

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:

SECUPRINT INC.,

Employer,

and

GRAPHIC COMMUNICATIONS CONFERENCE/  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
LOCAL 503-M,

Petitioner.

Case No. 3-RC-12019

**BRIEF ON REVIEW SUBMITTED ON BEHALF OF  
EMPLOYER SECUPRINT INC.**

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## **PRELIMINARY STATEMENT**

Pursuant to Rule 102.67(g), employer Secuprint Inc. (“Secuprint”) hereby submits its Brief on Review in support of its request for the National Labor Relations Board (“Board”) to reverse the Acting Regional Director’s Decision and Direction of Election dated May 20, 2011 (“Decision”) in which he found, *inter alia*, that the petitioned-for unit of all employees working in Secuprint’s pre-press, bindery, digital bindery and shipping/receiving departments was an appropriate unit, even though it excluded employees working in Secuprint’s press department. Contrary to the Acting Regional Director’s Decision, the press employees share a substantial community of interests with those employees included in the petitioned-for unit, and Board precedent favors their inclusion in a broader lithographic unit. As such, the smallest appropriate unit in this case includes the press employees.

Upon review of the entire record, as required by Rule 102.67(g), the Board should find that the Acting Regional Director’s Decision must be reversed because (1) it was clearly erroneous on the record and such error prejudicially affects the rights of Secuprint; and (2) the Acting Regional Director misapplied Board precedent regarding the inclusion of press employees in a broader lithographic unit.

## **PROCEDURAL HISTORY**

On April 7, 2011, petitioner Graphic Communications Conference/International Brotherhood of Teamsters Local 503-M (“Petitioner”) filed a petition seeking certification as representative of a unit consisting of all full time and regular part time hourly employees in the pre-press, digital, shipping, and bindery departments of Secuprint. (*See* Board Exh. 1(a)). On April 20, 2011, a representation hearing was held before John N. Sullivan.

During this hearing, Secuprint and Petitioner introduced evidence related to two issues. The first issue relates to the scope of the unit. Petitioner sought a unit encompassing all hourly employees in the pre-press, digital, shipping and bindery departments of Secuprint but excluding the press employees. Notably, the petitioned-for unit excludes press helpers, who are part of the press department, and includes the digital press operator. It is Secuprint's position that the smallest appropriate unit encompasses all hourly production employees, which would include all those requested by the Petitioner but also the press employees. The second issue presented was whether two Secuprint employees, Bindery Manager Michael McFadden and Shipping/Receiving Manager Jessie McFadden, are supervisors within the meaning of the National Labor Relations Act.

Four different witnesses testified during the representation hearing. The employer called Vice President of Operations Jason Colline. The witnesses called by Petitioner were: Bindery Technician Robert Schultz; Bindery Manager Michael McFadden; and Shipping/Receiving Manager Jessie McFadden.

At the conclusion of the hearing, the parties were directed to file briefs setting forth their positions related to the two issues stated above. On May 20, 2011, the Acting Regional Director issued his Decision ruling that the press employees are properly excluded from the unit, and that the two managers in question are not supervisors within the meaning of the Act.

On June 3, 2011, Secuprint submitted its request that the Board review that part of the Acting Regional Director's Decision excluding the press employees from the unit. On June 9, 2011, the Petitioner submitted its Opposition to the Employer's Request for Review ("Opposition"). The Board subsequently granted Secuprint's request for review on June 16,

2011. Pursuant to the Acting Regional Director's Decision, an election was held at the Secuprint facility on June 17, 2011. The ballots cast in the election were impounded in accordance with the Board's Order granting Secuprint's request for review. For the reasons set forth below, Secuprint hereby requests that the Board reverse the Acting Regional Director's decision to the extent that it excludes the press employees from the unit.

### **FACTS**

Secuprint is a commercial printing company that maintains its sole facility in Rochester, New York. (TR<sup>1</sup> 12). While Secuprint is capable of fulfilling a wide array of paper-based printing needs, it specializes in security printing, which includes the printing of birth certificates, car titles, checks, coupons, and other documents of that nature. (TR 12).

Secuprint employs a total of thirty-two (32) employees. (TR 11). Secuprint's nineteen non-supervisory hourly production employees, including the two managers deemed nonsupervisory by the Acting Regional Director, work in five different departments. (TR 11). Those departments are pre-press, press, bindery, digital bindery, and shipping/receiving. (TR 11; Employer Exh. 1). All of these departments are located in Secuprint's one building, mostly in one large, open room. (TR 15; Employer Exh. 2). They are located in close proximity to each other and there is little, if any, separation between them. (TR 15, 17; Employer Exh. 2). Jason Colline, Vice President of Operations, has overall responsibility for all the hourly production employees. (Employer Exh. 1).

The production process involves multiple stages. First, the client files, containing the images and text to be printed, are delivered to the pre-press department where they are laid out to

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<sup>1</sup> References to "TR \_" are to the transcript of the Representation Hearing before John N. Sullivan, Hearing Officer, which took place on April 20, 2011.

the satisfaction of the client. (TR 13, 18). Once the files are laid out properly, a pre-press operator generates the plates for the printing press. (TR 18). Pre-press workers then deliver the plates to the press department and hang them on a rack at the front of the press. (TR 13, 14). There, the plates are put on the press, and press employees feed paper, which is stored in the bindery area, through the press. (TR 13, 19). Blank paper is fed in through the right side of the press, and it comes out of the left side finished as flat sheet. (TR 19). Press and pre-press workers discuss and resolve any issues that arise in the printing process. (TR 21-22). Once the product comes off the press, a press helper (otherwise referred to as a feeder tender) delivers it to the bindery area a few feet from the press where bindery workers perform cutting, folding, and stitching on specialized bindery machines. (TR 13, 19). From time to time a feeder tender assists in the bindery, working on the jogger. (TR 107, 154-155). The product is either wrapped and labeled right in the bindery or it is moved to the shipping department to be wrapped, palletized, and prepared for shipping. (TR 16-17). Once the product is ready, it is loaded onto a truck to be delivered to the client. (TR 19-20).

## **POINT I**

### **The Acting Regional Director's Decision On Substantial Factual Issues Was Clearly Erroneous On The Record**

In deciding whether a petitioned-for unit is appropriate, the Board focuses on whether the employees share a community of interest. *See Overnite Transportation Co.*, 322 NLRB 723, 724 (1996). It is well established that all employees who share a substantial community of interest must be included in the same unit. *See Colorado Nat'l Bank*, 204 NLRB 243, 243 (1973) (ruling that the petitioned-for unit is “too narrow in scope in that it excludes employees who share a substantial community of interest with employees in the unit sought”); *see also Seaboard*

*Marine, Ltd.*, 327 NLRB 556, 556 (1999). The factors considered in determining whether a community of interest exists among employees include: (1) contact with other employees; (2) degree of interchange with other employees; (3) similarity of qualifications, training, skills, and job functions; (4) similarity of wages, hours, and employment benefits; (5) shared supervision; and (6) history of bargaining. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

In his Decision, the Acting Regional Director erroneously concluded that Secuprint's press employees do not share a community of interest with its pre-press, bindery, digital bindery and shipping/receiving employees. He completely ignored certain evidence provided at the hearing and misconstrued other evidence. Indeed, an analysis of the relevant factors clearly demonstrates that a substantial community of interest exists among all of Secuprint's hourly production employees and, therefore, the smallest appropriate unit necessarily includes the press employees.

A. Contact

With respect to the first factor, the evidence established that Secuprint's hourly production employees frequently come into contact with each other. Employees from all different departments, including press employees, constantly interact in order to discuss issues that arise at various stages of the production process. For example, Jason Colline testified that press employees talk to pre-press employees when something on the printing plate does not look quite right, and also that press employees talk to bindery employees if an issue arises with the layout of the product. (TR 21-22). Interactions such as these take place on a daily basis. (TR 22). The Acting Regional Director completely ignored this testimony, stating that there "is no detailed evidence regarding the type and extent of contact" between the press employees and employees in the requested unit. (Decision at 25). He also disregarded the testimony of union

witness Jessie McFadden that the responsibilities of shipping employees include delivering materials and/or products to the different departments within the Secuprint plant, including the press department. (TR 186-87). As such, in carrying out their job duties, shipping employees frequently come into contact with employees from pre-press, press and bindery. These interactions are clearly sufficient to satisfy the “contact” factor of the community of interest analysis. *See Sears, Roebuck & Co.*, 319 NLRB 607 (1995) (finding that group of employees was improperly excluded from petitioned-for unit where such employees work near, interact with, and share common supervision with at least one group of employees who were included in the unit).

Additionally, as demonstrated during the hearing, all hourly production employees work in the same building in close proximity to each other. This fact weighs in favor of a finding that all hourly production employees of Secuprint share a community of interest. *See Lifeline Mobile Medics, Inc.*, 308 NLRB 1068, 1069 (1992) (stating that “close proximity is another factor supporting a community of interest”). The floor plan and photographs of Secuprint’s facility clearly demonstrate the close proximity of the different work areas. (Employer Exhs. 2, 5). Since the Secuprint facility is largely one open room, with little separation, employees can easily travel between the work areas and communicate with their fellow employees.

The photographs of the Secuprint facility, which were completely ignored in the Decision, show the close proximity of the different departments within the Secuprint facility. These photographs depict press employees working within feet of employees in other departments. For example, Employer Exhibit 5, which is a photograph of the feeding end of the press and pieces of bindery equipment (including the cutter and the jogger), shows that the

distance separating the press area from the bindery area is no more than a few feet. (Employer Exh. 5; TR 28). Employer Exhibit 3, which is a photograph of the bindery and door to shipping/receiving taken from the back of one of the presses, shows the close proximity of the different departments within the Secuprint facility. (Employer Exh. 3; TR 22). This photograph also depicts Jessie McFadden and Jackie Washington, the shipping/receiving manager and shipping/receiving clerk, working on the shrink wrapping machine – which is in the bindery and in close proximity to the presses. (Employer Exh. 3; TR 23). Further, Employer Exhibit 4, which is a photograph of the bindery, depicts Chris Costales, a press employee, working in the bindery alongside three bindery employees. (Employer Exh. 4; TR 26). Because of the close proximity in which they work, hourly production employees from all different departments frequently come into contact with each other.

In a meager attempt to dissuade the Board from considering these photos, Petitioner claims that the above-referenced photographs are unreliable. (*See Opp.* at 2, fn. 4). However, Petitioner has not – and cannot – provide any reason why the photographs are “unreliable” or why they allegedly “confuse the record.” (*See id.*). The photographs provide documented proof of the close proximity between the different departments within the Secuprint facility and, as further discussed below, the fact that press employees perform bindery work. As such, the photographs must not be disregarded. The Acting Regional Director’s failure to even mention the photographs is further proof that his Decision ignored important evidence.

Apart from the close proximity of their work areas, all hourly production employees, including the press employees, also share the same entrance, locker-room, and time clock. (TR 37-38). Further, hourly production employees interact during impromptu lunch gatherings at the

plant as well as during company outings and holiday parties. (TR 40). These facts support a conclusion that a community of interest exists. *See The Westin Hotel*, 277 NLRB 1506, 1508 (1986) (finding that employees who work in “proximity to other employees and share the same locker room and cafeteria with other [employees]” belong in the same unit as those other employees).

In light of the foregoing evidence, it is clear that the level of contact among all hourly production employees of Secuprint is high. As such, this community of interest factor weighs heavily in favor of including all hourly production employees of Secuprint in the same unit. The Acting Regional Director ignored certain relevant evidence regarding this factor. Indeed, although the Acting Regional Director considered evidence related to the level of contact among employees in the petitioned-for unit, he failed to address similar evidence of the level of contact between press employees and the other hourly production employees. For example, in support of his finding that employees in the petitioned-for unit come into frequent contact with each other, the Acting Regional Director noted that shipping/receiving employees come into contact with “employees in all departments” when delivering materials and that the petitioned-for employees “may come into contact at the time clock, in the lunch room, or the locker room.” (Decision at 21). As demonstrated above, the press employees come into contact with other hourly production employees in the exact same manner. The Acting Regional Director failed to consider this evidence of the level of contact between press employees and other hourly production employees and, therefore, his Decision must be reversed.

B. Interchange

During the hearing, Jason Colline testified that there is interchange of job duties among hourly production employees of Secuprint. (TR 20-21, 25-26, 41-42, 107). In fact, Employer

Exhibit 4, which is a photograph of the bindery department, depicts press employee Chris Costales operating the jogger – a piece of bindery equipment. (Employer Exh. 4; TR 25-26, 107). Jason Colline testified that, in this photograph, Chris Costales is shown loading finished paper into the jogger, which is a bindery function. (TR 107). In his Decision, the Acting Regional Director completely ignored this evidence, stating that “[o]ccasionally, a press employee may use the jogger, or the cutter after the cutter operator has gone home, to jog or cut paper for the presses.” (Decision at 9). As the evidence demonstrates, press employees perform the job duties of bindery employees – they do not merely “jog or cut paper for the presses.” The submitted photographs and testimony provide strong evidence of interchangeable job functions among all hourly production employees.

This evidence of interchange was corroborated by union witness Michael McFadden who testified that he has seen press employees perform work in the bindery. (TR 154-55, 171). Among other bindery duties, Michael McFadden testified that he has seen press employees operate the jogger, which is a piece of bindery equipment. (TR 154-55).

In its Opposition, Petitioner appears to argue that there is not a sufficient degree of interchange of job duties among the press employees and other hourly production employees. Based solely on *Continental Can Co.*, 171 NLRB 798 (1968), Petitioner apparently concluded that employees must spend at least thirty percent of their time working in other departments in order to satisfy the “interchange” factor of the community of interest analysis. However, the Board has not announced any such bright line rule – in *Continental Can Co.* or elsewhere. In *Continental Can Co.*, the Board merely noted the fact that employees spend thirty percent of their time performing other duties as support for its finding that there was a high degree of

interchange. *See id.* at 800. Here, the evidence demonstrates that there is a significant amount of interchange of job duties among the hourly production employees at Secuprint. As such, the interchange factor is established.

The interchange of job duties, and frequent contact, among hourly production employees is logical given the relatively small size of Secuprint's printing operation. In fact, Secuprint addressees this expected interchange of job duties in the employee welcome letters it presents to its new hires. The employee welcome letter given to all newly-hired hourly production employees explicitly states, regardless of the department, that "[the employee] will be expected to assist other departments as needed." (Employer Exhs. 6-9).

Based on the foregoing evidence, it is clear that there is significant interchange of duties among the hourly production employees at Secuprint. The Acting Regional Director failed to accord sufficient weight, or any weight at all, to the strong evidence provided by Secuprint at the hearing. As such, the Acting Regional Director's Decision must be reversed.

### C. Similarity of Qualifications, Training, Skills, and Job Functions

Further weighing in favor of the inclusion of all hourly production employees in the same bargaining unit, all hourly positions at Secuprint require similar qualifications, training and skills. During the hearing, Jason Colline testified without dispute that no specific certification or formal training is required for any of the hourly production employees. (TR 14, 16). Instead, employees in each work area learn any necessary skills through on-the-job training. (TR 14, 16). The amount of on-the-job training needed to proficiently operate both press and bindery equipment is generally completed within a matter of months. (TR 79-80). During the hearing, Jessie McFadden, a shipping employee, testified that he could operate a press after a little training. (TR 187). Although the Acting Regional Director noted that the pressmen require

longer training, a slightly longer period of on-the-job training cannot destroy the substantial community of interest that exists among all hourly production employees. Additionally, there is no evidence that the press helpers, whom the Acting Regional has excluded, require any substantial training. In fact, Jason Colline testified that some feeder tenders, a press helper position, “come right off of the street with no training at all.” (TR 45). As noted by the Acting Regional Director, “feeder-tenders, as their title suggests, feed paper into the presses...[t]hey also set up the ink according to the instructions on a job ticket and clean the presses during changeovers or at the end of a shift.” (Decision at 4, fn. 4). Clearly, the skill level required of feeder-tenders is no greater than that of the other hourly production employees.

The Acting Regional Director correctly found that the similarities among the employees in the petitioned-for unit with respect to requisite skill sets and training weighed in favor of finding a community of interest. He correctly pointed out that all such employees are “trained on the job” and that none of the employees are required to have had any “prior training, degree, or certificate.” (Decision at 22). However, the Acting Regional Director inexplicably failed to consider similar evidence as it relates to Secuprint’s press employees. Secuprint’s press employees, like all the other hourly production employees, are not required to have had any specific training or experience.

The nature of the work performed is also similar among the hourly production employees. Robert Schultz’s testimony established that the press and bindery machines both require settings and adjustments. (TR 71, 82). In fact, Secuprint’s employees often perform overlapping job functions. This fact is supported by the evidence discussed above in Point I(B) regarding interchange. Additionally, there is one set of standard operating procedures for both

the pressroom and the bindery. (Employer Exh. 10). Moreover, all of Secuprint's hourly production employees work toward the same goal – the production of high quality printed products. All of these facts establish the existence of a community of interest among Secuprint's hourly production employees. As noted in the Decision, slight differences in the skill sets of various employees, which can be eliminated with a little training, do not destroy the community of interest that exists among them. (Decision at 22). If that were the case, then Secuprint's bindery employees would belong in various different units because specific skills, which are learned on the job, are needed for each of the different bindery machines. (*See* TR 181-82). The similarities in requisite qualifications, training and skills among all of the hourly production positions weighs heavily in favor of a determination that a community of interest exists among all employees in those positions.

Additionally, in light of the foregoing evidence, the Acting Regional Director's citation of *United Operations, Inc.*, 338 NLRB 123 (2002) must be disregarded. In *United Operations*, the Board reversed the Regional Director's finding that the petitioned-for unit of HVAC (heating, ventilation, and air conditioning) employees was inappropriate because it should have included all field service employees. The Board found that the HVAC employees shared a separate community of interest from the other field service employees based, in large part, on the difference in skills and training between the two groups of employees. In *United Operations*, the Board noted that the HVAC employees were "highly-skilled and licensed" employees who were required to have some prior experience or schooling in HVAC and be certified by the EPA. *Id.* at 123-24. None of the other field service employees were required to have such experience, training, or certification. *Id.* Here, the press employees, like the other hourly production

employees, are not required to have prior training or experience and they can learn all necessary skills through on-the-job training. As such, the Board's ruling in *United Operations* has no bearing on this case.

D. Similarity of Wages, Hours, and Benefits

As further evidence that a community of interest exists between all hourly production employees of Secuprint, the same method of wages, hours and benefits is applied to all employees. As stated during the hearing, there is no specific set pay for positions in pre-press, press or bindery. (TR 42). The pay for these positions overlap. (TR 42). Contrary to the finding of the Acting Regional Director (Decision at 25), the shifts worked by pre-press, press, and bindery employees also overlap. (TR 40-41). During the day shift, all of the hourly production employees are working at the same time. (TR 68). In fact, Employer Exhibit 4, which is a photograph of the bindery department, depicts press employee Chris Costales operating the jogger – a piece of bindery equipment – alongside three bindery employees. (Employer Exh. 4; TR 25-26, 107). Additionally, all hourly production employees of Secuprint receive the same benefits package. (TR 39). The striking similarities between each of Secuprint's hourly production employees with respect to method of wages, hours, and benefits clearly weighs in favor of concluding that a community of interest exists.

In his Decision, in an attempt to distinguish the press employees from the other hourly production employees, the Acting Regional Director stated that “[t]here was unrebutted testimony by Mike McFadden that when work is slow, pressmen are allowed to stay on the job, while employees in the bindery are sent home.” (Decision at 24). This statement grossly misconstrues the evidence. During the hearing, when asked whether press employees were sent home, Mike McFadden testified that “[a] few of the feeder tenders may go home but the head

pressman never go home.” (TR 168). Thus, the evidence demonstrates that feeder tenders, who have been excluded from the unit along with the press employees, are treated the same as the other hourly production employees.

With respect to the similarity of benefits, the Acting Regional Director correctly observed that “all of the petitioned-for employees have common benefits and similar working conditions.” (Decision at 23). Moreover, as the Acting Regional Director noted, all employees enter the facility through the same door, punch the same time clock, share the same lunch room, and are invited to the same social activities.” (*Id.*). However, the Acting Regional Director failed to mention that the press employees share in the same benefits and working conditions. Indeed, the evidence presented at the hearing demonstrates that the press employees share in the same benefits as the rest of hourly production employees. As such, this community of interest factor weighs in favor of a unit encompassing all hourly production employees.

#### E. Supervision

With respect to this community of interest factor, the Acting Regional Director correctly noted that Jason Colline is the supervisor “ultimately responsible for all hourly employees.” (Decision at 22; *see also* Employer Exh. 1). However, the Acting Regional Director wrongfully excluded the press employees from his observation regarding supervision. The Acting Regional Director stated that “the pre-press, digital press, and digital bindery employees are commonly supervised,” but failed to mention that the press employees also fall under the same exact supervision. (*See* TR 10-11). The fact that all hourly production employees share the same supervisor supports a finding that a community of interest exists among them.

In a desperate attempt to undercut the clear community of interest that exists among all hourly production employees of Secuprint, Petitioner claims that Secuprint overemphasized the

“contact” factor in its analysis of the community of interest factors. However, as demonstrated herein, there is strong evidence to support each of the community of interest factors – not just the contact factor. As such, Petitioner’s attempt to downplay the existence of a community of interest among all hourly employees of Secuprint must be disregarded.

In his Decision, the Acting Regional Director cited specific evidence that showed the existence of a community of interest among employees in the petitioned-for unit, but he failed to acknowledge the existence of strikingly similar evidence that supports a finding that the employees included in the petitioned-for unit also share a substantial community of interest with the press employees. Since an analysis of each of the applicable community of interest factors weighs in favor of a unit encompassing all hourly production employees of Secuprint, the petitioned-for unit must be denied to the extent that it excludes press employees. In short, the smallest appropriate unit includes all hourly production employees of Secuprint.

## **POINT II**

### **The Acting Regional Director Misapplied Board Precedent Regarding The Inclusion Of Press Employees In A Broader Lithographic Unit**

In addition to an analysis of the community of interest factors, in determining the appropriate unit in the printing industry, the Board accords weight to the traditional lithographic unit – a combined unit of press and pre-press employees. *AGI Klearfold, Inc., LLC*, 350 NLRB 538 (2007); *Moore Business Forms*, 216 NLRB 833 (1975). Indeed, it is well established that press employees should be included in a broader lithographic unit. *See id.* In his Decision, the Acting Regional Director both misapplied Board precedent and misconstrued the facts of this case in order to distinguish the relevant case law.

The relevant Board case law demonstrates that Secuprint’s press employees must be included in a broader lithographic unit. In *AGI Klearfold, Inc., LLC*, the Board denied petitioner’s request for a unit consisting only of press employees. Specifically, the Board ruled that “pressmen alone do not constitute an appropriate unit, as they ‘comprise but a segment of the lithographic production employees employed by the Employer.’” *AGI Klearfold, Inc., LLC*, 350 NLRB at 540 (quoting *Moore Business Forms*, 216 NLRB 833). The Board ruled that the smallest appropriate unit included both pre-press and press employees.

In the second part of the *AGI Klearfold* decision, after ruling that the appropriate unit should consist of press and pre-press employees, the Board denied the employer’s contention that a production and maintenance grouping was the only appropriate bargaining unit. *AGI Klearfold, Inc., LLC*, 350 NLRB at 538. Applying the community of interest analysis to the particular facts involved in *AGI Klearfold*, the Board found that there was “insufficient cohesiveness between all members of the Employer’s production and maintenance department so as to require inclusion of the other production and maintenance employees in the combined press and pre-press unit.” *Id.* at 541. However, this latter ruling by the Board in *AGI Klearfold*, denying the employer’s request to include all production and maintenance employees in the unit, is distinguishable from the instant matter on several grounds.

First, the Board ultimately concluded that a unit encompassing all production and maintenance employees was inappropriate because the evidence showed the existence of only “some contact, interaction, and similarity of terms and conditions of employment.” *Id.* at 541 (emphasis added). While the Board found evidence to support some of the community of interest factors, the record was devoid of any evidence to support many of the remaining factors.

For example, in *AGI Klearfold*, the Board noted no instances of interchange of job duties among the different production departments. Further, the printing company involved in that case was quite large (250 employees) and had strict divisions between some of its production departments. These facts reduced the level of contact between employees from different departments.

Here, as discussed above, a strong community of interest exists among the employees in each of the different departments within Secuprint. As demonstrated, Secuprint's hourly production employees share much more contact, interaction, interchange, and similarity of terms and conditions of employment than those in *AGI Klearfold*. As such, unlike in *AGI Klearfold*, a unit encompassing all hourly production employees of Secuprint is appropriate in this case.

Second, in *AGI Klearfold*, the Board was ruling on the issue of proper unit scope in a different context. In *AGI Klearfold*, the petitioner sought a narrow unit consisting of only press employees, and the Board ruled that such a unit was too restrictive and, therefore, inappropriate. Specifically, the Board ruled that "the smallest appropriate unit is one consisting of the Employer's press and pre-press department employees." *Id.* at 541. In contrast, in this case, Petitioner has requested a broad unit made up of all hourly production employees exclusive of the press employees. By seeking a broad unit exclusive of press employees, Petitioner is attempting to perpetrate an end-run around the Board's holding in *AGI Klearfold*. If the petitioned-for unit is approved, then press employees will be separated from the pre-press employees, which is the very result the Board found improper in its *AGI Klearfold* decision.

Third, in reaching its decision not to include all production and maintenance employees in the unit in *AGI Klearfold*, the Board explicitly stated, "We are not suggesting that an overall production and maintenance unit would necessarily be inappropriate." *Id.* at 541, n. 8. Instead,

the Board merely decided that a unit encompassing all production and maintenance employees was not appropriate based on the facts involved in that particular case.

*AGI Klearfold* stands for the proposition that press employees cannot be separated from other lithographic employees who share a community of interest. For the reasons listed above, *AGI Klearfold* supports a finding that the smallest appropriate unit here includes all hourly production employees at Secuprint.

In its Opposition, Petitioner misstates the holding in *AGI Klearfold*. First, the Petitioner incorrectly states that the Board, in that case, held that press employees alone make up the “traditional lithographic unit.” (Opp. at 2). To the contrary, as stated above, the Board specifically ruled that “pressman alone do not constitute an appropriate unit.” *AGI Klearfold, Inc., LLC*, 350 NLRB at 540 (quoting *Moore Business Forms*, 216 NLRB 833). Second, Petitioner erroneously refers to the traditional lithographic unit as a “craft distinction.” (Opp. at 2; *see also* Opp. at 4). As stated in *AGI Klearfold*, “the Board has long refrained from applying a craft or departmental analysis to lithographic units.” *AGI Klearfold, Inc., LLC*, 350 NLRB at 1408 fn. 7. Petitioner’s attempt to misconstrue Board precedent to support its position must be rejected.

The Acting Regional Director’s Decision must be reversed because he misapplied Board precedent and misconstrued the relevant facts in order to distinguish this case from the relevant case law. The Acting Regional Director readily pointed out that the Board’s holdings do not require that a unit must always encompass both press and pre-press employees in order to be appropriate. However, the Acting Regional Director appears to have given no consideration to the Board’s development of the traditional lithographic unit and its impact on this case. For the

reasons stated above, the fact that the Board has held, in several cases, that the smallest appropriate unit must include both press and pre-press employees is directly relevant to this case. Allowing Petitioner to exclude press employees from a broader lithographic unit, where a community of interest *does* exist among all hourly production employees, runs afoul of the relevant precedent. In short, because the press employees cannot constitute a separate appropriate unit and because they share a substantial community of interest with the other hourly production employees, their inclusion in a unit consisting of all hourly production employees is required.

Apart from his misapplication of the holdings of cases like *AGI Klearfold* and *Moore Business Forms*, the Acting Regional Director also misconstrued, or simply ignored, relevant evidence in order to distinguish this case from the relevant Board case law. In his Decision, the Acting Regional Director pointed out that the Board, in both *AGI Klearfold* and *Moore Business Forms*, found that a community of interest was shared by the pre-press employees and the pressmen. Similar to the case at hand, in *AGI Klearfold*, the Board found that a community of interest existed between the pre-press and press employees based on evidence that “[p]ress employees regularly enter the pre-press room to search for a missing plate or job bag...[and] press employees consult the pre-press department whenever adjustments to the plates are needed.” *Id.* at 540. In an attempt to distinguish this case from the relevant Board precedent, the Acting Regional Director stated that, unlike in *AGI Klearfold* and *Moore Business Forms*, “the record demonstrates that the offset press employees work distinct shifts and perform no duties in the pre-press, bindery or shipping and receiving departments.” (Decision at 25). The Acting Regional Director further stated that “the record herein contains no detailed evidence regarding

the type and extent of contact between the offset press and pre-press employees or between the offset press employees and employees in the other petitioned-for classifications.” (Decision at 25). Both of these statements by the Acting Regional Director are grossly inaccurate. They are belied by the record and, therefore, cannot serve as grounds to distinguish this case from the relevant Board precedent.

First, as stated above, the press employees regularly perform duties in other departments within the Secuprint facility. (*See, supra*, Point I(B)). Employer Exhibit 4, which is a photograph of the bindery department, depicts press employee Chris Costales operating the jogger – a piece of bindery equipment – alongside three bindery employees. (Employer Exh. 4; TR 25-26, 107). This photograph is clear evidence of the fact that press employees perform duties in other Secuprint departments and do not work shifts that are “distinct” from other hourly production employees. Second, there is uncontradicted evidence of daily contact between the press employees and the other hourly production employees. (*See, supra*, Point I(A)). Indeed, Jason Colline testified that discussions between press employees and employees from the bindery and pre-press occur on “a daily basis.” (TR 22). Because the Acting Regional Director failed to consider this evidence, and the conclusion he drew is in direct contradiction of this evidence, the Decision must be reversed by the Board.

Finally, in an attempt to further distinguish the relevant case law, the Acting Regional Director cited *Continental Web*, 262 NLRB 1395 (1982) as an example of a pressman-only unit being found to be appropriate in the printing industry. However, *Continental Web* is readily distinguishable from this case based on its facts. In *Continental Web*, the Board rejected application of the traditional lithographic unit and ruled that a pressmen-only unit was

appropriate based on evidence that the press employees had a different supervisory structure, had little contact with other employees, wore uniforms, and had access to a separate lockerroom. *See id.* at 1396. Here, as the Acting Regional Director correctly observed in his Decision, press employees share the same supervisor with the other hourly production employees. (Decision at 22). Moreover, as stated by the Acting Regional Director, all hourly production employees are in frequent contact with each other, are given the option of wearing a uniform, and share the same lockerroom. (Decision at 8). As such, *Continental Web* is distinguishable from this case and does not support the Acting Regional Director's decision to exclude press employees from the unit. In fact, if anything, *Continental Web* supports the inclusion of the press employees in the petitioned-for unit. Indeed, none of the above factors relied upon by the Board in *Continental Web* to exclude the press employees are present in this case.

The Acting Regional Director misapplied Board precedent and misconstrued the facts of this case in an attempt to distinguish the relevant case law. As such, the Acting Regional Director's Decision must be reversed by the Board.

### **CONCLUSION**

For the reasons discussed above, Secuprint requests that the Board reverse the Acting Regional Director's Decision with respect to the issues noted above.

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