Local 17B of the Graphic Communications Conference of the International Brotherhood of Teamsters *and* Quebecor World Buffalo, Inc. Case 3–CB–8648

September 12, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On January 18, 2008, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent Union filed exceptions, and the General Counsel and the Charging Party Employer filed answering briefs.

The National Labor Relations Board[1] has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Local 17B of the Graphic Communications Conference of the International Brotherhood of Teamsters, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act."

2. Substitute the attached notice for that of the administrative law judge.

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We shall modify the judge's recommended Order to include the Board's standard remedial language, and we shall substitute a new notice to conform to the modified Order.

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with Quebecor World Buffalo, Inc. by failing to execute the collective-bargaining agreement submitted to us on February 7, 2007.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights set forth above.

WE WILL, on request of Quebecor World Buffalo, Inc., execute forthwith the collective-bargaining agreement reached by Quebecor World Buffalo, Inc. and us, and tendered to us on February 7, 2007.

LOCAL 17B OF THE GRAPHIC COMMUNICATIONS CONFERENCE OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Aaron Sukert, Esq., for the General Counsel.
Francis Novak, Esq., of Eden, New York, for the Respondent Union.
Ronald L. Jaros, Esq., of West Seneca, New York, for the Respondent Union.
Sean F. Beiter, Esq., of Buffalo, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Buffalo, New York, on August 28 and 29, 2007. The original charge was filed by Quebecor World Buffalo, Inc. (Company or Employer) on February 21, 2007, and an amended charge was filed on June 27, 2007.[1] Region 3 issued a complaint and notice of hearing on June 28, 2007. The complaint alleges, inter alia, that Local 17B of the Graphic Communications Conference of the International Brotherhood of Teamsters (Respondent, Local 17B, or Union) has engaged in conduct that violates Section 8(b)(3) of the National Labor

[1] All dates are in 2006 unless otherwise indicated.

Relations Act (the Act). Respondent Union filed a timely answer in which, inter alia, it admits the jurisdictional allegations of the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Union, and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Charging Party-Employer, a corporation, has been engaged in the commercial printing of paperback books and retail advertising inserts and other items at its facility in Depew, New York.[2] Annually, the Employer purchased and received at its Depew, New York facility goods valued in excess of $50,000 directly from points outside the State of New York. The Respondent admits and I find that the Charging Party-Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent-Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Complaint Allegations

The complaint alleges and the Respondent admits that the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

Robert Mamon	President, Secretary/Treasurer, Business Agent
Elizabeth Snyder	Vice President
David R. Klyczek	Executive Board Member
Michael Casey	Recording Secretary

At all material times, Respondent has been the designated exclusive collective-bargaining representative of the Respondent's employees in the unit set out below and has at all material times been recognized as such by the Employer. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from March 14, 2000, through May 31, 2009. The following employees of the Employer (the unit) constitute a unit appropriate for the purposes of collective bargaining with the meaning of Section 9(b) of the Act:

> All employees in the Bindery Department working on binding processes and operations, including preparation, movement, and storage of in-process materials for bindery processes, and operations, including jurisdiction over all machines and all work, as described in Article 4.1, Union Recognition, of the collective bargaining agreement, effective from March 14, 2000, through May 31, 2009.

The complaint alleges that on or about December 13, 2006, the Employer and Respondent reached complete agreement on terms and conditions of employment of the unit to be incorporated in a collective-bargaining agreement. It further alleges that since on or about February 1, 2007, the Employer has requested that Respondent execute a written contract embodying the agreement described immediately above. It further alleges that since on or about February 7, 2007, Respondent, by Robert Mamon, orally failed and refused to execute, and has reneged on the terms of the agreement described in this paragraph. The complaint alleges that by this conduct, Respondent has been failing and refusing to bargain collectively and in good faith with an employer in violation of Section 8(b)(3) of the Act. The questions for determination framed by the complaint are:

> 1. Whether on December 13, 2006, the parties reached a "meeting of the minds" regarding an essential term of a collective-bargaining agreement?
>
> a. Did the parties agree to the Employer's ability to reduce 21 employees on the binder/trimmer line without restriction?
>
> b. Did the parties agree to utilize article 17.15–Special Note of the collective-bargaining agreement after implementation of the reduction of 21 employees?
>
> 2. Should Respondent be required to execute a collective-bargaining agreement presented on February 7, 2007, after ratification of the collective-bargaining agreement by Respondent's membership?
>
> 3. Can Respondent claim a unilateral mistake enabling it to rescind its agreement to collective-bargaining terms with the Employer?

B. Facts Related to the Issues

1. The general operation of the Employer

Dennis Kerl is the manager of human resources and production control for the Employer. In this position, he is responsible for, inter alia, the negotiation of collective-bargaining agreements between the Employer and its various unions. He has been negotiating contracts since 1984. He testified that the Employer engages in the printing, binding and distribution of mass market paperback books and retail advertising inserts for newspapers generally. The Employer has about 80 facilities in the U.S. and 120 worldwide. Kerl works in the Employer's Depew, New York facility which is the only facility involved in the case. The employer at Buffalo prints and binds paperback books for such publishers as Harlequin, Simon & Shuster, Hashet, Merriam Webster, Kensington, and others. It prints tour guide books for AAA and prints newspaper advertising inserts for Best Buy stores.

At the Depew facility, the Employer maintains the following departments: the press room, the bindery, electrotypers, or cylinder manufacturing, shipping and receiving, distribution, mechanical maintenance, building maintenance, and office and clerical. The press room is involved in printing the text for the paperback books, the AAA tour guide, the covers for the books, and the Best Buy ad inserts. The bindery department binds and trims the books and the tour guides. Shipping and receiving provides the named services. The cylinder manufacturing department makes photo polymer plates used in one of the printing processes. It also cuts the cylinders for the gravure printing process. This printing process uses a copper cylinder which has the

[2] The Depew facility is sometimes referred to as the Buffalo facility.

texts engraved into it and then is put on a gravure printing press.

The bindery department is the department chiefly involved in this case. Printed paper is manually or mechanically fed into binding machines where the pages are clamped together and a spine affixed with glue to one side and then the bound items are conveyed to a trimmer which trims up the books. The books are then either manually or mechanically packed into boxes and palletized for shipment. General Counsel introduced a series of photographs which show the actual machines used in the binding and trimming process. They are interesting, but have no real bearing on this decision.

From the end of 2006 to January 2007, normally 14 employees were assigned to each of seven separate binder/trimmer lines, which run over three shifts. The employer can run an additional line if needed because of volume. This eighth line is run regularly at least 3 months a year. The employees generally fall into three classifications, journeymen, assistant loaders and helpers. One journeyman is employed on each binding line and trimming line. They are responsible for the rest of the crew. The loaders load printed sections into the binder machinery. The assistant loader loads covers into a "cover feeder" as well as packaging material. Helpers are assigned to a variety of tasks, such as assisting the trimmer operator or any other tasks which may arise that would require help.

One of the printers used is from Europe and is called a Timson press and uses an offset printing process. It is used to print the paperback texts. The employer also uses Gravure presses. In 2006, it operated four or five of them at Depew depending on volume. Another printer used is called a Bobst press and it is used for fancy book covers that have cuts in them or employ foil.

The parties to this case entered a stipulated set of facts into the record. Those stipulated facts I find relevant are set out below or in other places in this decision where they are identified as stipulated by being put in *italics*. The wording is almost entirely as set out in the stipulation, except for some obvious errors which I have corrected.

At the Depew facility in 2006, there were eight separate bargaining units with eight separate contracts with six different local unions. There has been a longstanding collective-bargaining relationship between the Employer and the Union. The Union involved in this case represents a unit of the employees in the bindery department and a separate unit of employees on the so-called QDS line. This latter line involved employees picking a variety of book titles to ship and packing them to meet specific orders. There are approximately 353 bindery and 16 QDS employees in the bargaining units represented by Local 17B. The Employer and Respondent Union were parties to a collective-bargaining agreement effective from March 2000 through May 31, 2009.

The Employer has a separate contract with Graphic Communications Conference of the International Brotherhood of Teamsters (GCC/IBT) Local 27C, which represents printing press employees. The Employer has separate contracts with all of the following unions as well: GCC/IBT Local 75 (electrotypers, also known as the cylinder manufacturing/foundry unit) (which represents a unit of cylinder/photopolymer plate manufacturers); GCC/IBT Local 26 (which represents the paper handlers), International Brotherhood of Electrical Workers (IBEW) Local 41 (which represents the electrical workers), IAMAW (International Association of Machinists) (which represents machinists and building maintenance employees). All of the collective-bargaining representatives present at the Employer's Depew facility will be collectively referred to as the Unions. The Employer has typically negotiated new collective bargaining agreements with all of the Unions, since at least 1984.

2. Existing contractual terms affecting staffing levels

The General Counsel introduced into evidence the current collective-bargaining agreement between the Employer and Respondent. Article 17.15 of this contract reads: "*Special Note–All Equipment:* Whenever unusual circumstances arise due to the nature of the job or the materials used, affecting the normal scheduled production on the machine, the manning of this equipment will be adjusted to meet the conditions based on mutual agreement between the Company and the Union." According to Kerl, this provision has been used in the past, usually just on one shift. If a need arises, the Employer notifies the union steward and the staffing is adjusted. If the need for a staffing change would be longer, the union president would be notified. In either case, the provision has only been used in unusual circumstances, not as a permanent or even long term staffing change. The staffing change might be to add a person to the shift or remove a person. According to Kerl, this happens 6 to 10 times a year.

With respect to article 17.15, Interim Vice President David Smith testified that this clause had been used to increase and decrease manning in the past. It has typically been used in unusual circumstances such as a slowdown on the line, which would allow a person to be taken off until the job was finished. There are also circumstances that would require adding someone to a line. Smith cited an example of the clause's use about 2-1/2 years ago. The Employer was running a book cover and because of the covers design the covers fed very slowly requiring a manning adjustment. He also noted that some AAA covers were gate fold covers and those required less manning than others. Such adjustments to manning following the provision of article 17.15 occur about twice a year according to Smith. On each occasion, the manning was adjusted for 4 or 5 days in a row. Some adjustments add personnel and others reduce personnel. When the Employer knows in advance that it will need to make a manning adjustment, written notice is given to the affected union steward or stewards and the union president. General Counsel, through Smith, put three such written notices in evidence. When the situation arises suddenly, the supervisor involved notifies the steward on duty.

Article 21 of the contract is entitled "New Processes and Productivity." Section 21.1 of this article reads:

> This will confirm the agreement of both the Company and the Union that the Contract contains the commitment of both parties to work together to the best of their abilities to improve productivity, reduce waste and improve quality. During the 1995 negotiations, the parties have agreed to and implemented improved work practices. They fur-

ther agreed to meet to resolve issues that inhibit the effective utilization of the work force.

Article 21.12 reads:

> In order to remain competitive, the Company assumes an obligation to study its equipment and methods so that it can make use of any automation and technical changes that are available. In the event of the installation of a new machine or a new operation or substantial modification of a present operation or crew complement which falls within the jurisdiction of this Contract, the Company will review and discuss the manning with the Union as soon as possible before establishing such manning. In the event that the parties to this Contract shall fail to agree, the Company shall establish and operate under the manning for a trial period of up to two (2) months of actual operation with progress reviews after every fifteen (15) days. The trial period may be extended by mutual consent of the Union and the Company. At the end of the trial period, there shall be a review of the recommended manning. If no agreement can be reached at the end of a thirty (30) calendar day period, this matter may be submitted by either party to arbitration under the conditions of the Arbitration Clause as contained in this contract.

Kerl testified that the provisions of article 21.12 (the "New Process" clause) have been used and cited an example that took place about 2 months before this hearing. The Employer made a modification to an existing machine which enabled it to remove one person from the operation over three shifts. The matter was discussed with the Union and an agreement was reached.

Smith testified that the "new processes" clause is used when the Employer adds a new piece of equipment, when it adds an insert or line, and when it makes a major modification to an existing line. The Employer used the clause within the preceding 6 months when it added an automated carton erecting and carton forming machine on the end of Binder 400. Utilizing this equipment resulted in a manning decrease of three persons per shift.

Kerl testified that article 17.15 is used when unusual circumstances arise in a normal operation and that article 21.12 is used when new equipment or technology is brought in or significant modification is made to existing machinery. The duration of staffing changes under 17.15 is usually just one shift or one specific job order and under 21.12 the duration is permanent.

3. The Employer's financial condition at the end of 2006

In 2006, the Employer became aware that printing as an industry was in a continuing decline. There was either no growth or very little growth in the industry. Thus, the Employer needed to effect consolidations and cost reductions to continue in business. The Depew facility was identified, along with others, as one with costs higher than the Company could sustain. This plant was put on the list of plants facing potential closure in the first quarter of 2006. Kerl was notified of this fact by Kevin Clarke, the president of Quebecor USA's Book and Directory Services Group. On July 20, 2006, Clarke held meetings with employees at the Depew facility. In these meetings he used a power point presentation that informed the employees that:

> Due to the high cost of production in our facility and numerous market changes, Quebecor World has made a decision to shut down all gravure operations in Buffalo (Depew). The current retail business will transfer out of Buffalo and into other Quebecor World gravure and offset facilities during December of this year.[3]
>
> The entire gravure operation will be shut down once the transfer of AAA to Corinth has been completed during the first quarter of 2007.
>
> Going forward, we must become low-cost producers, exceed customer expectations in schedule, quality and overall service with a highly focused effort on safety and housekeeping. Exceeding customer expectations is critical to our future and equally applies to all remaining customers as well as those moving to other plants.

The points made in the quoted sections above were included in a notice to employees that the Employer posted in the plant.

On or about August 9, 2006, Respondent's president, Mamon, sent a letter to his membership related to the impending changes at the plant. In this letter, Mamon notes the July 20 meetings and informs the membership of the loss of the AAA business and the fact that as of the letter's date, no decision had been made to close the Depew facility. He notes that the Employer was currently negotiating with Harlequin to renew its contract. He also notes that getting that contract was vital for the plant's future. He advised employees as individuals to continue to stay focused on the job at hand, continue to keep their work area clean, continue to closely monitor product quality, and never quit on the job.

In September 2006, the employer held a management meeting to discuss possible cost-saving measures. The management team at this meeting was composed of: Vice President and General Manager Bob Scheifflee, Human Resources Manager Kerl, Manufacturing Manager Dave Smith,[4] Maintenance and Engineering Manager Dan Nolsom, Controller Mark Bargnesi, and Logistics Manager Dennis Wybac. They decided that to make changes significant enough to get the plant off of the closure list, it would be necessary to renegotiate the union contracts under which it was currently operating.

In late September or early October, the Unions were notified of the Employer's desire to renegotiate their contract.

4. The December 2006 concessionary negotiations

As noted earlier in this decision, the Parties stipulated certain facts which are set out in italics. On December 4, 2006, at approximately 8 a.m. at a conference room in the Employer's facility Kevin Clarke announced that the Depew facility was slated to be closed by Quebecor's corporate parent in a meeting attended by Quebecor management and representatives of the eight bargaining units at the Employer (including Respon-

[3] During 2006 the Employer ran five Gravure presses, which are used for the AAA guide books. This work constitutes about 20 percent of the plant's volume, but about 40 percent of the labor utilized. This work however is among the most profitable work done at the Depew facility and accounts for about 60 percent of the plant's profit.

[4] As of the date of hearing, Smith had been promoted to the position of interim vice president.

dent Union President Robert Mamon). The Employer suggested that the parties engage in concessionary bargaining as part of a plan to keep the facility open. After Clarke left the meeting at approximately 9:30 a.m., the representatives of the bargaining units present continued to meet without the Employer being present. At approximately 11:40 a.m. the same day, the following representatives of the Employer met with the following representatives of the bargaining units (Elizabeth Snyder, David Kleczka, and Edward Jablonski were not present at this meeting:

Name	*Union/Position*
Dave Mecca	*GCC/IBT Local 27C/Business Agent*
Gene Opatkiewicz	*GCC/IBT Local 27C/President*
John Kumpf	*GCC/IBT Local 27C/Vice President*
Dennis Mohr	*GCC/IBT Local 76/Vice President*
Ken Zawistowski	*GCE/IBT Local 26/President*
Robert Noble	*IBEW Local 41/Steward*
Michael Gaiser	*IBEW Local 41/Asst. Business Manager*
Ron Warner	*IAMAW/Business Agent*
Celio Nero	*IAMAW/Steward*
Tim Zagst	*IAMAW/Steward*
Robert Mamon	*GCC/IBT Local 17B/President, Treasurer*
Elizabeth Snyder	*GCC/IBT Local 17B/Vice President*
David Klyczak	*GCC/IBT Local 17B/Steward*
Michael Casey	*GCC/IBT Local 17B/Secretary*
Edward Jablonski	*GCC/IBT Local 17B/Steward*

Employer's Representatives

Dennis Kerl	*Manager Human Resources*
Mark A. Bargnesi	*Controller*
Lisa Bennett	*VP HR Book & Directory Grp*
David M. Smith	*Manufacturing Manager*

Kerl served as the spokesperson for the Employer during these negotiations.

For concessions from the Unions, the Employer was offering as quid pro quo securing the Harlequin contract extension, installing Timson presses at Depew, and keeping one Gravure press at Depew for 1 year. The Timson presses are state of the art and produce a better quality product than the process that was being used at Depew in 2006. They also required 10 to 15 minute set up time as compared with 1 to 2 hours set up for the existing presses. The Timson presses involved a significant capital investment (about $12 million), but achieved great cost savings in operation. As the Employer was encountering more and more short runs, the setup time between the runs is an important cost factor. Evidently its customers are making frequent small orders rather than a few big ones.

The parties stipulated certain facts about the concessionary negotiations which followed the December 4, 2006 meeting. They are as follows:

On December 5, 6, and 7, 2006, Bargnesi, Bennett, Kerl, and Smith for the Employer met for the purposes of negotiations at the Millennium Hotel in Cheektowaga, New York, with representatives of all of the bargaining units listed above. Representatives of Local 17B were present at the negotiations.

At various times during the negotiations, which lasted from December 5 through December 8, 2006, Gene Opatkiewicz, GCC/IBT Local 27C, served as chief spokesperson for the Unions. Ron Warner, IAMAW, Ken Zawistoski, GCC/IBT Local 26, and at times, Dave Mecca, GCC/IBT Local 27C, spoke at these negotiations. At no point in time did any representatives from Respondent Local 17B serve as chief spokesperson on behalf of the various units.

a. The December 5 meeting and proposals of that date

At the hearing Kerl testified about the meeting of December 5. He testified that as of that date the Depew facility remained high on the list of facilities the Employer's parent planned to close. This information was related to the various unions often in the negotiations. On December 4, the Employer gave to the Unions a list of concessionary changes it wanted to make to the contracts it had with them. The list reads as follows:

1. Contract term though May 31, 2015.
2. Zero percent GWI for June 1, 2007, 2008, 2009.
3. Employee contributions towards medical and dental will be increased to no less than 20% with annual increases of 1% per year over term of the contract.
4. Eliminate WNYLISF and revise company pension
5. Eliminate 5th week vacation for anyone currently receiving it.
6. Extend forth week vacation eligibility from 10 years to 25 years of service worked.
7. Eliminate Birthday paid holiday.
8. Eliminate paid lunch and all other premium rates currently paid.
9. Establish a 40hr workweek where time and a half is paid only after 40hrs are worked in a week and eliminate double time pay.
10. Gravure press crewing 5 people per press effective 10/1/2006.
11. Crewing on Press 125 single web 3 people and Press 125 double web 4 people on all calipers and roll diameters.
12. Work cell for roll stand assistant in photo polymer text press area.
13. Work cell crewing for any combination of Bobst or sheet fed offset presses.
14. Establish a requirement for PPO involvement for all workers compensation claims.[5]
15. Utilization of temporary employees for term of CBA.

Kerl testified that the Employer was seeking cost savings of $10-1/2 to 11 million by its proposals. It also stressed that it could not guarantee the plant would stay open even if the concessions were made.

[5] PPO stands for preferred provider organization.

b. The meeting of December 6 and proposals as of that date

On December 6, the Employer gave the unions a modified list of changes it desired supplanting the list of December 4.[6] This one reads:

1. Increase employee contributions towards medical and dental to 18% 1/1/2007, 20% 2008, 22% 2009.

2. Eliminate fifth week vacation, include fifth week for significant years 25, 30, 35 etc.

3. Eliminate all double time & replace with time & a half, exclude holidays.

4. Lead men premium remain and all other premiums in all CBA's or past practice terminate.

5. Eliminate 20 day bump provision.

6. Establish a 40 hour work\eek where time and half is paid only after 40 hours are worked in a workweek.

7. Implement new work cell crewing when running any two sheet fed combination of Bobst or sheet fed off set presses.

8. Implement work cell crewing when running any three photopolymer presses sharing two roll stand operators.

9. Extend forth week vacation eligibility from 10 years of service to 20 years of service worked.

10. Implement new crewing for press 125 double webs at 4 people on all calipers and roll diameters from 40" to 50."

11. Reduce crew size by one person per binder/trimmer line.

12. Establish a requirement for PPO involvement for all workers comp claims.

13. Use of temporary employees year round.

14. Interdepartmental workforce flexibility to have the ability to flex employees from one department to another for productivity needs on a shift by shift basis. Productivity based flexibility.

15. Freeze current company pension and replace plan with 401A/401K plan with company contribution.

16. Elimination of WNYLISF[7] Payments. Increase Company group life insurance to $17,000.

17. Zero GWI, 2007, 2008, 2009–2010 through 2014 to be determined.

Item 11 above would have changed the normal complement of each binder/trimmer line by one, going from 14 to 13. In the normal operation of seven lines on three shifts, that means item 11 would cause the reduction in force of 21 people. Kerl testified that these people would not have been laid off, but moved to other jobs and the actual reduction in force would occur by attrition over time. The affected employees would undergo cross training and be used where needed. This proposal and the way it would be put into effect was discussed with Local 17B.

Reducing the crew size on the binder/trimmer line was necessitated, according to Kerl, by the six involved unions telling him that certain items on the original list of December 4 were "sacred" to them and a proposal containing changes to sacred items could not be ratified by their membership. On the list of December 6, set out above, items identified by the Unions as "sacred" were items 2, 3, 4, 6, and 16. Mamon testified that he and Snyder sought to have this reduction proposal dropped without success. They then repeatedly urged that it be subject to the parties' "mutual agreement."

At some point in these negotiations the Employer determined what each item sought would likely save and gave this information to the unions. A great deal of discussion was had relative to the proposed manning reductions in the press room and on the binder/trimmer line. The binder/trimmer line reduction is contained in item 11. The press room reductions are contained in items 7, 8, and 10. The costs savings associated with the reduction on the binder/trimmer line amounted to approximately $790,000 annually and was the second most significant cost savings proposed.

c. The meeting of December 7 and the proposals of that date

On December 7, the Employer gave the Unions a revised list of changes it wanted. This list superseded the one from December 6 and reads:

1. Increase employee contributions towards medical and dental to 18%–1/1/07, 20% 2008, 22% 2009, 23% 2010, 24% 2011.

2. Eliminate 20-day bump down provision 2008.

3. Implement new work cell crewing when running any two sheet fed combination of Bobst embossing or sheet fed offset presses, will share an assistant.

4. Extend fourth week vacation eligibility from 10-years to 15-years of service worked.

5. Implement new crewing for Press 125 double webs 4 people when running .004 caliper or lower on 40" rolls.

6. Reduce crew size by one person per binder/trimmer line.

7. Establish a requirement for PPO involvement for all workers' compensation claims.

8. Use of temporary employees year round after recall.

9. *Productivity Based Flexibility*: If the need arises on a shift to provide additional crewing to cover for absenteeism or tardiness, or to provide manpower for short-term production demands or for the need for a particular skill for short-term employees may be temporarily assigned or transferred to a classification or department other than his/her own. Under such conditions, a qualified available employee will be transferred without regard to seniority from the same shift and will be paid the rate of the classification they are working.

10. Freeze current company pension and replace plan with 401(a)/401(k) plan with company contribution.

11. Zero GWI 1/1/2007, Zero GWI 1/1/2008, Zero GWI 1/1/2009, 2% GWI 1/1/2010, 2% GWI 1/1/2011

Above contingent on quid pro quo of the following: Signed Harlequin contract, 2 Timsons installed in Buffalo, 1 Gravure press for 1 year.

This proposal differs from the previous one in a number of

[6] Between December 4 and 6, there may have been other lists given to the Union, but they are not in evidence and in any case, were superseded by the one passed out on December 6.

[7] Western New York Labor Income Security Fund.

ways. The proposal to eliminate the fifth week of vacation has been dropped. The proposal to eliminate doubletime has been dropped. The proposal to establish a 40-hour workweek has been dropped. The proposal to implement new work cell crewing for the photopolymer presses has been dropped. Forth week vacation eligibility has been changed from the original proposal of 20 to 15 years of service. The crewing proposal for press 125 has been changed to be less inclusive. Use of temporary employees has been restricted somewhat from the original proposals. The flexibility proposal has been limited. The general wage increase proposal has been changed to add a 2-percent increase in the years 2010 and 2011. And the quid pro quo for agreement has been added to the proposal.

With respect to item 6 above, Kerl testified that he told the Respondent Union during these negotiations that it meant 21 employees would be removed from the binder/trimmer line. He testified that both Mamon and Snyder said that they understood that to be the case. They had discussions about the process to be used to select the actual persons to be removed upon implementation of this proposal. Kerl testified that on December 7, he and Snyder discussed this topic. Snyder felt the position eliminated should not be a loader as that position had seen enough reductions. Klyczak spoke on the subject, and Kerl suggested that decision be deferred until after the matter of the reduction per se had been ratified by the membership.

Kerl and his team became frustrated with the negotiations in the afternoon of December 7 and sensing they were not succeeding, decided to leave before they failed completely. He testified that most of the day had been spent dealing with the proposed reduction in the binder/trimmer line and no agreement seemed imminent. According to Kerl, the Respondent wanted to use "mutual agreement" to achieve the reduction in force. Kerl rejected this approach as it gave the Respondent a veto over the reduction and could not guarantee the cost savings the Employer needed to keep the plant open. The Respondent then suggested using article 21.12 of the existing contract, the New Process clause, and the Employer rejected this approach as there was no new process, just an overriding need for cost savings. The Respondent's unwillingness to agree to the Employer's proposal to reduce the crewing on the binder/trimmer line caused the breakdown in negotiations.

Dave Smith offered corroborating testimony on these points, adding that the Employer was not adding new equipment or employing new processes, so these articles in the existing contract were not appropriate. He testified that it was pointed out to Respondent that if the concessions sought were not given and the quid pro quo items put in place, the Depew plant would permanently close. Smith pointed out to Respondent that mutual consent was not acceptable as the Employer need the cost savings represented by the binder/trimmer line staff reductions immediately. Smith testified that Mamon stated that he knew that one person per line must come off, but he wanted to accomplish that end by mutual consent.

During the negotiations on December 7, 2006, at the Millennium Hotel, the Employer advised the representatives of the bargaining units that they were leaving and would report that these negotiations had failed to achieve the desired goal. Later in the evening of December 7, 2006, another meeting was arranged for Friday, December 8, 2006, at the Hilton Garden Inn, with the representatives of the Unions.

d. The meeting of December 8 and the Employer's final offer

On Friday, December 8, 2006, Bargnesi, Bennett, Kerl, and Smith for the Employer met with representatives of the bargaining units listed above at the Hilton Garden Inn. Present at these negotiations from Respondent Local 17B were Mamon, Snyder, Klyczak, and Casey. The representatives of all of the bargaining units met amongst themselves from 9 a.m. to 1:30 p.m. At approximately 1:30 p.m., the parties resumed their negotiations. At approximately 4:18 p.m. on December 8, 2006, Kerl presented the Employer's "final offer" to the union representatives. The union representatives agreed to present the final offer to their members without their recommendation.

Kerl testified that when the meeting began, he asked Gene Opatkiewicz, who was the lead spokesperson for the Unions, if a resolution had been reached with respect to item 6, the reduction in the crew for the binder/trimmer line. Also present were the representatives of Respondent. Opatkiewicz stated that manning issues had been resolved and turned to Mamon and asked if that was correct. Mamon said it was. During this meeting, the Employer presented what is referred to in the paragraph above as the Employer's "final offer." It reads:

> 1. Increase employee contributions toward medical and dental to 20% 6/1/07, 20% 1/1/09, 22% 1/1/08, 22% 1/1/10, 24% 1/1/11.
>
> 2. Eliminate 20-day bump down provisions 1/1/2008.
>
> 3. Implement new work cell crewing when running any two sheet fed combination of Bobst embossing or sheet fed offset presses, will share an assistant.
>
> 4. Extend forth week vacation eligibility from 10-years to 15-years of service.
>
> 5. Implement new crewing for Press 125 double webs 4 people when running .004 caliper or lower on 40" rolls.
>
> 6. Reduce crew size by one person per binder/trimmer lines.
>
> 7. Establish a requirement for PPO involvement for all workers' compensation claims.
>
> 8. Use of temporary employees year round only after recall rights exhausted and maximum of 60 shifts worked per employee and 50% of entry level positions.
>
> 9. *Productivity Based Flexibility*: If the need arises on a shift to provide additional crewing to cover for absenteeism or tardiness, or to provide manpower for short-term production demands or for the need for a particular skill for short-term employees may be temporarily assigned or transferred to a classification or department other than his/her own. Under such conditions, a qualified available employee will be transferred without regard to seniority from the same shift and will be paid no less than their current classification rate.
>
> 10. Freeze current company pension and replace plan with 401(a) 4% company contribution. 401(k) employee contributions optional with no company match. Effective 6/1/07.
>
> 11. Zero GWI 1/1/2007, Zero GWI 1/1/2008, Zero GWI 1/1/2009, 2% GWI 1/1/2010, 2%GWI 1/1/2011

12. Expiration 12/31/2011

Above contingent on quid pro quo of the following: "signed Harlequin contract,[8] commitment to install 2 Timsons in Buffalo by June 30, 2007, and 1 Gravure press for one year."

The final offer differs from the previous proposal with respect to items 1, 8, and 10. The Employer gave up on several concessions it has originally sought in these negotiations and lowered its overall cost-savings target. The original of the final offer is signed by each of the union representatives present, including those from Respondent. Their signatures indicated that they understood the terms of the final offer. Mamon, in particular, stated that he understood the terms of the offer. The final offer, in addition to the crew reductions on the binder/trimmer lines, calls for crew reductions in other departments in items 3 and 5, which involve the press room.

From the Employer's standpoint, the final offer if ratified by the Unions, gave the local management something tangible to show higher management in their effort to keep the Depew plant open and running. It did not, however, guarantee that outcome would happen. This message was conveyed to the involved unions.

Kenneth Zawistowski of Local 26 testified. With respect to negotiations over the binder reductions, Zawistowski recalled the Respondent raising issues of safety and productivity being impacted by the proposed reduction. He remembered the Employer saying that it would not run a machine that was unsafe and unproductive. He remembered the Respondent stating that if there could be mutual agreement added to the reduction language, then it would agree. He recalled management saying they already had that right in the existing CBA. He recalled that on the meeting of December 8, the Respondent agreed to the proposed reduction of one person per line on the binder/trimmer lines. On the other hand, he also recalled Mamon continuing to press for "mutual agreement."

e. The meetings of December 11 and "clarifications" of that date

On Monday, December 11, 2006, on approximately three occasions, Clarke held a series of meetings with employees at the Employer's facility and presented a power point presentation and a business overview.[9] *It was explained that the quid pro quo for approval of the final offer was to sign the Harlequin contract, a commitment to install 2 Timson presses, and to operate on Gravure press for 1 year.*

Respondent's representatives attended one of these meetings. On December 11, 2006, in response to various questions from the various union representatives, the Employer distributed what is entitled "Clarifications." This document reads:

> "One Gravure Press for one year. One Gravure Press will be scheduled Mon-Fri thru March of 2008 for Best Buy or Equivalent."
>
> "#7: PPO will be post negotiated–The current CBA process for dispute resolution will be utilized if the parties are unable to successfully negotiate acceptable terms."
>
> "#8: Temporary employees–Utilize temporary employees in entry level positions only."

Kerl testified that he gave a copy of this document to each union representative, explained it, and noted that it did not in any way affect the terms of the final offer.

f. The ratification vote of December 12 and events surrounding it

By the time of the first ratification vote by Respondent's membership, Mamon had become convinced that the Employer was not going to drop the reduction in force proposal and would not agree to have it subject to mutual agreement. Respondent's Executive Board had recommended to the membership that they not ratify the final offer.[10] According to Mamon, at the initial ratification vote, the membership had many questions about item 6 and Mamon left the membership to try to get answers from Kerl. Mamon testified that he called Kerl and asked how the Company planned to achieve the reduction in force and was told by Kerl that the new process clause would be used. According to Mamon, when he gave this information to the membership, they wanted to see it in writing. The membership then rejected ratification.

Respondent's vice president, Liz Snyder, also testified on this subject. According to Snyder, during the meeting of Respondent's membership for the ratification vote, Mamon excused himself for a few minutes and on returning, told the membership that Kerl had agreed that the reduction in force would take place using the guidelines of the new process article in the existing contract. According to Snyder, this still did not satisfy the membership because it was not in writing.

Respondent's recording secretary, Michael Casey, testified that at the first ratification vote Mamon excused himself for a while, then told the membership that he had just spoken with Kerl and that Kerl has said that negotiations after ratification would determine the persons to be cut from the binder/trimmer lines. He testified that there was no discussion of new process at this juncture.

Kerl testified that on December 12, 2006, he received a telephone call from Mamon. Mamon was in the process of conducting a ratification meeting with his members. He indicated to Kerl that the meeting was rowdy and asked if the Employer would use the "new process clause" of the existing contract in relation to item 6 of the final offer, the reduction of the binder/trimmer line crew. Kerl told Mamon he could not change the terms of the final offer and, further, that the new process clause was not part of the final offer as it did not achieve cost savings absolutely.

I will find here and at later junctures in this decision that the

[8] The Harlequin business accounts for 45 percent of the plant's paperback book business, which is the bulk of the work at Depew.

[9] The presentation also pointed out that the Depew plant was in a break even or no profit position, that the Employer needed productivity based flexibility, cost reductions including wage freezes, crewing reductions, and benefit changes in order to secure a successful future for the Depew plant. It urged the employees to ratify the Company's concessionary proposals.

[10] Mamon had left the Employer with the understanding that there would be a neutral recommendation as was apparently the case with all the other unions involved.

Respondent's witnesses gave fabricated testimony designed to support their position regardless of the truthfulness of the testimony. I credit Kerl's testimony that in the phone call he rejected Mamon's plea to use the new process clause to accomplish the reductions. This finding is totally consistent with the Employer's unwavering position throughout the negotiations. To do what Mamon said, make the reduction subject to the new processes clause, would have the effect of withdrawing the reduction from the table as the parties could have tried to have a reduction using this clause under the existing contract. It would have also made the reductions dependent on mutual agreement and subject to arbitration. I find it telling that Casey did not go along with Mamon's and Snyder's fabrication. Casey's testimony is wholly consistent with Kerl's testimony and the position of the Employer in the preceding negotiations. I do not find Snyder's and Mamon's testimony on this point to be credible and reject it.

At ratification votes held on Tuesday, December 12, 2006, five (5) bargaining units voted to accept the Employer's final offer. The following three (3) bargaining units rejected Quebecor's final offer: The Bindery Unit and QDS Unit represented by Local 17B, and the Electrotypers Unit represented by GCC/IBT Local 76. On December 12, 2006, the Employer met with representatives from Respondent Local 17B to discuss the ratification vote held on December 12.

Kerl testified that the meeting was held in the afternoon of December 12. The parties talked about the reasons for the Respondent not ratifying the final offer. With respect to item 6, the discussion was about the item relative to the new process clause and the concerns of the affected employees as to who would be selected to be in the group of 21 to be shifted to other jobs. Mamon testified that he told Kerl that the Employer would have to put in writing its intention to use the new process clause to achieve staff reductions. Kerl testified that he again rejected the new process clause approach to item 6 as it did not give absolute certain savings. Dave Smith testified about this meeting. He testified that the Respondent indicated that the lack of identification of the person to be removed from the lines was the sticking point. According to Smith, the Employer then made it clear that the final offer was the final offer and would not be revised. Then the Respondent's representatives, Mamon and Snyder, asked if they could present a proposal to the Employer the next day.

Kerl also met this day with representatives from Local 76. They told him that the electrotypers had rejected the final offer because of concerns with the changes proposed with respect to the pension, use of temporary employees, and productivity based flexibilities.

g. The meeting of December 13 and additional "clarifications"

On December 13, 2006, Mamon and Snyder for Respondent met with the Employer (Bargnesi, Kerl, and Smith) in the Human Resources conference room at the Employer's Depew, New York facility, and presented the Employer with a proposal for a re-vote. At some point Bennett joined this meeting. Also on December 13, the Employer prepared a document dated December 13, 2006, which was presented to Mamon and Snyder during the course of the meeting described above. This document was thereafter provided to the representatives of every bargaining unit.

Snyder testified that she prepared a document which addressed the membership concerns on each of the final offer items the membership differed with. This was in the form of a counterproposal. She testified that her wording of item 6 referred to the new process clause because of Mamon's telephone conversation with Kerl during the vote. She said the wording also reflected her fear that if the reduction of one person per line were too severe that a mechanism would be in place to add extra manpower at times, if needed. Snyder also testified that when the counterproposal was presented to Kerl on December 13, he seem to have no problem with it and said we can work with it.[11] Consistent with my earlier credibility finding about the Kerl–Mamon phone call of the previous day, I reject Snyder's contention that her wording of the counterproposal on item 6 was worded the way it was because of the phone call. Instead, I believe it was worded that way to once again try to convince the Employer to use that approach and to address her fear about the effect of the reduction on production and quality after the reduction in staff had been effected.

The Respondent's proposal for a re-vote is similar to the Employer's final offer, except for a few proposed changes. In item 1, the Respondent proposed adding a phrase to the end of the item, which reads "using IH Encompass B as the base rate." Kerl testified that he reminded Respondent that this matter had been discussed in negotiations.

To item 4, the Respondent added a sentence to the end of the Employer's item 4 reading, "All already receiving forth week will be grandfathered in." Kerl testified that he told Respondent that those employees already receiving the forth week would be grandfathered in.

The Respondent's proposed modification of item 6 reads: "Reduce crew size by one person per binder/trimmer line following guidelines of new process clause. Once implemented, if the need arises in difficulty of a job, management will afford the crew an extra person to assist."

Kerl testified that he reiterated his position of the day before and during negotiations that the new process clause could not be used.[12] He asked the Respondent's representatives if they understood that there would be a reduction of one person per binder/trimmer line and they indicated that they understood that. There was also some discussion about the second sentence the Respondent proposed to make to this item. Kerl then told Respondent's representatives that he would meet with them postratification and discuss the position and classification to be targeted for reduction.

Dave Smith offered testimony corroborating that of Kerl on this point. Smith also testified that the Employer's clarification of item 6 was a response to the Respondent's concern that it would fail to perform its work properly with a reduced work force, and provided a mechanism for adding employees in

[11] This statement is not in Snyder's affidavit covering the December 13 meeting.

[12] Kerl credibly denied a suggestion by Respondent's counsel that he had made the suggestion that the "new process" clause be used to achieve the reduction in crew size on the binder/trimmer lines.

situations where they were needed on a particular project. According to Smith, the meeting ended with the Respondent again stating its understanding that one person would come off each binder/trimmer line. According to Smith, there was no mention in the meeting that the clarification of item 6, mentioning article 17.15, would apply before the implementation of the reduction, only afterward.

With respect to item 7, the Respondent's proposal reads, "Establish a requirement for PPO involvement for all Compensation claims, within NY State guidelines. All existing claims grandfathered. 90 day opt out and other details Post Negotiations."

With respect to item 9, Respondent added an asterisk to the word "short term" each time it appears in the item and then noted the asterisk meant "shift by shift."

With respect to item 10, the Respondent proposed that it read: "Freeze current company pension and replace plan with 401(a)/401(k) plan with company contribution of 4% to the 401(a). Based on gross wages of employee."

Respondent proposed adding to the quid pro quo language the words "Quebecor Buffalo" in conjunction with the Harlequin contract language and the word "Quebecor" before the word "Buffalo" in the line dealing with the installation of the Timson Presses.

Kerl testified that, with respect to Respondent's re-vote proposal, he told the Respondent's representatives that he was not authorized to change the final offer and that in any event, it would not be fair to the unions that had ratified the offer. He did offer to make clarifications to the final offer to answer any questions the Respondent might have, but stated he would not change the language of the final offer. Mamon asked Kerl to put this in writing.

At this point, the management representatives caucused and prepared what it entitled "Clarifications." This document reads:

"One Gravure Press for one year. One Gravure Press will be scheduled Mon–Fri thru March of 2008 for Best Buy or Equivalent."

#7: PPO will be post negotiated—The current CBA process for dispute resolution will be utilized if the parties are unable to successfully negotiate acceptable terms."

#8: Temporary employees—Utilize temporary employees in entry level positions only."

Rev 1:[13]

#1: Medical & Dental: EE contribution percentage based on total cost of plan.

#4: Fourth Week Vacation: Employees currently receiving fourth week are grandfathered.

#6: Reduce crew size on Binder/Trimmer—Reference CBA Article XVII SPECIAL NOTE—ALL EQUIPMENT.

#7: PPO involvement will follow NYS guidelines.

#9: Productivity based Flexibility—Short term is defined as shift by shift and last sentence in paragraph is clarified to "with" regard to senority and employee will be paid higher rate if applicable. #9 is not applicable to Cylinder and Merigraph depts.

#10: 401(k)/401(a) plan—Guidelines calculate company contribution on employees' gross wages.

As noted earlier, article 17.15 of the existing CBA reads: "*Special Note—All Equipment*: Whenever unusual circumstances arise due to the nature of the job or the materials used, affecting the normal scheduled production on the machine, the manning of this equipment will be adjusted to meet the conditions based on mutual agreement between the Company and the Union."

Kerl testified that this new document was a revision or continuation of the earlier clarification made to the final offer. Kerl testified that it was not only prepared to clarify items for Respondent, but for some of the other unions as well. For example, the clarification of item 9 is applicable to the Cylinder and Merigraph departments and does not apply to Local 17B.

With respect to item 6, Kerl testified that he came up with the language utilized. He explained that he meant that once the crew reduction had been implemented, article 17.15 would be used to handle unusual circumstances that might arise. He testified that he believed that this is what Mamon wanted put in writing. It also fit the concern that Snyder addressed in the second sentence of her counterproposal to item 6. Kerl testified that in no way did this language change the final offer's language of reducing the binder trimmer crew by one person per line. He further testified that he told the Respondent that this was the case. Kerl also testified that he told the Respondent's representatives that he and the other management personnel at the meeting did not have any authority to change the terms of the final offer. The clarification language of item 6, like the language used in the other items noted, is simply a shorthand clarification and does not replace the language in the final offer.

After the clarification document was given to Respondent's representatives, all parties met again. At this meeting Kerl stated that the document would be given to all the Unions and reiterated that it in no way changed the final offer.[14] He asked the Respondent to take the matter to a re-vote. According to Kerl, the Respondent's representatives said they would take the clarification to their executive board for review and would advise about a re-vote after that had occurred. Kerl testified that based on what was said in this meeting, the Respondent under-

[13] Kerl testified that REV 1 means revision one to the earlier clarification document which is repeated in the first three paragraphs above. He testified that this language is required by the Employer's document control procedures.

[14] Kerl testified that copies of the document were in fact given to all the Unions with the caveat that it did not in any way change the final offer. Joseph Ziewicki is president of Local 76 at the plant. He testified that after his union initially voted not to ratify the Employer's final offer he met with Kerl and received clarifications about certain sticking points. Kerl satisfactorily clarified some concerns and put the clarifications in writing. These related to whether one of the items applied to his bargaining unit and a clarification that in the workers' compensation proposal the New York State guidelines for PPO would be followed. These clarifications satisfied his membership. It was his understanding that the clarifications did not change the final offer.

stood what the clarification meant as he described in earlier testimony. He again testified that during his explanation of the document he asked the Respondent's representatives if they understood that the Employer was going to remove one person per binder/trimmer line and they said they did. Kerl also testified that they discussed meeting after ratification to discuss whether the person removed from each line would be a loader or assistant. He also noted to the union representatives that the clarification was in line with their re-vote proposal, that once the reductions were implemented, they would use the provisions of article 17.15 to handle problems that arose. Kerl testified that at no time on December 13 did the parties talk about using article 17.15 prior to the implementation of the crew reduction. Their discussions of the use of this article were all about its use post-implementation. Kerl testified that at no time on December 13 did the Employer indicate that the proposed reductions on the binder/trimmer line would only occur when it could show special circumstances as envisioned in article 17.15 or by mutual agreement of the Employer and Respondent. Kerl also denied that there was any discussion of the Respondent having veto power over the proposed crew reductions. Kerl testified that at this meeting, the Union gave no indication that its interpretation of item 6 was different from that of management.

The Employer's controller, Mark Bargnesi, testified about the December 13 meeting. Bargnesi testified that when they discussed item 6, Snyder raised the matter of how staffing problems on the binder/trimmer lines would be handled after implementation. According to Bargnesi, that was the reason for the clarification of item 6 by the Employer and it related only to the second sentence of the Union's proposal for a revision of item 6. Bargnesi testified that the Employer reiterated that it was not changing the language of its final offer, that it still called for the reduction of one person per line, and that the clarification language was only to be used to solve problems after implementation of the reduction. At no time on December 13 was it ever suggested that the Respondent would have veto power over the proposed reduction or that special circumstances as defined in article 17.15 of the existing contract would have to exist before the reduction could take place.

Respondent's witnesses had an entirely different and far less credible version of the meeting with respect to item 6. Mamon testified that the Respondent's proposal regarding item 6 was prepared as a result of Mamon's phone call to Kerl the previous day. I have previously discredited Mamon's testimony in this regard. Mamon testified that when the Employer came back with its clarifications, he asked questions about the one related to item 6 as it proposed to use article 17.15, a more restrictive clause than the new process clause. He testified that he understood the manning reductions would be accomplished using article 17.15. Mamon testified that he or Snyder asked if article 17.15 would be used prior to reductions, as the means to achieve reductions. He testified that the management team, by Kerl, said that article 17.15 would be used to achieve the reductions. According to Mamon, Kerl asked if they would have a second vote, and Mamon replied he had to have the approval of the executive board. Mamon then testified that he went to the Board and showed them the clarifications and the Board felt it was a significant enough change to have a second vote. Mamon testified that at the vote, he told the members that the reductions would take place under the provisions of article 17.15.

Mamon's affidavit that addresses this meeting of December 13, in pertinent part, states:

> The Employer provided us with a clarification sheet, dated December 13, 2006, and asked if we would take this to our membership for a revote. Liz Snyder may have asked if the reference to #6 was going to be done prior to the reduction, or if this was the vehicle, Article XVII, Special Note, to reduce crew size on binder/trimmer. That language does not state 'one person.' Liz Snyder may have asked how are you going to do it. To me, that meant that some of the lines would possibly be saved from a reduction. I do not recall the Employer's specific comment about #6. However, I affirmatively recall that the Employer did not state anything at that meeting that led the Union to believe that Article XVII would not be used to reduce the manning as proposed. The Employer made no statements, or set up any red flags, that would lead the Union to believe anything other than that the Employer would be using Article XVII as a vehicle to reduce manning. The Employer never stated that they would implement the reduction and then apply Article XVII to the future. Article XVII is more restrictive than the new process language. This was the first time the Employer brought up the Special Note—All Equipment language. I do not recall a discussion about the Special Note occurring at all in the first meeting earlier in the day.

At one point during the afternoon meeting, Liz Snyder, asked whether the Employer was going to utilize article XVII (17.15), the parameters of special note, prior to the manning reduction. One of the Employer representatives said it would apply "prior to." After this meeting, the general consensus among Liz Snyder and myself, there was no question that the Employer was going to use article XVII special note to reduce the manning at issue. The Union did not even conceive that the Employer would be referring to manning in the future. The Union believed that the Employer threw out the new language, because they thought it would be more amenable to the Executive Board and the employees." (End of quote from Mamon's affidavit.)

Snyder testified that when she saw the clarification to item 6, she was shocked because she felt that the Employer had taken the proposed staff reduction off the table as the language of the clarification was already in the existing contract. She testified that she was still concerned so she asked if the clarification language was to be used prior to the reduction. According to Snyder, Kerl said, "Yes, yes, yes." For reasons set out below, I do not credit this testimony and believe it to be fabricated to serve Mamon's and Snyder's personal agendas.

There were several items clarified by the Employer on December 13, and those clarifications were discussed by the parties on that date. Each in some fashion modified or clarified in some small way the Employer's final offer, but did not significantly change it. Yet, those items were discussed, but the clarification of item 6 was almost entirely left alone, save for the cryptic "prior to" question purportedly posed by Snyder. This

is true even though Snyder felt or says she felt that the change to item 6 had the effect of taking that item off the table. If her testimony is to be believed and I do not believe it, certainly she would have asked whether the Employer was taking it off the table.

It should be noted that if article 17.15 were used as the method to reduce one person per line, it could never be accomplished. Article 17.15 is very restrictive, allowing a reduction only when there are special circumstances shown, something that would not happen on a daily basis. Article 17.15 addresses temporary problems and is not used to make permanent staffing changes. Moreover, if the Employer did make this proposal, it was making the proposed new contract even more restrictive in this regard than the existing one, which would have allowed the new process clause to be used or perhaps other existing provisions.

I find that the Employer did not change the terms of its final offer. It was not authorized to change it, and as its witnesses noted at hearing and to Respondent, it would not have been fair to the other local unions to change the offer. All that the Employer was willing to do was to provide some clarification, and specifically with respect to item 6, to provide a mechanism for solving manning problems that arose in future after the binder/trimmer line reductions had taken place. The clarification only dealt with the second sentence of Respondent's counterproposal on item 6 which dealt with problems post reduction. I find that the Employer clearly communicated to Respondent its rejection of the new process clause or article 17.15 as a means to make the reduction. The existing contract already contained the new process clause and article 17.15 and thus, the Employer was not getting anything by asking the Respondent for it. There was no new process involved nor were there special circumstances as envisioned by article 17.15, simply and significantly there was an overriding financial necessity to achieve cost reductions to keep the plant alive. The Employer had consistently and repeatedly rejected the notion of new process, mutual agreement, or any other mechanism that gave the Respondent a veto power of the reduction. To have agreed to new process or any other similar mechanism, would have not allowed the Employer to have a chance to save the plant, or make the investments envisioned by the quid pro quo items.

I credit the testimony of Kerl, Smith, and Bargnesi over that of Snyder and Mamon regarding the events of December 13. Using article 17.15 it makes sense in the way its use was intended, as related by the Employer. It would afford a mechanism to solve any production staffing problems that arose on particular jobs post reduction. It makes no sense whatsoever to use it to make the reductions. The Employer already had article 17.15 in its contract. Nothing had changed with respect to the financial necessity of achieving the cost savings the 21-person reduction represented.

I do not think Snyder and Mamon were confused or misled in any respect in this meeting. They have simply chosen to play a game to serve their own limited and short sighted interests. I find that the Employer made perfectly clear that the final offer remained the same with respect to the reduction, that it would involve one person per binder/trimmer line for a total of 21 persons without restriction or limitation on its implementation. I find that it was likewise perfectly clear that article 17.15 would be used in the future, post reduction, to solve problems that might arise. The clarification was only made to clarify what would happen if problems arose post reduction, a legitimate concern of Respondent, and expressly raised by Snyder. When two of Respondent's representatives left the December 13 meeting, the state of the agreement was that the reductions would take place as proposed in the Employer's final offer and, if problems arose thereafter, they would be addressed by use of article 17.15. I believe and find that Mamon and Snyder knew this and agreed to it, but chose after this meeting to jump on the language of the clarification in a last ditch effort to avoid the reduction. I do not credit their representations that the Employer agreed that article 17.15 would be used prior to the reductions and find their testimony in this regard to be fabricated and untrue. I similarly find all of Mamon's and Snyder's testimony about their reaction to the Employer's clarification of item 6 fabricated. Respondent's counsel, at one point, accused the Employer of playing a "shell game" when in fact that is clearly what Respondent did in the timeframe following agreement on December 13.

h. Other events of December 2006

On December 14, Mamon called Kerl and told him that a revote would take place on December 15. Kerl made available to Mamon 300 copies of the final offer and 300 copies of the clarification document for distribution to unit members. Snyder testified that at the membership meeting of December 15 Mamon told the membership that the Employer would attempt to reduce staff following a procedure used in February 2006. The Employer, on that occasion, submitted a written request to reduce force to the Respondent and it was voted up or down by the Respondent's executive board. This procedure was clearly not mentioned in the December 13 meeting.

On December 15, 2006, the members of the Bindery bargaining unit, represented by Local 17B, voted to ratify. The electrotypers unit represented by Local 76 voted to accept the final offer; and the QDS bargaining unit represented by Local 17B rejected the final offer. On December 18, 2006, the QDS bargaining unit voted to accept the final offer.

Subsequent to the ratification of the Employer's final offer, the Employer did get the Harlequin contract and got a commitment from higher management to install the two Timson Presses in Depew and to keep one Gravure Press in Depew for 1 year. Thus, it followed through on its quid pro quo offer.

i. The meeting and events of January 29

On January 29, 2007, there was a meeting between representatives of the Employer and representatives of Respondent Local 17B. Present for the Employer were Bargnesi, Smith, and Bill Reese, manager of the Bindery Operations. Present for the Respondent were Mamon and Snyder.

Mamon testified that in early January 2007 he received one draft of the new contract which the Employer wanted him to sign. It was introduced as Respondent's Exhibit 2. It does not contain the language reducing the binder/trimmer line as does the copy of the contract Mamon was asked to sign in February. He testified that he got that language on the day of the sign-

ing.[15] Kerl testified that the language of the reduction was not in the early drafts because the position to be eliminated had not been decided.

Mamon testified that he received a voice mail from Kerl on January 26, 2007. Mamon testified that Kerl's message was that he wanted to talk about contractual language on reducing the manning on the binder/trimmer lines. Mamon added that Kerl indicated that he wanted to reduce manning by one person, per line, noting that he had not included that language in the draft contract he had sent Mamon.

According to Kerl, the purpose of the meeting from the Employer's perspective was to discuss the position or clarification to be reduced on the binder/trimmer line pursuant to item 6.

Smith testified and agreed with Kerl as to the purpose of the meeting. According to Smith, the Employer proposed eliminating the cover feeder position. The Respondent, by Snyder, objected that this position on the binder/trimmer lines had been reduced earlier. At that point, Mamon called a caucus. When Respondent's representatives returned, Mamon inquired what process was to be used to determine the position eliminated and indicated that he expected it to require mutual agreement of the parties. Smith then asked if Mamon understood that a person had to be eliminated from each line. According to Smith, Mamon said "yes," then added that it had to be by mutual consent. The parties went back and forth over this issue and the dialogue became heated. Finally, Smith stated that on February 12, 2007, the reduction would take place and a person would come off each binder/trimmer line. The parties, at some point in this meeting, agreed to meet again. The Employer stated that if agreement had not been reached in these meetings, it would implement its proposals as of February 19, 2007.

Snyder testified about the January 29, 2007 meeting. She testified that Smith opened the meeting by saying "who are we going to cut from the manning." She testified that she and Mamon had no clue as to what he was talking about as they thought they were meeting to discuss contract language. She or Mamon asked how the Employer was going to use article 17.15 to achieve a reduction in force. Snyder said the reduction would be accomplished by February 12, 2007. Smith testified she realized that the Employer was applying article 17.15 only after the reduction in force had been achieved. If, after the reduction, a need arose for an extra person, that person would be supplied using the terms of article 17.15. As found above, I believe that Respondent had known this since December 13.

According to Mamon, at the meeting held January 29, 2007, the Employer stated that it wanted to reduce manning in the Bindery Department by February 12, 2007. Mamon testified that he expected to achieve the reductions by use of article 17.15 and as of January 29, 2007, the Employer had no intention of doing it that way. He said the parties had two completely different understanding of how the reductions were going to take place. Because of this difference, he prepared and sent a letter to the Employer that reads:

> As per our meeting of 1–29–07, 1100 a.m. I have met with my bargaining committee. We have come to the same interpretation of #6 on the concessionary bargaining list based on the company clarification of #6 which reads "#6: Reduce crew size on Binder/Trimmer—Reference CBA Article XVII SPECIAL NOTE-ALL EQUIPMENT" THIS CLAUSE READS: "*Special Note—All Equipment:* Whenever unusual circumstances arise due to the nature of the job or the materials used, affecting the normal scheduled production on the machine, the manning of this equipment will be adjusted to meet the conditions based on mutual agreement between the Company and the Union."
>
> Manning reduction is to follow articles XVII, paragraph 17.15 prior to manning reduction changes as was explained to us prior to the voting on Dec. 15 and was presented to the people with this understanding.
>
> With that understanding no further contractual language is needed. (End of quoted letter.)

Kerl credibly disagreed with Mamon's assertion that his interpretation of the reduction provision was that given to him by the Employer prior to the December 15 vote. Kerl testified that no one from the Employer had explained the reduction provision as Mamon now interpreted it. Respondent's attorney on the record stated that Respondent's view is that Item #6, as clarified on December 13, was a nullity. It takes the position that in insofar as manning reductions were to be accomplished, the decision to do so would be made pursuant to the directions of the existing contract provisions, article 17.15 and the new process clause. Thus, if one believes the Respondent's position, it ratified the existing contract with no change as it concerned the proposed reductions in staffing on the binder/trimmer lines. For reasons noted above, I have rejected this assertion and have found that the testimony given by Respondent's representatives about the December 13 meeting to be fabricated and untrue.

j. Meeting and events of February 1, 2007

The Employer's representatives (Bargnesi, Kerl, Reese, and Smith) met with representatives of Respondent (Mamon, Snyder, Klyczak, and Casey) in the Employer's human resources conference room on February 1, 6, 7, 9, and 17, 2007. Dave Smith did not meet during the February 1, 2007 meeting.

Kerl testified that at the meeting of February 1, 2007, the Employer discussed various positions that could be eliminated and the impact of each. They also discussed what the person removed would be doing post reduction.[16] The Respondent's representatives joined in these discussions with questions. According to Kerl, at this meeting he asked Mamon and Snyder if they understood they were to discuss the removal of one person per line, and they said they did.

Kerl recalled Mamon asking what process they would follow and Kerl told him they were in the process, as the Employer had stated it would discuss identifying the position or classification to be eliminated post ratification. According to Kerl, he told the Union that after implementation of the reduction, if

[15] On cross-examination, it appears that Mamon got by some means one or two other drafts of the proposed contract.

[16] As noted earlier in this decision, the Employer was not going to lay off the persons removed from the binder/trimmer lines, but transfer them to other lines and actually reduce staff by attrition.

unusual circumstances arose, article 17.15 would be used to meet them. Also at this meeting, Kerl asked the Union if it would sign the revised CBA and the Union indicated it would not.

Kerl identified a document reading: "The Company/Union have negotiated/ratified as follows: Reduce crew size by one person per binder/trimmer line. Furthermore the Company will meet with the Union starting on February 5, to identify the position/classification to be removed. We will use an implementation date of no later than Monday February 19, 2007. This implementation would utilize article XVII, Special Note—All Equipment, when unusual circumstances arise." It is signed by Kerl and states in handwriting "This document presented on February 1, 2007." It also has in handwriting, "Reviewed on February 5 and 6, 2007." Kerl testified that these latter dates should be February 6 and 7. He also testified that the document was prepared in response to Mamon's request of January 29, 2007, that the process to be used in the reduction be put in writing.

k. The meeting and events of February 5, 2007

At the meeting held on February 5, 2007, the Employer began talking about implementing its final offer on February 19, 2007. Following this meeting, Mamon sent the Employer a letter reading:[17]

> Local 17B has delayed the signing of the concessionary contract due to a change in the position of the Company. When the final Company offer (*concessionary contract list of Dec. 8, 2006)*, was voted on by the Union body on Dec. 12, 2006 it was turned down. The Union and Company met to discuss the concerns of the members. One major concern was #6 on the list (#6 Reduce crew size by one person per binder/trimmer line). It was said to be open ended. Questions as to who and how this was to be done and where was it in writing were high on the list. Shortly after that meeting the Union and Company met again to discuss a Company clarification which included the clarification of #6 which reads: "Reduce crew size on Binder/Trimmer—Reference CBA Article XVII SPECIAL NOTE—ALL EQUIPMENT." This was the contractual clause the Company said they would use to adjust manning. This clause reads: (omitted as repetitive, see above Union letter of January 29, 2007).
>
> In past practice this article was successfully used to adjust contractual manning as follows: When the Company wanted to adjust contractual manning based on this clause they contacted the Union. The Union and the Company worked toward a mutual agreement. The same held true for Union request of contractual manning changes based on the said clause. This was all done prior to the manning adjustment as clearly aligns and stated in this clause and by mutual agreement.
>
> With that understanding of this clause supported by the clarification document and meeting, the negotiating committed presented this clarification list to the Union's executive board and asked for a revote on the concessionary list based on the Company's clarification document of the list. The board OK'd a revote. On Dec. 15, 2006, the list as well as the clarifications were presented to the Union body for a vote. I was the presenter of the clarification and explained the clarification of #6 as follows: Manning well be adjusted as it aligns with articles XVII, 17.15 of our present contract. I read the entire clause and explained the clause to them which included its use as prior to any manning adjustment. This was the same understanding that the bargaining committee as well as the Executive Board had. With that understanding, it was taken to another vote by the Union body and was passed by a close YES vote.
>
> On January 29, 07 at a meeting on manning reduction with the Company, Liz Snyder and I were told that the manning reduction will take place February 12, 07 and it was not the intent of the Company to use this clause as we understood it but to use it after the manning changes were implemented.

It is the position of GCC.IBT Local 17B that, "Manning reduction is to follow Article XVII, paragraph 17.15 prior to manning reduction changes, as was explained to us prior to the voting on Dec. 15 and was presented to our members with that understanding. We want what we voted on." (End of quoted letter) Again, for reasons set out above in my discussion of the December 13 meeting, I reject this claim as pure fabrication.

l. Meeting and events of February 6, 2007

Kerl testified that he received Mamon's letter on February 6, 2007. Kerl took the letter as an answer to his question of Mamon about whether he was going to sign the revised CBA. On February 6, 2007, Kerl again asked Mamon if he were going to attend the February 7, 2007 signing ceremony that was to be attended by all the Unions and their representatives for the purpose of signing the revised CBA. Mamon indicated he would be there representing the QDS employees and sign their revised contract, but would not sign the Bindery CBA.

Following this conversation, Kerl sent Mamon a letter dated February 6, 2007, which details the Employer's position. It states:

> A series of meetings to collectively bargain certain changes to the current collective bargaining agreement between Quebecor World Buffalo and GCC/IBT Local 17B were held over the past several months. As a result of those meetings, the Company believed it had reached full agreement with GCC/IBT Local 17B consistent with the Company's final offer of December 8, 2006 as to changes to this current collective bargaining agreement. This belief was validated by the fact that you presented the tentative agreement reached to the GCC/IBT Local 17B membership for ratification. I was thereafter advised that the GCC/IBT Local 17B membership had ratified the new agreement.
>
> Following your notification that the new agreement was ratified by GCC/IBT Local 17B you have now informed me that you do not believe full agreement was reached. Specifically, you raised an issue regarding Item

[17] The letter is copied verbatim with no changes in spelling or wording.

#6 of the tentative agreement that called for a reduction of crew size on Binder/Trimmer equipment. On January 29, 2007 the Company met with you and responded to this issue with a clarification (this clarification did not change the agreed upon language or intent of the parties). On January 29, 2007, you provided the Company a document indicating that you and the GCC/IBT Local 17B bargaining committee had "come to the same interpretation of #6 on the concessionary bargaining list based on the company clarification of #6." In your letter of January 29, 2007 you further stated "Manning reduction is to follow Article XVII paragraph 17.15 prior to manning reduction changes as was explained to us prior to voting on Dec. 15 and was presented to the people with this understanding." Based on your letter of January 29, 2007 there appeared to be no disagreement as to the meaning and intent of Item #6.

Despite the communication of January 29, 2007, you then informed the Company that GCC/IBT Local 17B was refusing to sign the new collective bargaining agreement. In light of that refusal to sign the new collective bargaining agreement, a meeting was held on January 29, 2007 to discuss the reason for such refusal. During this meeting, Item #6 was again discussed as to its language, meaning, intent and implementation. Based on those discussions a document was prepared setting forth the common understanding of the parties. This document read: The Company/Union have negotiated/ratified as follows: Reduce crew size by one person per binder/trimmer line. Furthermore the Company will meet with the Union starting on February 5, to identify the position/classification to be removed. We will use an implementation date of no later than Monday February 19, 2007. This implementation would utilize article XVII, Special Note—All Equipment, when unusual circumstances arise.

This document was prepared during the course of the meeting and, upon your review, you agreed that it was accurate in its description of the agreement and implementation plan.

Additional telephone calls between you and I following this January 29, 2007 (meeting) have failed to bring about any change in the GCC/IBT Local 17B position, i.e., that the Local will not execute the agreed upon collective bargaining agreement.

Despite the several above noted instances of GCC/IBT Local 17B agreement to all items of the new agreement and specifically, Item #6, you continue to refuse to execute the agreed upon collective bargaining agreement. In a further effort to bring this matter to conclusion, the Company has met with you on this date. During that meeting you have continued to take the position that GCC/IBT Local 17B will not sign the new collective bargaining agreement. In response to specific Company inquiry, you have indicated that GCC/IBT Local 17B has not changed in this position and has nothing to offer by way of alternative resolution or compromise.

Based on the position taken by GCC/IBT Local17B in today's meeting, it is clear that GCC/IBT Local 17B is in violation of the NLRA by its refusal to execute the collective bargaining agreement to which it has agreed and ratified.

Additionally it is also clear that if there were a legitimate issue as to Item #6 between the parties, that the GCC/IBT Local 17B position is absolute and fixed. This is in contrast to the Company position that the language relating to Item #6 along with its meaning, intent and implementation method is clear as set forth in the new collective bargaining agreement, the GCC/IBT Local 17B letter of January 29, 2007 and the mutually agreed upon memo stemming from the January 29, 2007 meeting between the parties. In light of this, it must be concluded that the parties are as impasse.

Given the existence of impasse regarding Item #6, it is the Company's intention to implement the terms of Item #6 effective Monday, February 19, 2007. The Company remains willing to meet to discuss and identify the position/classification to be removed from the Binder/Trimmer equipment as mutually agreed upon in the January 29, 2007 and reflected in the memo of that agreement. If GCC/IBT Local 17B does not engage in these discussions to identify the position/classification to be removed because of its refusal to execute the new collective bargaining agreement, the Company will have no other choice, based on the impasse status, but to unilaterally identify the position/classification.

Based on the above, GCC/IBT Local 17B is strongly urged to execute the agreed upon collective bargaining agreement. Further, GCC/IBT Local 17B is strongly urged to engage in discussions per the prior mutual agreement to identify the position/classification to be removed from the Binder/Trimmer equipment. [End of quoted letter.]

With regard to his mention of a mutual agreement, Kerl testified that he continued to ask Mamon and Snyder if they understood that one person per binder/trimmer line had to be removed and they continued to say they understood this to be the case. With regard to Kerl's mention of Mamon's January 29, 2007 letter in which Mamon indicated that article XVII would be used prior to the reduction in force, Kerl testified that was never agreed to or discussed in the negotiation leading to the revote on December 15.

Kerl testified that Respondent brought up the matter of "mutual agreement" in the February meetings. Kerl testified that he rejected that idea each time it was raised, noting that it would not guarantee the savings the Employer needed.

m. Meeting and events of February 7, 2007

On February 7, 2007, during the course of a signing ceremony for the respective bargaining units to execute collective-bargaining agreements with the Employer, Respondent, by Mamon, did not execute a collective-bargaining agreement between the Employer and Respondent for the Bindery Unit.[18] Mamon was presented with a copy of the new contract, but

[18] Mamon did review drafts of the new contract and made some cosmetic corrections to the drafts. The language in the contract relative to item 6 reads: "Reduce crew size by one person per binder/trimmer line."

refused to sign it.[19] All of the other unions signed their new CBA's and Mamon signed the one for the QDS unit.

Snyder testified that things got heated at this meeting. According to Snyder:

> Respondent's representative Casey asked the employer that if its intent was to use 17.15 only after the reduction in force had taken place, why did not management say that before the second ratification vote. According to Snyder, Smith responded, saying that the Employer needed to give it to you to sell the package.

With respect to the February 6, 2007 meeting, Casey testified that Smith was upset and said, "[Y]ou know, you guys blew me out of the water. I thought I had a deal here. I thought we had an agreement, why aren't you signing this contract." According to Casey, Mamon said that the Respondent had a problem with item 6. Kerl then asked if that meant he was not signing the contract. Mamon said, "Yes, we are not signing the contract." As the parties left the meeting, Casey remembered asking Smith, "Dave, why the hell didn't you put that in your revision proposal, when we brought it back to the membership for the second vote, if you weren't going to use it." According to Casey, Smith angrily replied, "To sell it, that's why we gave it to you. We gave that to you to sell it." Casey testified that this exchange took place in the meeting room.

While Casey's Board affidavit states that Smith did make a statement to the effect that "[W]e gave it to you to sell it," there is no reference in the affidavit that Casey asked Smith about the clarification document. This change in Casey's testimony changes the whole context of this exchange, assuming it ever happened. Both Kerl and Bargnesi were in the meeting room at all times when Casey was there. Kerl testified that he never heard Casey ask the question nor did he hear Smith say what Casey attributes to him. Bargnesi testified similarly. Mamon did not testify about this alleged outburst. Given Respondent's previous demonstrated willingness to fabricate testimony to suit its ends, I do not credit this testimony by Casey and give it no weight.

On February 7, 2007, the Employer put out and posted a notice entitled, "Buffalo Status." It noted that the Company had signed a contract with Harlequin books for its mass market books that would be effective until 2014. It also extended its agreement with Best Buy for its newspaper inserts and had decided to run two or even three Gravure presses during their busy season of September to December. It notes that because the employees approved the new 5-year CBAs, higher management was installing two Timson presses in late February or early March 2007.

n. The events occurring subsequent to February 7, 2007

The Employer and representatives of Local 17B met again on February 9, 2007 for the purpose of choosing what position on the binder/trimmer line would be cut. Management said that it had decided that the assistant cover feeder classification would be the one. The Employer noted that it would be implemented on February 19, 2007.

On February 14, 2005, Mamon sent a letter to the Employer that reads:

> I have reviewed your letter of February 6, 2007 stating impasse and found it to encompass information voids and inaccuracies. Based on the meeting of Feb. 9, 2007, it is apparent that this contract dispute needs to be resolved immediately for the benefit of all involved. The Union has noted this resolution of a #1 priority. I will be in contact with you to keep you informed of our choice of action.

On Monday, February 19, 2007, the Employer implemented the reduction of the crew size by one person for each of the binder/trimmer lines on all three shifts, for a total reduction of 21 employees. The Employer implemented the reduction of the cover feeder position.

On February 20, 2007, Kerl wrote a letter to Mamon that reads:

> On February 6, 2007, the Company provided you with a letter calling upon you to sign the ratified collective bargaining agreement and detailing events regarding Item #6 of that agreement which lead the parties to impasse as of that date. Since that time the Company has initiated multiple meetings in an effort to break the impasse. These meetings have been held on February 6th, 7th, 9th and 14th. At each meeting the sole topic was resolution of Item #6, i.e., resolution as to what position was to be removed from each of the Binder/Trimmer lines.
>
> During each of these meetings you have continued to take the position that GCC/IBT Local 17B will not sign the new collective bargaining agreement. Furthermore, in response to specific Company inquiry as to the Union's stance on which position is to be removed from each of the Binder/Trimmer lines, you continue to indicate that GCC/IBT Local 17B has no change in its position and nothing to offer by way of input, suggestion, ideas, or alternatives on this issue. You continue to simply refuse to discuss the matter of what position should be removed from each of the Binder/Trimmer lines despite the Company's ongoing effort to engage in that dialog. Your one suggestion that the Company make a capital expenditure was non-responsive to the issue.
>
> In light of your ongoing refusal to engage in discussion as to the position to be removed from each of the Binder/Trimmer lines the impasse of February 6, 2007 remains. In light of this impasse, during the February 14th meeting the Company indicated that it could no longer delay implementation of the contractual agreement that clearly stated a position was to be removed from each of the Binder/Trimmer lines. In that February 14th meeting the Company outlined its intended implementation process to effect the removal of the contractually agreed upon position from each of the Binder/Trimmer lines. That implementation process was:
>
> The Company would discuss the removal of a position from each of the Binder/Trimmer lines and its implemen-

[19] Respondent noted that earlier drafts of the new Bindery CBA did not have language reducing the crew size on the binder/trimmer lines. Kerl testified that it was not included in some drafts as the classification of the persons to be reduced had not been determined.

tation as part of the agenda during the regularly scheduled monthly meetings with the Bindery Journeymen on Thursday February 15th. One meeting was held per shift, each of which you attended. The position removal and implementation process would then be presented during the crew meetings with the first shift on Monday, February 19th, the second shift on Tuesday, February 20th and the third shift on February 22nd.

The next meeting with you and your team is scheduled for Thursday, March 1st, which would provide approximately 20 shifts of actual implementation to evaluate. Either party can call a meeting prior to that date as appropriate.

On February 14th, you presented the Company with a document entitled "Re: Company's decision of impasse" and a document referencing "In the matter of grievance "Manning Reduction" requesting the Company to (waive) the first three steps of the grievance procedure. As to the impasse, the Company clearly believes impasse was reached on February 6th and that impasse remains given your refusal to discuss the implementation of Item #6 (removal of a position from each of the Binder/Trimmer lines) as required per the collective bargaining agreement ratified by Local 17B. The fact that you illegally refuse to execute this Agreement does not, in the Company's view, absolve you of your responsibility to discuss implementation of Item #6.

As to the request to waive the first three steps of the grievance procedure, it should be noted that no grievance has yet been filed (only your verbal indication that one would be filed at a later date). Since no grievance has yet been received, it would be entirely premature to agree to any waiving of grievance steps.

On Monday, February 19, I contacted you by telephone indicating that the new collective bargaining pages had been revised to reflect the Binder/Trimmer line manning adjustments implemented and once again requested you to sign the new collective bargaining agreement. Your response to this request was again "No." I asked you to clarify and you replied, "We will not sign this contract."

As we have done from the time Local 17B ratified the new collective bargaining agreement, we again strongly urge GCC/IBT Local 17B to execute such agreement. [End of letter.]

C. Conclusions

Respondent violated Section 8(b)(3) of the Act by refusing to execute and by reneging on the terms of the agreed-upon collective-bargaining agreement.

1. The final offer was clear and unambiguous

I find that Respondent, by Mamon, violated Section 8(b)(3) of the Act when, on February 7, 2007, it refused to execute the agreed-upon contract and subsequently reneged on the terms of that agreement concerning the reduction in manning on the binder/trimmer line. I further find that Respondent was bound to execute that contract based on a December 13, 2006 meeting of the minds between the Employer and the Respondent over the reduction in manning on the binder/trimmer line.

Section 8(b)(3) of the Act provides that "[i]t shall be an unfair labor practice for a labor organization or its agents to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of Section 9(a)." A labor organization violates Section 8(b)(3) of the Act when refusing to execute a collective-bargaining agreement at the request of the employer once the parties have reached agreement on the terms of that agreement, and those terms are accurately reflected in the agreement. *H. J. Heinz Co. v. NLRB,* 311 U.S. 514 (1941).

The Board has placed limits on the *Heinz* contract execution requirement. Most importantly, that obligation will only attach if it is found that the parties reached a "meeting of the minds" on all material terms of that agreement. *Intermountain Rural Electric Assn.,* 309 NLRB 1189, 1192 (1992). To obtain a meeting of the minds, there must be "mutual expressions of assent" to the exchange of promises between the parties to the contract. *Corbin on Contracts,* section 4.13 (2002).

When analyzing whether the parties achieved a "meeting of the minds" during negotiations, the Board has consistently applied an objective, reasonable person standard. "A 'meeting of the minds' in contract law is based on the objective terms of the contract rather than on the parties' subjective understanding of the terms. Thus, subjective understandings (or misunderstandings) of the meaning of terms that have been agreed to are irrelevant, provided that the terms themselves are unambiguous [as] 'judged by a reasonable[ness] standard.'" *Vallejo Retail Trade Bureau,* 243 NLRB 762, 767 (1979); *Hempstead Park Nursing Home,* 341 NLRB 321, 322 (2004); see also *MK-Ferguson Co.,* 296 NLRB 776, 776 fn. 2 (1988). In utilizing this standard, the Board looks to the contract negotiations as a whole. "What the parties may have agreed upon must be determined from what they said and did during their negotiations." *Electrical Workers Local 398,* 200 NLRB 850 (1972).

In this case there is no dispute about any provision of the offer given to Respondent by the Employer except for item 6. Item 6 of the final offer is clear as can be, reading: "Reduce crew size by one person per binder/trimmer line." Based on Respondent's witness's testimony, as of the end of the day on December 8, they understood that one person would be removed from each binder/trimmer line with no restrictions or limitations on implementation. Both Snyder and Mamon testified that they understood a person would be removed from each line and that the Employer rejected use of the new process clause or any other form of mutual agreement or mutual consent to achieve this reduction.

Under the objective reasonableness standard set forth in *Vallejo Retail,* supra at 767, the final offer reflected an understanding, held by both parties, that upon passage of the final offer, one person would be reduced from each binder/trimmer line. The final offer's silence as to mutual agreement or any other restriction as a part of the manning reduction process illustrates that the Employer was not offering any limitation on achieving the $790,000 in projected cost savings. Further the content of the negotiations between the parties leading up to the final offer indicates that the Employer flatly rejected Respondent's proposal to require mutual agreement regarding the manning reduction. Therefore, there can be no doubt as to Respondent's understanding of the clear and unambiguous lan-

guage of Item 6 of the final offer. See *Electrical Workers Local 398,* supra.

2. The parties entered into a meeting of the minds on December 13

I have heretofore found that the parties reached a meeting of the minds on December 13, rejecting as fabricated Respondent's testimony regarding its understanding of the meaning of the clarification of item 6 made that day. Under the reasonable person standard laid out by the Board in *Vallejo Retail,* supra at 267, it is inconceivable that Respondent could have interpreted the Employer's revised clarification document as an assent by the Employer to establish mutual agreement as a condition precedent to implementation. Rather, as found earlier, the document merely reflected the parties' agreement about Respondent's second sentence in its counterproposal of December 13, which pertained only to matters arising post-implementation of the reduction. This agreement was demonstrated in discussions held during the December 13 meeting, that under certain circumstances arising postimplementation, the Employer would make temporary manning adjustments utilizing article 17.15.

The discussion between the parties following presentation of the Employer's clarification document, under *Vallejo Retail,* supra at 267, put Respondent on notice that the Employer would not allow mutual agreement, or any other restriction, as a precondition to reduction in staff on the binder/trimmer lines. On presenting the document, Kerl stated that its contents did not in any way change the terms of the final offer. During discussions of the manning reduction clarification, Kerl specifically asked Mamon and Snyder if they understood the passage of the final offer would result in the reduction of one person from each binder/trimmer line. Both Mamon and Snyder stated that they understood. I have found earlier that the Employer's witnesses credibly testified that the discussion surrounding the reference to article 17.15 specifically pertained to post-implementation issues regarding potential changes in manning under special circumstances. These discussions made it abundantly clear to any reasonable person that there would be no mutual agreement requirement or other restriction to the reduction of 21 employees prior to implementation.

As I found in my discussion of the December 13 meeting, the clarification document did not constitute a new offer or a revision of the final offer. This point was made abundantly clear to Respondent at that meeting by the Employer. I have heretofore found that Respondent understood that the clarification as it affects item 6 related only to post reduction implementation and that the final offer with respect to the reduction itself remained unchanged. For the reasons set forth in my credibility finds relating to this meeting, I have rejected Respondent's postmeeting rationalizations and fabrications regarding its understanding of the clarification document relating to item 6. It should also be noted that the Employer fashioned the clarification document not only based on its December 13 discussion with Respondent, but also to address concerns raised by the electrotypers. Prior to the December 15 re-vote by the electrotypers unit, Kerl provided that Union President Ziewicki with a copy of the clarifications. Ziewicki testified that by "just looking at it, it was clear that no terms of the Final Offer had been changed." Further, on its face, the clarification document does not abrogate the terms of the final offer, rather simply clarifies them.

Prior to the re-votes by the three units that had rejected the final offer, all of the Unions received a copy of the revised clarification document, as that document, like the original clarification document, helped explain certain aspects of the final offer which some unions had already ratified. However, those units which had already ratified the final offer on December 12, including the pressmen which ratified a manning reduction, were not asked to take a re-vote based on the revised clarification document. If, as Respondent incorrectly and falsely claims, the revised clarification document represented a complete overhaul of the terms of the final offer, it would have necessitated a re-vote among the units that already ratified the final offer, as the Employer had previously expressed that it would not agree to change the terms of the final offer for just a single unit.

Under an objective reasonable person standard, the revised clarification document did not negate nor alter the terms of the final offer, including item 6. As discussed at length in my discussion of the meeting of December 13, the Employer's witnesses established that Respondent, on December 13, understood that one person would be coming off the binder/trimmer line, without limitation or restriction. Respondent also clearly understood that the reference to article 17.15 referred only to special manning circumstances arising after the reduction had been accomplished. I find that the Employer's final offer as clarified December 13 was clear and unambiguous on its face under a reasonable person standard. *Vallejo Retail,* supra at 767; *Electrical Workers Local 398,* 200 NLRB 850 (1972) (conduct and substance of prior negotiations is relevant in determining whether a meeting of the minds exists). That at some point, subsequent to December 13, Respondent had a change of heart with respect to its agreement and decided to renege on it does not change the fact that the parties did have a meeting of the minds.

3. After reaching a meeting of the minds, Respondent failed to execute the subsequent collective-bargaining agreement

It is undisputed that throughout meetings in February 2007, despite the passage of the final offer by its members, Respondent consistently stated that it would not execute the final offer. It is also undisputed that on February 7, 2007, a signing ceremony was held at which all units, with the exception of the bindery unit, executed their respective collective-bargaining agreements. Further, it is undisputed that Mamon attended the ceremony and signed the contract on behalf of the QDS unit, but refused to execute the bindery contract. Respondent admits as much in its answer to the complaint.

It is a violation of Section 8(b)(3) of the Act for a labor organization to refuse to execute a collective-bargaining agreement which accurately reflects the terms and conditions of the agreement between the parties to the contract. *H. J. Heinz Co. v. NLRB,* 311 U.S. 514 (1941). As I have previously found, the parties had already agreed on a contract which included all of the terms of the final offer, including the manning reduction on

the binder/trimmer line. Further, the bargaining unit members had voted to accept the offer and Respondent had informed the Employer of that acceptance. Respondent thus violated the Act by failing and refusing to execute the final offer.

4. Respondent's failure to properly communicate the agreed-upon contract to its members would not constitute a unilateral mistake that would necessitate the rescission of the contract

It is not certain what the Respondent told its membership prior to the re-vote which resulted in ratification. Given the very shaky credibility of Respondent's witnesses, that is really up in the air. I have already found that Snyder and Mamon did not tell the truth about what was told the membership at the first ratification vote. However, even assuming arguendo, that they told the membership the same incorrect and fabricated story they gave in this hearing, and further assuming that the membership ratified the contract based on that tale, it would at most constitute a unilateral mistake by Respondent, but one that would not lead to a rescission of the December 13 agreement. "[A] party to a contract cannot avoid it on the grounds that he made a mistake where the other [party] has no notice of the mistake and acts in perfect good faith." *North Hills Office Supplies,* 344 NLRB 523, 525 (2005).

In *Hospital Employees Local 1199 (Lenox Hill Hospital),* 296 NLRB 322 (1989), the employer and the union bargained to an apparent meeting of the minds regarding a salary increase during contract negotiations. The union, on presenting the details of the raise prior to the ratification vote, neglected to disclose a specific, important detail of the raise to the membership (the raise did not apply to all classifications). The membership ratified the contract and the union informed the employer of the ratification. Prior to contract signing, the union membership found out that the raise did not apply to one of the classifications. As a result, the union refused to sign the contract. The Board upheld the administrative law judge's finding that the union, by failing to sign the contract, had violated Section 8(b)(3). The judge found that because the proposal made by the employer was "unambiguous and clear," and that "only the [u]nion negotiator made a mistake in misinterpreting the . . . plain language used by [the employer]," the union's action constituted unilateral mistake which was 'not obvious" to the employer. Id. at 326. The judge found that the union violated Section 8(b)(3) of the Act because "[t]he [u]nion should be held to the representations made by its negotiator that the employees agreed to the contract and Lenox Hill should be able to rely on the bargain it made."

Similarly in the present case, the Employer could not have been on notice that Respondent was acting under an "obvious" mistaken assumption regarding the utilization of mutual agreement or the requirement of special circumstances before it could reduce 21 employees in accordance with the final offer, item 6. As previously found, the Employer on numerous occasions made it clear to Respondent that it refused to include mutual understanding, prior to the manning reduction implementation, because it would jeopardize the cost savings that the Employer needed to realize through the final offer. The importance of obtaining the manning reduction without strings attached was illustrated many times, including when the Employer walked out of negotiation prior to presentation of the final offer because Respondent was insisting on the utilization of mutual agreement. Throughout the December 13 meeting, Respondent demonstrated under a reasonable objective standard, that there was agreement that article 17.15 applied post-implementation; Respondent requested that the Employer memorialize its understanding in writing; Respondent stated it would take the matter to its executive board for a re-vote; and according to the Employer's witnesses, Mamon expressed that the offer, including the clarification of item 6 was valid and he thought it would be approved. For all of the reasons I have given in this decision, including Respondent's failure on December 13 to assert a differing interpretation, Respondent's current interpretation could not have been obvious to the Employer. Therefore, following Respondent's apparent acknowledgement of the meaning of the terms of the final offer after its receipt of the revised clarification document, the Employer could not have been on notice of Respondent's later "mistake." Even from January 29 through the February meetings, Respondent continued to accept that one person would have to come off the binder/trimmer line, which totally contradicts Respondent's position that there are restrictions on item 6 of the final offer. Thus, since Respondent's unilateral mistake would not have been obvious to the Employer, rescission should not take place. *Lennox Hill Hospital,* supra at 326.

In addition, under *North Hills Office Services,* supra at 525, the Board examines whether the party that is supposed to have received notice of a unilateral mistake, acted in good faith. Here, the Employer's good faith was evident not only during the negotiations, but also following what it thought was acceptance of the final offer by the units. By February 7, 2007, the Employer had procured all of the quid pro quo items it had tied to the Unions' passage of the final offer, including the new Timson presses, the operation of the gravure press which kept the Best Buy contract in Depew, and the extension of the Harlequin contract. Therefore, it is clear that the Employer, in good faith, was acting as if there were an agreement between the parties.

CONCLUSIONS OF LAW

1. The Respondent, Local 17B of the Graphic Communications Conference of the International Brotherhood of Teamsters is a labor organization within the meaning of Section 2(5) of the Act.

2. The Employer, Quebecor World Buffalo, Inc., is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

3. The following employees of the Employer (the Unit), constitute a unit appropriate for the purposes of collective bargaining with the meaning of Section 9(b) of the Act:

> All employees in the Bindery Department working on binding processes and operations, including preparation, movement, and storage of in-process materials for bindery processes, and operations, including jurisdiction over all machines and all work, as described in Article 4.1, Union Recognition, of the collective bargaining agreement, effective from March 14, 2000, through May 31, 2009.

4. At all times material, the Respondent has been the exclusive representative of all employees in the unit described above for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. On December 13, 2006, the Respondent and the Employer reached a meeting of the minds consistent with Board law on the terms of a collective-bargaining agreement that, inter alia, called for the unrestricted reduction of 21 employees from the binder/trimmer lines and if a problem arose on the lines post-implementation, the use of article 17.15 to adjust the manning on the lines.

6. On February 7, 2007, Respondent failed and refused to execute that collective-bargaining agreement and thereafter reneged on the terms of that agreement.

7. By its conduct as set forth above, Respondent has engaged in conduct in violation of Section 8(b)(3) of the Act.

REMEDY

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

Respondent is further ordered to, on the request of the Employer, execute the collective-bargaining agreement reached by the parties and tendered to Respondent by the Employer on February 7, 2007. Respondent is further ordered to post an appropriate notice to members.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[20]

ORDER

The Respondent, Local 17B of the Graphic Communications Conference of the International Brotherhood of Teamsters, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Quebecor World Buffalo, Inc. by failing to execute the collective-bargaining agreement submitted to it on February 7, 2007.

(b) In any like manner refusing to bargain with Quebecor World Buffalo, Inc., in accordance with the requirements of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request of Quebecor World Buffalo, Inc., execute forthwith the collective-bargaining agreement reached by the parties and tendered by Quebecor World Buffalo, Inc. on February 7, 2007.

(b) Within 14 days after service by the Region, post at its business office and meeting places, copies of the attached notice marked "Appendix."[21] Copies of the notice (and versions in other languages as deemed appropriate by the Regional Director) on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by Quebecor World Buffalo, Inc., if willing, at all places where notices to employees are customarily posted.

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

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

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