commerce directly from States of the United States other than the State of New York, goods and materials valued at in excess of $50,000. It is found that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the National Labor Relations Act, as amended ("the Act").

II. THE LABOR ORGANIZATION INVOLVED

New York Paper Cutters' and Bookbinders' Union No. 119, International Brotherhood of Bookbinders, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act

III. THE UNFAIR LABOR PRACTICES

The principal issues litigated at the hearing were whether Respondent terminated Szostak's employment discriminatorily and whether it violated Section 8(a)(5) of the Act by refusing to execute a certain contract which the Union presented to it and by negotiating in bad faith and with no intention to enter into any final or binding collective-bargaining agreement.

A. *Refusal to Bargain*

Respondent is engaged primarily in printing; as an adjunct to this it also performs bookbinding. It is owned and managed by Irving Eisenberg and Jack Mogel. Respondent has had collective-bargaining agreements with a local of International Typographical Union, AFL-CIO, for some 6 years, and with Local 1 of Amalgamated Lithographers of America for about 2 years. On November 12, 1968, following an election held on November 1, the Regional Director certified the Bookbinders Union as the exclusive collective-bargaining representative of the employees in the following unit:

All full time and regular part time bindery employees employed by Respondent at its New Hyde Park, New York, plant, exclusive of all other employees, guards and all supervisors as defined in the Act

For some years the Union has had contractual relations with Printers League Section, Printing Industries of Metropolitan New York, Inc., ("the Printers' League"), through which many employers in the industry bargain jointly. Respondent was not a member of the Printers League and did not authorize it to bargain on its behalf

The parties met on seven occasions on or about the following dates:

1968

1. November 21
2. End of November
3. December 5
4. December 20

1969

5 First week of January
6. Early February[1]
7. April 29

All discussions on behalf of Respondent were by Eisenberg, except that on April 29 Mogel also participated. The Union was represented by Arthur Grossman, a vice president and organizer, at meetings numbers 1, 2, 5, and 6. It was represented by Joseph Hellman, its president, at meetings numbers 3, 4 and 7. The bulk of the negotiating for the Union was done by Grossman; as more fully described below, the December 5 and April 29 meetings were not really negotiating sessions. However, during several of the sessions where the Union was represented by Grossman there were telephone conversations between Eisenberg and Hellman as well as between Grossman and Hellman.

The parties agree that at the first meeting, held on November 21, Grossman presented to Eisenberg the following documents:

1. The 1966-1968 Contract for Book and Job Offices between the Union and the Printers League ("the 1966 League contract")

2. A letter dated August 1968 from the Union "to the employing Printers, Bookbinders, Lithographers and Finishers of the Greater New York Metropolitan area employing members of New York Papercutters and Bookbinders Local Union 119," setting forth in full changes in the 1966 League contract which had been agreed upon between the Union and the Printers League.

3. A letter dated September 1968 from the Union to the same employers correcting some of the wage scales in the August 1968 letter.

The parties also agree that at the early January meeting Grossman delivered to Eisenberg the Union's 1968-1971 contract with the Printers League ("the 1968 League contract"). Grossman testified that at the November 21 meeting he also handed Eisenberg a printed form of agreement intended for non-Printers League employers ("the non-League contract"). Eisenberg denied this and testified that Grossman told him on November 21 that he would mail another document to him which he had neglected to bring, but that he had never done so. Neither Grossman nor Heller testified that the non-League contract or any of its provisions was mentioned in any of the discussions prior to April 29, the date the negotiations broke off; they testified to frequent mention of the League contracts The Trial Examiner found Eisenberg's denial convincing and finds that the non-League contract was not delivered to Respondent.

Except with respect to the seventh meeting, on April 29, there is no material dispute as to the nature of the negotiations with respect to the monetary items. At the first few meetings Eisenberg repeatedly expressed fear that Respondent could not afford the cost of the requested contract, and Grossman and Hellman tried to reassure him that concessions would be made so that Respondent would have time to make the necessary adjustments. At the fourth meeting Hellman went into specific detail as to "major concessions" which the Union would make and Eisenberg took notes At the next meeting, in early January, the Union made further concessions. It was at this meeting that Respondent received the 1968 League contract, and Grossman testified, ". . I did meet with Mr. Eisenberg the first part of January and that is where Mr. Eisenberg and I really accomplished something about renegotiating the contract . . . " Eisenberg requested time to study the costs involved, and the parties next met in early February At that time the Union agreed to a 6-month delay in the institution of payments to welfare and other funds, and final agreement was thus reached on all monetary items Grossman and Eisenberg shook hands and Eisenberg acceded to the former's suggestion that the Union's attorney proceed to draw up a contract. This was done and Respondent received the proposed contract, with a request for its execution, at the beginning of March.

From time to time in March and in early April Hellman telephoned Eisenberg to ask when he would execute and return the contract. After pleading first that he needed time to study the document, then that his lawyer was studying it, then that he or his partner was going on vacation, Eisenberg, in early April, said that he had finally got round to studying the contract and found that he needed some clarification. He made several appointments to meet Hellman at the union office but broke each, without giving notice. On April 17 the Union filed its charge, but Hellman kept on telephoning Eisenberg and finally an appointment was made for April 29 at the company office.

At the April 29 meeting Eisenberg protested the expense which resulted from the provision making the contract retroactive to January 1 and said that he did not realize it would cost so much. Hellman testified that Eisenberg demanded that the retroactivity provision be renegotiated. Eisenberg admitted that he constantly complained about the cost of the contract but explained that he considered such complaints "part of my negotiations"; and he categorically denied saying that he wanted or requested the renegotiation or revision of the wage provisions.

Mogel, Respondent's other owner-officer, came in and protested against the plant-visitation provision of the contract He said that the employees could notify the Union of any contract violations and the Union could then telephone for an appointment. Eisenberg made the same protest and offered to accept a visitation provision which would require union officials to come to the office first. He testified that Respondent had certain expensive printing equipment, not used in unit work, which it did not want outsiders to see in operation, and that the Union's proposed contract would have justified its officials in entering the plant even during the night shift, when he and Mogel were not present. Hellman said, "You knew that whatever was not discussed would be as per this agreement." Eisenberg said that he was not a member of the Printers League and that he objected to the League contract being part of his contract. Hellman insisted that the contract be executed and accused Eisenberg of stalling when Eisenberg refused. Hellman said that the Union would have to proceed with its charge and left "in a huff." The parties did not thereafter meet.

While the parties are in agreement as to the extent of their agreement on monetary items, and that their discussions started from the provisions of the League contracts, they are in sharp disagreement as to the extent to which the nonmonetary provisions of the 1968 League contract were agreed to.

[1]Hellman, the Union's president, testified that there was another meeting about 1 week after the sixth meeting but Grossman, who supposedly represented the Union there, testified to only one meeting in February

The 1968 League contract was a printed booklet, 3 1/2 x 7 inches, containing approximately 125 pages and divided into a number of separate sections. The first, apparently a basic contract, contained 38 pages plus 21 pages of wage scales; the second, entitled "Arbitration Agreement," contained 4 pages; the third contained 18 pages, and set forth the wage scales for what was denominated "the 119A Division"; the fourth contained 7 pages and set forth the wage scales for the Finishing Division; the fifth contained 9 pages and set forth the wage scales for the Manifold Division. Each of the five foregoing sections was separately executed, some, but not all, by the same signatories. The sixth section in the booklet consisted of a 29-page vacation-credit schedule which was not separately executed.

The testimony of both parties was to the effect that there was agreement that parts of the League contract were to be in Respondent's contract, but the record is devoid of convincing evidence as to exactly what was said in that connection. Eisenberg testified positively that it was agreed that all references to the Printers League were to be eliminated, that the agreement on which he and Grossman shook hands at the February meeting consisted of all the items specifically negotiated plus the provisions in the League contract booklet with all items pertaining to the Printers League omitted. He commented, "Ninety-nine percent does not pertain to the Printers League section." While 99 percent was a substantial exaggeration, an examination of the booklet discloses that the great bulk of the provisions, and especially those dealing with working conditions in the narrow sense and wages, make no reference to the Printers League. Hellman and Grossman, on the other hand, testified to at least three negotiating sessions, namely the second, the fourth, and the fifth or sixth, at which it was explicitly stated that except for concessions made, the League contract was to govern. As to the first of these occasions Grossman testified:

> . . . I said to Mr. Eisenberg, "All of our other conditions in our regular contract are standard throughout the industry and these would have to be accepted . . . He says he was primarily interested in whatever it was going to cost the company for all of the different people and wages and conditions. . . . Nothing else was said at this meeting. . . .

With respect to the fifth or sixth meeting Grossman testified

> Q. Was there anything said about the terms and conditions which you did not discuss?
>
> A. We did say that all of the terms and conditions we did not discuss would be part and parcel of the contract.
>
> Q. Who said that?
>
> A. Both Mr. Eisenberg and myself.

Hellman testified as follows, referring to the meeting of December 20:

> The words that were said, in many areas, especially in the monetary areas, we could offer him relief in the initial contract with the company. All other provisions were as per contract. He said he understood because he has had a chance to study it, but he was still very much concerned that he could not afford the contract which we had submitted, and he was also afraid, he told me, that regardless what concessions we gave them, he would still not be able to afford any contract.

Hellman also testified:

> At our December 20 meeting I referred to the material he had and that if I specifically stated at that meeting that he would get the non-League agreement spelled out, or the . . . [Printers] League, specifically, I don't remember telling him. I do remember telling him at the December 20 meeting that anything that we could not make concessions on would be as per the contract that he had, that we had submitted to him.

Neither Grossman nor Hellman testified that there was any discussion whatsoever of the terms of the nonmonetary provisions; the only claim was that they were accepted by Eisenberg without discussion.

Although some sort of agreement was reached that provisions of the 1968 League contract were to be incorporated in Respondent's contract, it is found that the General Counsel has failed to prove by a preponderance of the credible evidence that the parties had a meeting of the minds as to what was to be so incorporated.

While the foregoing finding is sufficient to dispose of the allegation that Respondent refused to execute a contract agreed upon, it should be pointed out that the contract submitted by the Union which the Respondent refused to execute also included provisions neither mentioned in the negotiations nor included in the 1968 League contract.[2] It eliminated the provisions of the League contract for settlement of disputes and arbitration and substituted other provisions half as long and providing for arbitration through the New York State Board of Mediation in lieu of the American Arbitration Association. It gave the Union a clear and simple right to enter upon and visit Respondent's premises, unconditioned as to the presence of any representative of management, whereas the corresponding provision in the League contract was vague and, in any event, explicitly contemplated management's presence. The proposed contract provided for the automatic incorporation therein of any change in wages, hours, or other conditions thereafter agreed to by the League and the Union, or imposed by arbitration under the League contract, and provided that upon its expiration Respondent would enter into a contract providing "wages, hours, and other conditions" in all respects identical to those prevailing between the Union and the Printers League. It contained a merger clause and a nonsubcontracting clause not contained in the League contract. The struck-work clause of the submitted contract omitted the words, potentially of material advantage to Respondent, "other than normal account work," contained in the league contract. The submitted contract also modified some monetary provisions which had been negotiated, providing that not its provisions, but those of the League contract, would apply to employees hired after its execution with respect to hours, jury-duty pay, the Columbus Day holiday, vacations, and overtime Eisenberg testified that none of the foregoing deviations from the League contract or the negotiated concessions were agreed to by him, and the Union has made no claim that they were at any time discussed with Respondent.

[2]Most of these items were included in the non-League contract which, however, it has been found was not delivered to Respondent The Trial Examiner would reach the same result in this case even if the non-League contract had been delivered to Respondent The General Counsel adduced evidence only that it had been delivered, none that the non-League contract or any of its provisions had been discussed. Grossman's testimony as to the incorporation in the proposed contract of provisions which were not

It is found that Respondent did not refuse to sign a written agreement with the Union embodying terms or conditions of employment agreed upon.

There remains for consideration the allegation that Respondent negotiated in bad faith, and with no intention to enter into any final or binding collective-bargaining agreement with the Union.

The fact that the Union submitted a contract containing provisions not negotiated did not relieve Respondent of its statutory duty to bargain in good faith. Some sort of understanding was reached to incorporate in the contract nonmonetary provisions prevalent in the industry, and the unnegotiated provisions submitted by Respondent, were for the most part what the Union customarily agreed upon with non-League employers and were copied from the non-League agreement Moreover the evidence warrants the inference that Grossman and Hellman assumed, albeit mistakenly, that Eisenberg had had the non-League agreement to study along with the other documents. The Trial Examiner therefore finds that the Union did not act in bad faith in submitting the proposed contract to Eisenberg

While it has been found that Respondent was within its rights in refusing to sign the submitted contract, it was not within its rights in being dilatory in making its position known to the Union As a minimum, Respondent failed to comply with its obligation, set forth in Section 8(d) of the Act, "to meet at reasonable times." Business needs must, of course, be assessed in weighing Respondent's conduct, but they cannot be pleaded as an excuse for postponing unreasonably the obligation to meet and negotiate with the employees' bargaining representative. Taking into consideration all the circumstances disclosed by the record, including the pressing nature of its customers' requirements, the small size of its management, and the complicated nature of the submitted contract and of the documents used as working papers, a 2-month delay in negotiations already in progress for over 3 months and concerning a unit of only seven employees, was an unreasonable time for Respondent to take to inform the Union that the proposed contract was not acceptable and that further negotiations were required. Plainly, apart from the question of its intent, discussed below, Respondent "failed to display the degree of diligence that proper performance of its bargaining obligations required." See *"M" System, Inc., Mobile Home Division Mid-States Corporation,* 129 NLRB 526, 529; see also *The Little Rock Downtowner, Inc.*, 145 NLRB 1286, 1306, enfd 341 F.2d 1020 (C.A 8); see also *B F Diamond Construction Company,* 163 NLRB 161, 174. Even assuming that Respondent acted in good faith, therefore, it is found that its delay in taking and stating a position as to the proposed contract was in violation of Section 8(a)(5) of the Act.

The Trial Examiner has concluded, however, that Respondent was not acting in good faith Respondent received the proposed contract at the beginning of March but did not reject it until April 29. Eisenberg insisted, first, on having time to study the contract; but he also insisted on postponing such study until after, first his partner, and then he, took a vacation. He then insisted on time to allow his lawyer to study the contract. It must be inferred that when he finally made an appointment to meet Hellman at the union office, he had read the contract sufficiently to realize that it included provisions which he did not intend to accept. He concealed this fact from the Union, however, and proceeded to make and, without notice, break several appointments. At the same time he lulled the Union into allowing time to go by without a collective contract by indicating that Respondent was merely seeking "clarification." It was only when the Union filed the charge and pursued Eisenberg to his own office that it was able to extract a reply which disclosed that Respondent was not seeking clarification but was rejecting the contract.

It is found that, commencing on or about March 1, 1969, Respondent in bad faith unduly delayed negotiations with the intention of impeding the reaching of a final or binding collective-bargaining agreement and that Respondent thereby violated Section 8(a)(5) of the Act.

B *Interference, Restraint, and Coercion, Discrimination*

Boar, an employee, testified as follows: Just before the November 1 election Eisenberg approached him and said that if the Union came in, Boar would be the first one out of a job. He asked Boar why he listened to the girls and said that eventually he would get rid of them He said that if it was a question of money, Boar should have gone to Eisenberg. Eisenberg's denial of parts of this testimony was unconvincing and the Trial Examiner has credited Boar. However, the statement that Boar would be the first to lose his job, especially in view of the Union's policy of classifying the various jobs as male or female, would seem to refer to union action rather than action by Respondent and was thus a prediction and not coercive Although Eisenberg's statements implied that he considered the women responsible for bringing in the Union, his statement that Respondent would eventually get rid of the girls did not necessarily imply that that was the reason he would get rid of them. It is found that the remarks testified to by Boar were not violative of the Act.

Szostak started working for Respondent on May 2, 1967. She was one of the four employees who signed union cards, and the fact that she favored having a union was known to management. On January 3, 1969, she was temporarily laid off for lack of work. Subsequently Respondent called her in for work on infrequent occasions. In the first week of February, when she called to say that she thought it was time that she came back, Eisenberg told her that he had no work for her and he suggested that she speak to Grossman about a job. She was then removed from Respondent's payroll. Szostak testified, and Eisenberg denied, that he also said on that occasion, "You asked for this . . if you didn't join the Union you would still be working. Now I have no work for you. Get Mr. Grossman to get you a job . . . ." The Trial Examiner found Szostak's testimony as to this conversation unconvincing and finds that the General Counsel has failed to prove by a preponderance of the evidence that Eisenberg made the statements in question.

Eisenberg testified that Szostak was an efficient employee and that he laid her off because her work had been discontinued.

A considerable amount of testimony was taken on the issue of what Szostak's work consisted of and how much of it was still being done after her termination and by whom. Respondent kept no records of how much time was spent by each employee on any particular assignment, and the testimony adduced therefore consisted of estimates by

discussed refer to provisions of the League contract, not the non-League contract, and Hellman testified that he did not recall which contract was mentioned

witnesses none of whom seemed impartial. The following facts, however, emerge with sufficient clarity. Szostak's primary work, which took the bulk of her time, consisted of (a) collating pages for calendars; (b) "inserting signatures," a procedure of assembling sheets in groups in such fashion that the several book or pamphlet pages printed on each sheet would appear in proper order when the sheets were ultimately folded, cut and bound; and (c) hand-feeding the "signatures" so assembled onto a revolving chain on the gang stitcher In October or November 1968 Respondent installed a new binding machine, referred to in the record as the McCain, which automatically performed the inserting and feeding operations which Szostak had performed.[3] In addition Respondent failed to obtain a contract to print 1970 calendars, a job which would normally have been done throughout most, if not all, of 1969.[4] With the installation of the McCain and the loss of the calendar job at least 80 percent, and more probably 90 percent, of Szostak's work was no longer available.[5] The remaining work that Szostak had done consisted of collating items other than calendars, operating a drill press and a hand-stitching machine, and work on journals, chance books, pads and plastic bindings. Some of these tasks came up irregularly and were performed by whoever happened to be available, including members of management Others were performed for the most part by two part-time employees of longer service than Szostak. Eisenberg testified credibly that these various tasks were assigned to Szostak primarily as "fill-in" work, i.e., when there was nothing else for her to do, or when it was too late in the day for it to be worthwhile for her to start on another job in her regular assignment, or, on occasion, to relieve her from the strain and monotony of the calendar work, which was trying. After terminating Szostak Respondent hired a man, and then his replacement, who at times performed some of these miscellaneous tasks, and the General Counsel adduced evidence to the effect that various other employees also were seen doing "Szostak's work." The newly hired men went out with the truckdriver and helped at the plant in the handling of skids, cartons and doing other heavy work. There is no credible evidence that the newly hired employees or other employees did any substantial amount of the work that had made up Szostak's primary job, or that Szostak was in any sense of the word replaced. It is found that Respondent terminated Szostak for economic reasons and not to discourage membership in the Union.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

It is found that the activities of Respondent set forth above in section III, occurring in connection with its operations described in section I, 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

As it has been found that Respondent has engaged in certain unfair labor practices, it is recommended that the Board issue the Recommended Order set forth below requiring it to cease and desist from said unfair labor practices and to take certain affirmative action which will effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and of the entire record in this case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. Respondent, Arland Printing Co., Inc., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent is, and at all times material has been, an employer within the meaning of Section 2(2) of the Act.

3. New York Paper Cutters and Bookbinders Union, No. 119, International Brotherhood of Bookbinders, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

4. All full-time and regular part-time bindery employees employed by Respondent at its New Hyde Park, New York, plant, exclusive of guards and of all other employees, and of all supervisors as defined in Section 2(11) of the National Labor Relations Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. At all times since November 1, 1968, the Union has been, and it still is, the exclusive representative of all the employees in the appropriate unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, within the meaning of Section 9(a) of the Act.

6 By refusing to bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, Respondent has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By interfering with, restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The unfair labor practices described above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act

9. Respondent did not engage in an unfair labor practice by refusing to execute the agreement submitted to it by the Union on or about March 1, 1969.

10. Respondent did not engage in an unfair labor practice by laying off and refusing to reinstate Ann Szostak

RECOMMENDED ORDER

On the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this case, and pursuant to Section 10(c) of the National Labor

[3]The machine could feed four book sections by the automatic process It also had two stations for hand feeding, but these were not used often enough to affect the conclusions here reached

[4]The record shows that work on 1969 calendars petered out in about November 1969 and that normally calendar work on a given year's calendar was done during the previous calendar year. Although the record is not clear as to how early in such previous year the work customarily began, Szostak testified, referring to calendar work, "This runs yearly from one year to the next continually "

[5]Eisenberg testified that those three tasks constituted 95 to 99 percent of Szostak's work, and Szostak testified to the same effect during the General Counsel's case On rebuttal she supported Troccoli, a witness for the General Counsel, who testified that the above tasks took up 75 to 80 percent of Szostak's time

Relations Act, as amended, Respondent, Arland Printing Co., Inc., its officers, agents, successors and assigns, shall.

1. Cease and desist from·

(a) Failing or refusing to meet with New York Paper Cutters' and Bookbinders' Union No 119, International Brotherhood of Bookbinders, AFL-CIO, at reasonable times and to confer with it in good faith with respect to wages, hours, and other terms and conditions of employment of the employees in the appropriate unit, or the negotiation of an agreement, or any question arising thereunder, or the execution of a written contract incorporating any agreement reached if so requested. The appropriate unit is.

All full-time and regular part-time bindery employees employed by Arland Printing Co., Inc., at its New Hyde Park, New York, plant, exclusive of all other employees, guards and all supervisors as defined in the Act.

(b) In any other manner failing or refusing to bargain collectively with the Union as the collective-bargaining representative of its employees in the appropriate unit.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their 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) Upon request, promptly meet with, and bargain collectively with, the Union as the collective-bargaining representative of the employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its office and place of business located in New Hyde Park, New York, copies of the attached notice marked "Appendix."[6] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by its representative, shall be posted 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 to ensure that said notices are not altered, defaced or covered by any other material

(c) Notify said Regional Director for Region 29, in writing, within 20 days from the receipt of this Recommended Order, what steps Respondent has taken to comply herewith.[7]

IT IS ALSO RECOMMENDED that the Complaint be dismissed insofar as it alleges unfair labor practices not specifically found in this Decision

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board an agency of the United States Government

WE WILL, upon request, promptly meet with, and bargain collectively with, New York Paper Cutters' and Bookbinders' Union No. 119, International Brotherhood of Bookbinders, AFL-CIO, with respect to the wages, hours and other terms and conditions of employment of our employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement The appropriate unit is:

All full-time and regular part-time bindery employees employed by us at our New Hyde Park plant, exclusive of all other employees, guards and all supervisors as defined in the Act.

ARLAND PRINTING CO., INC.
(Employer)

Dated By
(Representative) (Title)

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 Board's Office, Fourth Floor, 16 Court Street, Brooklyn, New York 11201, Telephone 212-596-3535.

[6] In the event no exceptions are filed as provided by Section 102 46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order herein shall, as provided in Section 102 48 of the Rules and Regulations, automatically become the findings, conclusions, decision and order of the Board, and all objections thereto shall be deemed waived for all purposes In the event that the Board's 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 be changed to read "Posted pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board "

[7] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify said Regional Director for Region 29, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith "