

**Deluxe Poster Co., Inc., d/b/a Johnson Printers and
Chicago Local 245, Graphic Arts International
Union, AFL-CIO. Case 13-CA-16857**

September 22, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND PENELLO

On June 12, 1978, Administrative Law Judge Lowell Goerlich issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions, a brief in support thereof, and a brief in answer to Respondent's exceptions.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs¹ and has decided to affirm the rulings, findings,² and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below and hereby orders that the Respondent, Deluxe Poster Co., Inc., d/b/a Johnson Printers, Downers Grove, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

Insert the following after paragraph 2(d):

"IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein."

¹ Respondent has requested oral argument. This request is hereby denied, as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

² In affirming the Administrative Law Judge's Decision, we do not rely on his finding that Respondent delayed in challenging the validity of the contract. Rather, we note that neither Respondent nor Lindgren informed the Union, before agreement was reached, that Lindgren had only limited authority. See *Adams Iron Works, Inc.*, 221 NLRB 71 (1975).

We note that the Administrative Law Judge, in reciting the terms of the agreed-upon contract, inadvertently stated that the starting wage for probationary apprentices was \$8.75 per hour. We modify his reference to reflect the correct rate of \$4.25 per hour. We also note that in stating the economic proposals which had been agreed to prior to July 7, 1977, the Administrative Law Judge inadvertently omitted the last line of the bereavement leave article. The complete article should read as follows:

BEREAVEMENT LEAVE: Three (3) days for Grandmother, Grandfather, Mother, Father, Brother, Sister, Spouse, Child, Step-parents, Mother-in-law, Father-in-law, Son-in-law, Daughter-in-law, or Grandchild

DECISION

STATEMENT OF THE CASE

LOWELL GOERLICH, Administrative Law Judge: The charge filed by Chicago Local 225, Graphic Arts International Union, AFL-CIO, herein referred to as the Union, on September 16, 1977, was served on Deluxe Poster Co., Inc., d/b/a Johnson Printers, Respondent herein, on September 19, 1977, by registered mail. A complaint and notice of hearing was issued on October 31, 1977.

The principal issue raised in the complaint is whether Respondent ought to be required to execute a written collective-bargaining contract which the General Counsel alleges was orally agreed to by the Union and Respondent.

Respondent filed a timely answer denying that it had engaged in the unfair labor practices alleged.

The case came on for hearing at Chicago, Illinois, on February 15, 16, and 17, 1978. Each party was afforded a full opportunity to be heard; to call, examine, and cross-examine witnesses; to argue orally on the record; to submit proposed findings of fact and conclusions; and to file briefs. All briefs have been carefully considered.¹

**FINDINGS OF FACT,² CONCLUSIONS, AND REASONS
THEREFOR**

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all material times herein, an Illinois corporation engaged in the business of commercial printing and has maintained its office and principal place of business of 1007-1009 Burlington Avenue, Downers Grove, Illinois (herein also called the facility).

During the last calendar year, a representative period, Respondent, at the facility, in the course and conduct of its business operations described in the above paragraph, purchased and received goods and services valued in excess of \$50,000 from vendors inside the State of Illinois, which vendors received said goods and services directly from points located outside the State of Illinois, and sold and shipped goods and/or rendered services valued in excess of \$50,000 from the facility directly to points located outside the State of Illinois.

Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

¹ Both Respondent's brief and the General Counsel's brief have been considered.

² The facts found herein are based on the record as a whole and observation of the witnesses. The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *N.L.R.B. v. Walton Manufacturing Company & Loganville Pants Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with the testimony of credible witnesses or because it was in and of itself incredible and unworthy of belief. All testimony has been reviewed and weighed in light of the entire record. No testimony has been pretermitted.

II. THE LABOR ORGANIZATION INVOLVED

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. On July 8, 1976, Respondent subscribed to a Stipulation for Certification Upon Consent Election, which was signed by Robert Lindgren on behalf of Respondent. Lindgren was the executive director of the Master Printing Association, of which Respondent was a member. On September 15, 1976, the election was held which resulted in a certification of the Union as the exclusive bargaining representative in Case 13-RC-14116 on September 23, 1976, for a unit as follows:

All full-time and regular part-time lithographic production employees employed at the employer's facility at 1007-1009 Burlington, Downers Grove, Illinois, excluding all office clerical employees, professional employees, salesmen, all other employees, guards, and supervisors as defined in the Act.

Lindgren assisted Respondent during the election campaign. It was during this period and prior to the election that, according to Respondent's president, Ross Abbott Johnson, he learned from some of his employees that the Union considered Lindgren as a "deceitful individual; that he didn't play fair when it came to negotiating; he is a puppet . . . of the Printing Industry of Illinois; that his job, the whole purpose of his job was to bust unions." Although Johnson had been "flabbergasted" by this report, he sent a letter to the Union dated September 27, 1976, advising the Union that he had "authorized Mr. Robert Lindgren, Executive Director of the Master Printer's Association, Printing Industry of Illinois, to represent our company in all collective bargaining matters. You may correspond with Mr. Lindgren directly."

Negotiations commenced on October 19, 1976, and thereafter the Union and Respondent met in negotiations on October 27, November 3, and December 8, 1976, and July 7, 1977. Robert Lindgren was the sole Respondent negotiator at all sessions except at the meeting of December 8, 1976. Johnson attended this meeting.

At the first negotiating session on October 17, 1976, the Union presented its economic and noneconomic proposals. The latter was a copy of the contract between the Union and various other employers in the Chicago area referred to herein as the "golden book." By December 9, 1976, the parties had come to an agreement in respect to a certain number of the union proposals (Respondent had made no counterproposals). However, the parties were hung up on union security. Lindgren, who knew that the Union in other negotiations had always insisted on such a proposal, was adamant in his opposition. The Union attributed Lindgren's intransigence to his personal beliefs and not those of Johnson.

On November 9, 1976, the union representative and chief negotiator, Roy Andren, addressed a letter to Johnson noting that there was a stalemate on two "important issues"—the lithographic unit (there was apparently a question

whether certain employees were engaged in supervisory work) and the union-shop clause. Andren indicated that the Union was "pleased to report some progress in the language and economic areas" and that if the two issues above mentioned were resolved "a fair and just contract can be arrived at in a short time."

In mid-November 1976, employees Allan J. Kubik and Allan Zuelke met with Johnson. They informed him that they "felt that Bob Lindgren wasn't telling him everything that was going on in negotiations." Johnson responded that "Bob Lindgren was his man and he could do whatever he wanted. He had complete faith in him." The employees asked Johnson to attend a negotiating session and he agreed.³

Also in November, Johnson met with camera department employees who were trying to persuade him to attend the negotiating sessions by voting on an overtime ban⁴ and told them that he and Lindgren were "communicating on a regular basis" and he was "aware of everything that was taking place during negotiations." Johnson told the employees that he was "willing to attend the negotiations sessions to make it clear that Lindgren had the authority to act on [his] behalf."⁵

Johnson, as agreed, attended the negotiation meeting of December 8, 1976. At the meeting on the subject of Lindgren, Johnson said, "Mr. Lindgren is my representative, and I totally support everything that he has done on my behalf in these bargaining sessions. I am tired of the gossip in the shop that I am not being told what is going on. . . . I know . . . everything that has happened at the bargaining sessions. Mr. Lindgren told me everything that has happened . . . and I want to put that kind of nonsense at rest." Further referring to Lindgren, Johnson said, "I appointed him and I agree with whatever he has done."⁶

At the December 8 session, Andren "briefly went through the economic items that were on that proposal and indicated that some of the items had been agreed to; some of them not."⁷ Johnson registered no dissent. The issues in Andren's letter were discussed. According to Johnson, there "was some concern on the part of the union representative that some of the individuals in the unit, that they felt should be included in the unit, were or were not supervisors or foremen. . . ." Johnson explained Respondent's position to the Union and testified, "I believe they understood my position on it, and appeared to be willing to forget it. It didn't come up again after—that was the last it was discussed at that negotiation."

³ Johnson testified that he told these employees that he "felt" he was "getting all the information from Mr. Lindgren that had taken place in the negotiations;" that he had "faith" in Lindgren; that he was "adequately representing" him; that the items brought up at the sessions were "passed" on to him; and that they were discussing them to decide whether they "could agree to those parts of the proposals or not."

⁴ Johnson had learned from a supervisor that employees had voted on November 6, 1976, to refuse to work overtime in order to force him to come to the negotiation sessions.

⁵ The foregoing is Johnson's testimony. Johnson also had indicated in a telephone conversation with Andren that he had "faith" in Lindgren.

⁶ Johnson testified that he told the negotiators that he did have "faith" that Lindgren was "reporting back" to him what had "transpired" so they "could discuss it" and "make a decision whether there were points that . . . could be accepted in the contract. . . ."

⁷ Johnson's testimony.

During the meeting, union security consumed the major part of the discussion. On this subject Johnson testified, "I got the very distinct impression that the Union felt that Mr. Lindgren was putting this idea in my mind." Johnson proceeded to erase such assumption. He said he was a contributor to the National Right to Work Group and he believed an employee should have "the right to decide for himself whether he wanted to join a union or not." Moreover, he had given "assurances" that employees would not be forced into the Union. At the end of the meeting, Andren, addressing Johnson, said, "Well, if you feel that way about union security, the Union, they will have to do what they have to do."⁸

Thereafter a strike occurred on December 15, 1976, which was unrelated to the negotiation. It ended on March 29, 1977. No negotiation meetings were held during the period. The strike had been caused by the discharge of an employee who failed to work overtime. It was settled pursuant to an unfair labor practice charge.

In April 1977, Johnson received a telephone call from Lindgren in which he informed Johnson that he had received a telephone call from Andren, who asked for the resumption of negotiations. According to Johnson, he replied to Lindgren, "I told him that was fine. I would be more than willing to continue. *I wanted to reach a contract.* And that my only concern was that he 'express' to them that my position on the union security clause had not changed." (Emphasis supplied.) Lindgren again advised Johnson in late June 1977 that he had received a telephone call from Andren "wanting to set up another negotiating meeting," "to get together for the purpose of signing the contract or finalizing the contract."⁹

Johnson replied that that was "fine"; he would be "willing to meet." Later Lindgren advised Johnson that the negotiating session had been set for July 7, 1977.

Prior to attending the July 7 meeting, Johnson had not instructed Lindgren to withdraw any previous commitments. As expressed by Johnson, the only limitations, if any, placed on Lindgren were "the union security and unit structure because our positions on that had not changed."

At the July 7 meeting, the conferees reviewed the Union's economic proposals and the "golden book." The parties came to agreement on the contract term (2 years), the press complement, and safety and health standards and again confirmed the agreement on all union proposals which had been agreed to at prior meetings. These proposals had been previously marked with an "OK."¹⁰ All union proposals which were not acceptable to Respondent were withdrawn, including the demand for a union-security clause. Respondent made no counterproposals. At the close of the negotiations, Andren said:

That completes the negotiations, and there [are] no other items on the table, that we have exhausted our proposals. . . . You have no proposals before us. . . . We have reached an agreement.

⁸ Johnson's testimony.

⁹ Johnson's testimony.

¹⁰ Lindgren testified, "We [Johnson and Lindgren] discussed the things that were okay and I was not aware that he had any objection to the things that were marked as 'OK' in General Counsel's 8."

Andren shook Lindgren's hand and added:

Would you tell Mr. Johnson we have reached an agreement, and that I will draw up the contract, and that, subject to the ratification of the members in the lithographic unit, I will get back to you on their posture on accepting this contract.

Lindgren agreed that the Union "withdrew all of the items, all of the articles which were not under agreement" and that the "Union felt it did have a contract." Accordingly, Lindgren reported to Johnson (Johnson's testimony):

He told me the issues that had been brought up before, primarily the one issue that there had been so much negotiating about regarding the union security was a point that was being dropped by the union and that the other—the other—the other points that had been agreed upon back in October of 1976 were now since those points had been agreed upon, *now we have a contract.* [Emphasis supplied.]

In the meantime the membership in the lithographic unit ratified the contract on July 14, 1977.¹¹ Andren telephoned Lindgren to advise him of the event and that the contract was ready for signature. Lindgren responded that he had been taken off the case and that Andren should contact Johnson directly. Andren asked Lindgren to request Johnson to call him. Andren heard nothing from Johnson, and after several unsuccessful telephone calls, Andren reached Johnson on July 25, 1977, and asked him to sign the contract. Johnson said he was "just in the middle of getting himself an attorney." Johnson contacted Andren on July 28 and said that his attorney could meet on August 19, 1977. The meeting was held. It was obvious that the Union had in mind the signing of the contract and Respondent had in mind renegotiating. Nothing was accomplished in either direction. Johnson particularly expressed his opposition to the arbitration clause. Although he had agreed to the clause during negotiations, he remarked: "Never in my wildest dreams could I agree to that."¹² Thereafter, the Union conferred with its attorney and the within charges were filed. The certification year would have ended on September 23, 1977, which had been mentioned by Andren.

On August 30, 1977, Respondent proposed to the Union, in writing, that it give all the employees "in the plant, who have not received a pay raise, including those in your unit, a flat two percent pay raise plus a possible additional raise to each individual based upon the company's determination as to the employees' performance." The Union answered in writing on September 2, 1977, calling Respondent's attention to the agreement which had been reached and that Respondent was "legally obligated to sign an agreement containing the agreed terms."

On September 12, 1977, the proposed wage increase was discussed in a conversation between Respondent Attorney Sinson and Andren. Andren commented, "[W]e approved of a seven percent wage increase effective July 7 of this year, and that that two percent increase has nothing to do with us." On October 12, 1977, Johnson informed Commit-

¹¹ According to Johnson, he knew that only 4 out of the 10 employees in the lithographic unit were members of the Union.

¹² In this report Johnson's bad faith was showing.

teeman Alan Kubick that "Our company intends to award the pay raises [2 percent] as of October 3, 1977. Future evaluations will take place according to existing company policy." The pay raises were implemented and the evaluations conducted. In this connection Johnson testified that it had been the practice for the Company to give the employees semiannual evaluations, interviews, and appropriate raises.

B. As noted above, Respondent negotiated from proposals submitted to the Company by the Union (i.e., the economic proposals (G.C. Exh. 9) and the "golden book" (G.C. Exhs. 8, 16, and 26)). As to the economic proposals, Respondent had agreed prior to July 7, 1977, and reconfirmed its agreement by Lindgren on July 7, 1977, to following items, which appear below verbatim:

WAGES: 1st year—7% increase for all employees; 2nd year—7% increase for all employees (increases to include night differentials)

COST OF LIVING: 4¢ per hour increase for each one full point rise in C.P.I. for Chicago—adjusted semi-annually.

JURY DUTY: Same as in litho contract.¹³

BEREAVEMENT LEAVE: Three (3) days for Grandmother, Grandfather, Mother, Father, Brother, Sister, Spouse, Child, Step-parents, Mother-in-law, Father-in-law, Son-in-law, Daughter-

Union demands for pension; additional daily, Saturday, and Sunday overtime; additional holidays and vacations; Health and Welfare benefits; and an educational fund were dropped by the Union on July 7, 1977, and the Union submitted to and accepted Respondent's practice in these respects.¹⁴ As to the "golden book," Respondent had agreed prior to July 7, 1977, and reconfirmed its agreement on July 7, 1977, by Lindgren as to the following items (except those noted in footnotes), which appear below verbatim from the "golden book":

ARTICLES OF AGREEMENT

These Articles of Agreement are entered into by and between ————hereinafter known as the "Employer" and Chicago Local No. 245 of the Graphic Arts International Union, hereinafter referred to as the "Union."

WHEREAS, the parties hereto are desirous of promoting and maintaining harmonious relations between employers and employees and of assuring industrial peace:

NOW, THEREFORE, it is mutually agreed as follows:

1. RECOGNITION

1.1 (a) The employer recognizes the Union as the exclusive representative, for the purpose of collective bargaining with respect to rates of pay, hours of employment, and other conditions of employment, of all

employees performing lithographic production work in the establishments of the respective employer.

(b) The term "Lithographic Production Work" is defined as being and is all work, processes and operations directly related to Lithography, or Offset Printing (dry or wet methods). It also includes any technological change, evolution or substitution for any work, process or operation now or hereinafter utilized for any of the work described above. It is understood by both parties that the term "Lithographic Production Work" excludes work which is only incidental or indirectly related to lithographic production work.

1.2 The employer agrees that, during the term of this Agreement and during any negotiation for the extension or renewal thereof or for any successor contract hereto, it will not sign a contract or make any written agreement of any kind with any other union relating to any lithographic production work, and specifically any lithographic jobs or work covered by this Agreement. However, an employer who is bound under the agreement, and who is also bound by other labor agreements between other employer associations and/or other unions, shall not be deemed to be in violation of this section so long as such other labor agreements shall by their terms, exclude such employers from the operation of the lithographic production work provisions of such other labor agreements.

1.3 The employer agrees that in the event any of the jobs or work under this Agreement are removed by the action of the Employer, for the purpose of escaping the provisions of this Agreement, the Union may, in its discretion, and only as to such Employer, either terminate this Agreement or reopen it in all respects, with the right to strike if the parties fail to come to a new Agreement.

1.4 The employer agrees that in the event the Union files a petition with the National Labor Relations Board for certification as bargaining agent in respect to the same group of lithographic production employees who are covered by this Agreement, the Association or the Employer as the case may be, will consent to any election required thereunder.

3. HIRING OF HELP AND UNION ACCESS TO PLANT

3.1 The employer covered by this agreement shall notify the Local Union office when in need of employees for lithographic production work and will give the same consideration to applicants for employment referred by the Union as is given to all other applicants for employment.

3.2 New employees hired to work in journeyman classifications shall be required to have fulfilled the equivalent of the requirements made of apprentices promoted to journeymen.

3.3 The Union representatives shall have access to the plant only by permission of the management.

4. NON-DISCRIMINATION

4.1 Neither the Employer nor the Union shall discriminate against any person in respect to hire, tenure

¹³ The litho contract is the "golden book."

¹⁴ See final draft of contract, G.C. Exh. 3, submitted by the Union to Respondent for signing.

or other conditions of employment because of race, color, religion, sex or national origin. The parties further affirm their mutual commitment to refrain from any employment discrimination because of age which is prohibited by law, and to cooperate affirmatively in the observance and implementation of any applicable governmental regulations relating to equal employment opportunity.

5. MINIMUM WAGE SCALES

5.1 The minimum wage scales appended to this agreement except as otherwise provided, shall continue without change during the term of this agreement. It is understood that employees now receiving above the minimum wage scale here provided shall not be reduced unless mutually agreed between the employer and the employee.

5.2 All employees covered by this Agreement shall be included in wage increases granted under this Agreement. Increases are to apply to apprentices on the same basis as journeymen and not prorated over indenture period.

5.3 The minimum starting rate for probationary apprentices in any department shall not be less than \$8.75 per hour.

Cost of Living Adjustments

5.5 (a) During the life of this agreement the wage rate of each employee will be increased or decreased semi-annually in accordance with the rise or fall of the Consumer Price Index for Urban Wage Earners and Clerical Workers (including Single Workers) 1967-100, New Series for Chicago, Illinois issued by the United States Bureau of Labor Statistics, but at no time will the rates be below the wage scale appended to this contract. Adjustment, when required, will become effective the first full payroll week following official publication of that Index and will be arrived at as follows:

For each one full point rise in the Index above the base of the March, 1972¹⁵ Index, there will be a .04 cents per hour increase in the wage rates; likewise, when the Index drops back one full point there will be a .04 cents per hour decrease in the wage rates but in no event below the rates appended hereto.

(b) No adjustments, retroactive or otherwise shall be made due to any correction which may later be made in the published figures for the BLS Consumer Price Index.

(c) In the event the B.L.S. discontinues the issuance of the Consumer Price Index used by the parties for computing cost of living adjustments, the parties shall substitute for such Index the Index issued by the Bureau to replace the discontinued Index.

(d) The wage scales adjusted in accordance with this Article which are effective on April 30, 1978, shall be deemed to be the wage scales incorporated into this agreement upon the expiration of this agreement.

7. RATE RETENTION FOR PRESS DEPARTMENTS

7.1 Each journeyman shall be permanently classified according to the wage scale classification he is hired at or at the classification he has worked for sixty (60) consecutive calendar days or more days except when assigned as a temporary replacement for another permanently classified employee.

7.2 He shall retain his permanent wage rate and classification for a period of thirty (30) calendar days if he is transferred to lower rated job except as otherwise modified by Article 24 (Press Complements).

7.3 On temporary assignments to a higher rated job he shall receive the wage applicable to such job for the time so assigned except apprentice advancement as set forth in Article 23 (Apprentices).

7.4 If an Employee voluntarily requests to be moved to a lower rated job, rate retention shall not apply and the Employer may pay the rate of the job to which the Employee transfers.

8. PAYMENT OF WAGES

8.1 Payment of wages shall be by check or cash in accordance with the office procedure of the individual employer.

Pension Fund Withholding

8.2 The Employer shall withhold 3% (but not less than \$2.50) from each employee's gross weekly wages and shall forward such amounts so withheld under one of the following options:

- (a) Monthly to the Trustees of Local No. 245 Inter-Local Pension Fund, upon receipt of an assignment from the employee, along with an appropriate report form to permit proper crediting to the employee's account in the Fund.
- (b) Weekly to the Trustees of Local No. 245 Inter-Local Pension Fund, upon receipt of an assignment from the employee, along with an appropriate report form to permit proper crediting to the employee's account in the Fund.
- (c) Monthly by separate check, to the individual employee.
- (d) Weekly by separate check, to the individual employee.

8.3 Wages withheld and paid separately under any of the above options shall be forwarded or paid within ten (10) working days from the month or week for which they are withheld. If the employer is in default in forwarding or paying wages as provided in this Article, he shall be liable for and agrees to pay such legal, court and/or other costs incurred in collection proceedings. Further, any such employer in default under this Article shall be required to pay direct to employees, such pension fund withholding by separate check at the same time the balance of employee's wages are due and payable. Further, the Union shall, in its discretion, have the right to terminate this contract, in

¹⁵ Date changed to June 1, 1977; see G.C. Exh. 16.

whole or in part, as to such employer in default, by notice in writing to the employer.

11. LUNCH PERIODS

11.1 Lunch periods of not less than thirty (30) minutes nor more than forty-five (45) minutes shall be scheduled by mutual agreement between the Employer and employees, providing that the scheduling of such lunch periods shall fall within the first five (5) hours of any regularly established shift. It is understood that scheduled lunch periods shall be strictly observed at all times, except in case of an emergency. When the emergency is over, then employees must take their regular lunch period.

11.2 It is understood that production situations may warrant changes herein. However, any such changes shall be made only by mutual agreement between the Association, the Employer and the Union and shall be applicable on a uniform basis to other employees under this Agreement.

11.3 It is further understood, however, that the Employer shall have the right to schedule staggered lunch periods on a shift, within the time limits above specified in Article 11.1 for the purpose of manning 1/2 of the employer's sheet fed press equipment. ("fully complemented,") or any of the employer's photocomposing machines. The overall staggered lunch periods shall not exceed one and one half (1-1/2) hours.

12. OVERTIME

12.1 It is understood by the parties that overtime work is necessary in the normal course of doing business. However, an employee, for personal reasons, may elect not to work overtime and such employee shall not be subject to discharge or disciplinary action by the employer for electing not to work overtime.

Notice of Overtime

12.2 The Employer shall make every effort to give as much advance notice as possible when overtime work is necessary.

12.3 An employee shall be notified whenever possible of Holiday overtime before the lunch period two (2) shifts prior to the Holiday.

Saturday and Sunday Holidays

13.2 When a contract holiday falls on a Saturday or Sunday, the Employers shall have the option of:

- (a) Paying for the holiday, or
- (b) Giving a day off with pay on the Friday preceding or the Monday following the holiday (unless THAT Monday is a legally celebrated holiday; in which event the option shall include the Tuesday following.)

13.3 The Employer shall give no less than three (3) working days prior notice under option 13.2(b).

Qualifications for Holiday Pay

13.4 To qualify for holiday pay the employee must work his last scheduled regular work week day before the contract holiday and his first scheduled regular work week day after the contract holiday, exclusive of Saturday or Sunday and except in case of illness, accident, death in the family, permission of the employer or other reasons beyond employee's control.

13.5 An employee absent due to sickness or accident exceeding a twenty-one (21) consecutive regular work day period in which the holiday occurs, shall not be entitled to the holiday pay.

16. JURY DUTY LEAVE

16.1 When an employee is required to be absent from his regularly scheduled work to serve pursuant to an official jury duty notice, the Employer shall pay him the difference between the fees paid to him by the court, if any, and his hourly rate of pay for the straight-time hours he would otherwise have worked. In order to receive such payment, an employee (1) must notify the Employer as soon as possible after receipt of notice to report; (2) must cooperate with the Employer in requesting release from or delay of jury duty when the Employer determines that the employee's absence would adversely affect operations; and (3) must furnish satisfactory evidence that he performed the service for which he claims payment and of the amount of fees received from the court. Second and third shift employees will not be required to work on a day on which they are serving on a jury. No jury duty pay shall be paid to an employee who volunteers for jury duty or for extra days of jury duty.

17. BEREAVEMENT LEAVE

17.1 An employee who is absent from his scheduled work days because of the death and attendance at the funeral of a member of his immediate family, which shall consist of grandfather, grandmother, mother, father, brother, sister, spouse, child, mother-in-law, father-in-law, son-in-law, daughter-in-law or grandchild, shall be entitled to paid funeral leave not to exceed three (3) days.

Such leave shall begin on the day of death and end on the day of the funeral and shall not apply to any day falling within or on a vacation, layoff, holidays, a weekend or during any other absence from employment.

In order to be eligible for pay, as above provided, employees may be required to furnish evidence satisfactory to the employer that they attended the funeral.

18. DIVISION OF WORK

18.1 It is further agreed that whensoever there is a recession in business, that wherever feasible, the work shall be divided between employees who have been employed by the Employer for a period of six months or more, with the object of avoiding excessive layoffs.

19. EMPLOYMENT TERMINATION (NOT TEMPORARY LAY-OFF)

When By the Employer

19.1 An employee who has been regularly employed by the same employer for a period of six (6) months or more shall be given at least one (1) week's notice, or in lieu thereof, at the Employer's option one (1) week's pay when he is to be terminated.

19.2 An employee dismissed for cause (intoxication, theft, fighting in shop, etc.) shall not be entitled to notice or pay in lieu thereof.

19.3 Lack of work shall not be construed as cause for immediate dismissal. Unsatisfactory workmanship shall not be considered cause for immediate dismissal unless the employee has been given notice of such unsatisfactory workmanship at least one (1) week, but no longer than one (1) month previous to such termination.

When By the Employee

19.4 Any employee who has been regularly employed by the same employer for a period of six (6) months or more desiring to terminate his employment shall give the Employer one (1) week's notice, and failing to do so shall forfeit any claim to vacation pay due him, but in any event, the amount of vacation pay so forfeited shall not exceed one week's pay.

Rehabilitation and Retraining

19.5 The parties agree that technological changes may affect the jobs of employees. Every reasonable effort will be made to utilize the service of those employees whose jobs are affected by the installation of new or improved machines; but nothing herein shall be construed to require an employer to retain employees who are not needed or to assign employees to work which they are not capable of performing.

20. TEMPORARY LAY-OFF

20.1 When an employee is to be laid off temporarily then said employee (including night shift employees) shall be notified of such lay-off not later than quitting time of the employee's previous work shift.

Sheet Fed Press Complements

24.3 Press complements on sheet-fed presses shall be as follows:

Multilith . . . one pressman

Single color press up to 30" inclusive . . . one pressman

Two color press 30" to 50" When operating with adequate floor help . . . one pressman, one feeder operator.¹⁶

¹⁶ Sheet-fed press complements provision was agreed upon at the July 7 meeting.

26. PROCEDURE FOR DISPUTES

26.1 In the event of any disagreement or dispute in any Company arising out of the application or interpretation of this contract, the following steps shall be followed.

- (a) The matter shall be taken up with the management of the Company by the Shop Delegate of the Shop Committee.
- (b) In the event of failure to adjust the matter, the Shop Delegate or Shop Committee shall refer the matter to the officials of the Local Union and the management of the Company.
- (c) Should there be no settlement of the dispute between the parties referred to in (b) above, the matter shall then be referred to a committee on which the Union and the Employer shall have equal representation.
- (d) Should no settlement result as provided in (c) above within a reasonable time then the joint committee shall select an arbitrator and if the selection of an arbitrator cannot be agreed to then the matter shall be referred to the American Arbitration Association whose designation of an Arbitrator shall be binding on both parties.
- (e) The cost of any arbitration shall be borne equally by both parties and the decision of the Arbitrator, however, selected, shall be binding on both parties.

26.2 A Shop Delegate shall not be subject to any disciplinary action or discharge for performing his normal duties such as reporting to the employer or the Union, any disagreement or dispute arising out of application or interpretation of this contract or for relaying official communications of the Union to the employees under his jurisdiction, provided that in the performance of these duties normal production continues.

27. SAFETY AND HEALTH STANDARDS¹⁷

27.1 The working conditions and the condition of equipment and tools, must comply with the health and safety regulations of the State of Illinois and the United States Department of Labor. Where such conditions are not specifically covered by legislation, or when there is evidence that safety standards are not being complied with, they shall be presented to the Employer for adjustment through the Union. No member of Local No. 245 will be required to work under conditions where in the opinion of the Union or¹⁸ of the Management it would be hazardous or unsafe for him to do so.

28. NEW MACHINES OR PROCESSES

28.1 The Employer agrees that in the event of the installation of new or improved machines or processes

¹⁷ Agreed to on July 7, 1977.

¹⁸ "Or" was changed to "and."

for lithographic production work, such machines or processes must be operated by lithographic workmen under this contract and under a scale of wages and conditions of work agreed upon by a joint committee, each party hereto having equal representation thereon. The wages whenever finally adopted shall be retroactive to the date of beginning of commercial production of such equipment or processes.

28.2 The joint committee referred to in this Article shall make every effort to promptly resolve any matters referred to them and if agreement cannot be reached in a reasonable period of time, they shall consider establishment of conditional trial periods on manning, wage scales or other conditions of work and at the completion of such trial periods, shall meet to resolve the issues taking into consideration the information and facts gained from operations during the trial period. Any agreement reached shall be reduced to writing and shall become a part of this Agreement.

28.3 Furthermore, the Employer agrees to give the Union ninety (90) days notice in writing prior to the installation of any such press equipment and reasonable notice on any other new lithographic equipment or process and to meet with the Union, at any time after such notice upon request for consideration of the manning of such machines or handling of such processes, the conditions of work, wage scales and any other matter relating thereto. In the event of failure of the Employer to comply in each respect with the terms hereof the Employer agrees that such equipment or process shall not be operated.

28.4 The Employer agrees that he will not change his present methods of lithographic production if such change affects the employment of employees under this agreement before giving ninety (90) days notice of such proposed change to the Union in order that the parties may meet to consider whatever other related changes are required.

30. INDENTIFICATION OF WORK

30.1 The Union Label is the exclusive property of G.A.I.U. and its use is authorized only by the express direction and consent of the G.A.I.U. upon execution of, and compliance with, the standard Union Label License Agreement.

30.2 The employer agrees that the Label shall not be placed on the printing surface of plates without the consent of the Union.

30.3 The employer shall affix his name or the G.A.I.U. Label on all negatives, positives and plates of any description produced hereunder before sending them to another shop.

32. STRIKES AND LOCKOUTS

32.1 There shall be no strikes, work stoppages, slow-downs, economic pressures, lockouts, or lockouts in the guise of suspension of operations in the plant covered by this contract during the period of this contract except as otherwise provided under this contract or sanctioned by law or the courts.

45. NO ORAL OR IMPLIED AGREEMENT

45.1 This contract sets forth the entire understanding and agreement of the parties and may not be modified in an respect except by writing subscribed to by the parties. Nothing in this contract shall be construed as requiring either party hereto to do or refrain from doing anything not explicitly and expressly set forth in this contract; nor shall either party be deemed to have agreed or promised to do or refrain from doing anything unless this contract explicitly and expressly sets forth such agreement or promise.

In addition, on July 7, 1977, the Union and Lindgren agreed upon a 2-year term for the agreement, which was indeed contemplated by the parties, since wages were agreed upon for a period of 2 years.

Thus, at the conclusion of the negotiations on July 7, 1977, no proposals were left on the bargaining table, the employer had offered no counterproposals, and the Union had withdrawn all its proposals which were unacceptable to Respondent. No unresolved issues of any significance remained. Since there were no longer any proposals or counterproposals at issue and there existed a meeting of the minds as to all other issues which had been the subjects of negotiations, an oral understanding had been reached¹⁹ which, under Section 8(d) of the Act, was required to be reduced to writing and signed if requested by a party. This assumes, of course, that Lindgren had appropriate authority. As to Lindgren, he acknowledged that a complete understanding had been reached when he reported to Johnson that "now we have a contract."

As to Lindgren's authority to have finalized a contract, it was Johnson who insisted over the protests of its employees that Lindgren had that power. "Bob Lindgren could do whatever he wanted." Johnson had "faith" in Lindgren and he was "adequately representing him." Johnson was "willing to attend negotiation sessions to make it clear that Lindgren had the authority to act on [his] behalf." "Mr. Lindgren is my representative. . . . I appointed him and I agree with whatever he has done."²⁰ Moreover, Johnson's instructions to Lindgren prior to his attendance at the July 7, 1977, meeting was that he "wanted to reach a contract" and that his "only concern" was that the conferees be told that his "position on the union security clause had not changed." Lindgren fulfilled his assignment to a tee. He brought back a contract whose terms, except for several items of little substantial significance, had been already approved by Johnson and without what was to Johnson a bane, a union-security clause. From Respondent's standpoint, Lindgren's efforts must be deemed to have been marked with success. Indeed, Johnson did not immediately advise the Union of any dissatisfaction with the contract. It was not until after the membership of the Union had ratified the contract and Johnson had seen a lawyer that he sought to renegotiate the

¹⁹ This oral understanding is referred to hereinafter as the "July 7, 1977, agreement or contract."

²⁰ "Whatever he had done" up to that point in the negotiation to which Johnson had agreed was all of the July 7, 1977, contract except the paragraphs on sheet-fed press complements and safety and health standards and the 2-year term, which, as above noted, had been contemplated since agreement had been reached on wage increases for 2 years.

contract and that defenses to its execution were proposed. Thus, it is clear not only that Lindgren was an authorized agent for the purpose of consummating a contract but that by Johnson's delaying until after the contract was ratified, Respondent is estopped from claiming that the 1977 contract is not a valid contract between Respondent and the Union. A union may rely on an employer's apparent, as well as express delegation of, authority. Cf. *N.L.R.B. v. Beckham, Inc.*, 564 F.2d 190 (C.A. 5), decided December 8, 1977. Here, I find that Lindgren was given express authority to finalize the contract²¹ and that the oral understanding reached on July 7, 1977, was binding on Respondent. Once such an understanding has been reached, it is an unfair labor practice for a party to refuse to sign a written contract. *N.L.R.B. v. Joseph T. Strong, d/b/a Strong Roofing and Insulating Co.*, 393 U.S. 357, 359 (1969); *H. J. Heinz Co. v. N.L.R.B.*, 311 U.S. 514, 525-526 (1941).

Additionally, the General Counsel claims that Respondent violated Section 8(a)(1) of the Act by implementing a 2-percent across-the-board wage increase for unit employees on October 3, 1977, and granting additional merit wage increases to certain employees in the unit after July 7, 1977. Since the July 7, 1977, contract was binding on Respondent at the time these wage modifications were put into effect, the increases resulted in an unlawful mid-term modification of the contract and a repudiation of the contract and of the Union's status as statutory bargaining representative in violation of Section 8(a)(5) and (1) of the Act. *Nedco Construction Corp.*, 206 NLRB 150 (1973); *Oak Cliff-Golman Baking Company*, 207 NLRB 1063, 1064 (1973); *Fairfield Nursing Home*, 228 NLRB 1208 (1977).

It having been found that an oral understanding binding on Respondent was reached on July 7, 1977, other defenses of Respondent become immaterial, as do certain affirmative demands of the General Counsel.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following unit constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time lithographic production employees employed at the employer's facility at 1007-1009 Burlington, Downers Grove, Illinois, excluding all office clerical employees, professional employees, salesmen, all other employees, guards, and supervisors as defined in the Act.

4. Since September 23, 1976, the Union has been the duly certified and designated exclusive representative of the employees in the unit found to be appropriate within the meaning of Sections 8(a)(5) and (9) of the Act.

²¹ Lindgren informed Johnson that the Union was "wanting to set up another negotiating meeting [July 7, 1977]" "to get together for the purpose of signing the contract or finalizing the contract." Johnson replied that that was "fine" and he was "willing to meet."

5. By unlawfully failing and refusing to execute a written contract embodying the terms and conditions of the oral agreement reached with the Union on July 7, 1977, as found herein, and by repudiating and modifying said agreement, Respondent engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

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

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

THE REMEDY

It is recommended that Respondent cease and desist from its unfair labor practices and take certain affirmative action deemed to effectuate the purposes of the Act. It is further recommended that Respondent sign the collective-bargaining agreement reached between the Union and Respondent on July 7, 1977, as above described and give it retroactive effect and that it make whole its employees for any loss of wages or other employee benefits they may have suffered as a result of Respondent's failure to sign the contract. The loss of earnings together with interest under the Order shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), *Florida Steel Corporation*, 231 NLRB 651 (1977), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

In respect to the across-the-board wage increase of 2 percent referred to above, it may be deducted from any back-pay owing the employees. However, the merit increases granted since July 7, 1977, may not be deducted from back-pay due in that Respondent did not establish by credible evidence that Respondent, according to its alleged past practice, would not have granted such wage increases even if the contractual 7-percent wage increase had been implemented.

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

ORDER²²

The Respondent, Deluxe Poster Co., Inc., d/b/a Johnson Printers, Downers Grove, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith with Chicago Local 245, Graphic Arts International Union, AFL CIO, by refusing to sign the collective-bargaining agreement embodying the terms and conditions of employment to which the parties had reached agreement on July 7, 1977.

²² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) Making mid-term modification of the July 7, 1977, contract's wage provisions without the Union's consent.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection or to refrain from any and all such activities.

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

(a) Forthwith sign a written contract embodying the terms and conditions of employment on which the parties had reached agreement on July 7, 1977, herein termed the "July 7, 1977, contract."

(b) Upon execution of the aforesaid agreement, give retroactive effect to the provisions thereof and make whole its employees for any losses they may have suffered by reason of Respondent's failure to sign the agreement in the manner set forth in the section entitled "The Remedy."

(c) Post at its place of business at Downers Grove, Illinois, copies of the attached notice marked "Appendix."²³ Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

²³ In the event that this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

WE WILL NOT refuse to bargain collectively in good faith with Chicago Local 245, Graphic Arts International Union, AFL-CIO, in the appropriate unit set forth below by refusing to sign the collective-bargaining agreement embodying the terms and conditions of employment on which the Company and the Union had reached agreement on July 7, 1977.

WE WILL NOT make mid-term modifications of the July 7, 1977, contract without the Union's consent.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, including the Union herein, to bargain collectively through a bargaining agent chosen by our employees, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any such activities.

We have forthwith signed a written contract with Chicago Local 245, Graphic Arts International Union, AFL-CIO, effective July 7, 1977, a copy of which is posted with this notice.

WE WILL give retroactive effect to terms and conditions of the contract, and WE WILL make whole our employees for any losses they suffered by reason of our failure to sign the contract. The appropriate unit is:

All full-time and regular part-time lithographic production employees employed at the employer's facility at 1007-1009 Burlington, Downers Grove, Illinois, excluding all office clerical employees, professional employees, salesmen, all other employees, guards, and supervisors as defined in the Act.

DELUXE POSTER CO., INC., D/B/A JOHNSON
PRINTERS