Northwest Graphics, Inc. *and* Local 505–M, Graphic Communications International Union, AFL–CIO. Cases 14–CA–25998, 14–CA–26121, 14–CA–26156, and 14–CA–26564

September 28, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On June 4, 2002, Administrative Law Judge Robert A. Pulcini issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed cross-exceptions, a supporting brief, and an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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

1. In its exceptions and supporting brief, the Respondent specifically refers to the 8(a)(5) violations found by the judge, but does not specifically refer to any of the 8(a)(1) violations. The Respondent does, however, generally except to the judge's conclusions of law, which include both the 8(a)(5) and the 8(a)(1) findings. Thus, it is not clear from the Respondent's exceptions and brief whether it intended to except to any of the 8(a)(1) violations found by the judge. However, assuming arguendo that the Respondent did intend to except to the 8(a)(1) violations found, the Respondent's exceptions to these findings fail to comply with the requirements of Sec. 102.46 of the Board's Rules. For this reason, we adopt the judge's 8(a)(1) findings.

2. The General Counsel excepts to the judge's failure to find that the Respondent violated Section 8(a)(1) of the Act by Production Manager Jim Recker's April 20, 2000 outburst at employee Paul Brannan, who was wearing a union button. The outburst, fully discussed in the judge's decision, consisted of Recker hitting Brannan's union button while shouting, "[w]ith mistakes like this, how dare you shove this shit down my throat?" Further, when Brannan replied by asking whether it is "the mistake or is it because I am wearing a button" Recker stated, "[i]t's the mistake. How dare you ask for more money?" We agree with the General Counsel that Recker's conduct conveyed a threat of reprisal for engaging in union activity. The conduct, which involved both a verbal outburst at an employee while simultaneously hitting his union button, reasonably conveyed a threat of lower wages or unspecified reprisals in retaliation for employees' support for the Union. See generally *Alexian Bros. Medical Center*, 307 NLRB 389 (1992) (supervisory comment linking poor evaluation with union activity reasonably suggested employee could suffer penalties for union activity).[3]

3. The General Counsel also excepts to the judge's failure to find that the Respondent violated Section 8(a)(5) by unilaterally increasing employees' wages in March, May, and July 2000, by unilaterally eliminating the evening shift and establishing a new 5 a.m.–1:30 p.m. shift in March 2000, and by laying off employee Sandra Lesh in March 2000 when the evening shift was eliminated. The judge fully set forth the facts underlying these allegations,[4] noting that these changes were made in the absence of an agreement or impasse with the Union, and that they occurred while the Respondent and Union were engaged in negotiations for an initial contract. The judge did not address, however, whether this conduct violated the Act. We agree with the General Counsel that these unilateral changes—like the other unilateral changes found by the judge—violated Section 8(a)(5) as alleged. See generally, *RBE Electronics of S.D., Inc.*, 320 NLRB 80 (1995).[5]

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

In sec. II,E, par. 3 of his decision, the judge incorrectly attributed the following statement to Production Manager Jim Recker: "That's right, Jim. Look around you. There is nine out of 11 people in this room, in this building here today that are wearing shirts and buttons. And no one is shoving this shit down your throat." The record shows that the statement was actually made to Recker by employee Joseph Napoli. The judge's attribution of this statement to Recker is not material to the findings of violations.

[2] We shall amend the judge's remedy and modify the judge's recommended Order to reflect both the violations found by the judge and our additional findings of violations. In addition, we shall provide an appropriate remedy for the unlawful layoff of employee Sandra Lesh, including requiring her reinstatement and that she be made whole for any loss of wages and benefits suffered as a result of the Respondent's unlawful layoff. We shall also substitute a new notice to employees to conform to the language set forth in the Order.

[3] We note that this conduct was alleged in the complaint, was part of a vacated settlement, and was fully litigated during the hearing.

[4] This conduct was alleged in the complaint and fully litigated before the judge.

[5] Chairman Battista further notes that the Respondent did not file an answering brief addressing the issues raised by the General Counsel's exceptions.

AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order the Respondent to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to offer employee Sandra Lesh full reinstatement to her former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and to make her whole for any loss of earnings and other benefits she may have suffered as a result of her unlawful layoff, from the date of her layoff, on March 20, 2000, less any net interim earnings, to be computed in the manner as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Board has held that "absent unusual circumstances, an employer will be required to honor a certification for a period of 1 year." *Mar-Jac Poultry Co.*, 136 NLRB 785,786 (1962). The Board has found that when an employer has refused to bargain with the elected bargaining representative during part or all of the year immediately following the certification, that it has "taken from the Union" the opportunity to bargain during "the period when Unions are generally at their greatest strength." *Van Dorn Plastic Machinery Co.*, 300 NLRB 278 (1990), enfd. 939 F.2d 402 (6th Cir. 1991). The measures taken by the Board to assure at least a year of good-faith bargaining include an extension of the certification year.

The length of such an extension is not necessarily a simple arithmetic calculation. The factors which the Board considers in determining the length that the certification year should be extended include the nature of the violations, the number, extent, and dates of the collective-bargaining sessions, the impact of the unfair labor practices on the bargaining process, and the conduct of the union during negotiations. *Metta Electric*, 338 NLRB 1059, 1065 (2003) (granting 12-month extension), enfd. in relevant part 360 F.3d 904, 912–913 (8th Cir. 2004). See also *Wells Fargo Armored Services Corp.*, 322 NLRB 616, 617 (1996).

The Union was certified on June 28, 1999. A month later, the Respondent implemented a general wage increase without notice to the Union or bargaining. At the parties' first bargaining meeting, 2 weeks later, the Respondent refused to bargain over the Union's list of tentative proposals, replying that it would only bargain over "entire proposals." The parties met subsequently on September 29, October 27, and December 2, 1999. The Respondent did not reply to the Union's October 27 wage proposal. Thus, from the date of certification in June 1999 until the end of the year, little real bargaining occurred.

In January 2000, the Respondent's unfair labor practices began. The judge found that the Respondent told employees not to discuss their wage increase; questioned the motives for the employees' union activity and requests for more money; unilaterally altered shift schedules, wages, and bonuses; delayed responding to information requests; dealt directly with employees; and posted notices in an effort to stimulate decertification attempts.

Based on the bargaining behavior of the Respondent in the 6 months immediately after certification and its unfair labor practices in the 6 months after that, we affirm the judge's 12-month extension of the certification year.

Applying *Mar-Jac Poultry Co.*, the judge granted an additional 12-month extension based, in part, on the fact that the Union was never given an honest opportunity to reach an accord with the Respondent. The judge rejected "totally" the Respondent's defense that the Union was at fault, finding that the Respondent acted in derogation of its bargaining obligations and was dismissive of the Union. In addition, the judge found that the Respondent's unfair labor practices further "muddled" the collective-bargaining process.

Ignoring the Respondent's bargaining behavior in the first 6 months after certification, the Chairman would only grant a 6-month extension on the grounds that "the first 6 months of the certification year were free from violation." This argument rests on the mistaken premise that an extension should only be granted for periods in which unfair labor practices impact bargaining and overlooks that the Board examines a number of factors (including bargaining behavior) in determining the length of an extension.

The Chairman also argues that a 12-month extension is inappropriate because during the first 6 months of the certification year, "the Union had a full opportunity for bargaining." However, contrary to the view of the Chairman, the Respondent's behavior during the initial 6 months did not enable the Union to have a "full" opportunity to bargain. And, even assuming, for the sake of argument, that the Union did have some opportunity to bargain during the first 6 months of the certification year, a 12-month extension is not precluded. In *Glomac Plastics*, 234 NLRB 1309 fn. 4 (1978), enfd. in relevant part 592 F.2d 94, 101 (1979), the Board affirmed the judge's recommendation that the certification year begin anew upon the Respondent's recommencement of good-faith bargaining, where the Respondent's bad-faith bargaining commenced 9-1/2 months after certification. The Board

held that, under proper circumstances, a complete renewal of a certification year may be granted even where the Respondent engaged in some good-faith bargaining in the prior certification year. Thus, the fact that the Respondent may have engaged in some good-faith bargaining in the last 6 months of 1999 does not, by itself, preclude a 12-month extension.

Given the Respondent's bargaining behavior in the first 6 months and its unfair labor practices in the next 6 months, a 12-month extension of the certification year is necessary to allow the Union and the Respondent a reasonable period of time for good-faith bargaining. For these reasons, we affirm the judge's 12-month extension.

ORDER

The National Labor Relations Board orders that the Respondent, Northwest Graphics, Inc., St. Charles, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees not to discuss their wages with other employees.

(b) Questioning employees concerning their motives for their union activity and requests for more money.

(c) Telling employees that profit-sharing funds will be used to pay for attorney fees as a result of the employees' union activity.

(d) Posting notices encouraging employees to engage in antiunion activity.

(e) Threatening employees with unspecified reprisals for their union activity.

(f) Unilaterally changing shift schedules and wage differentials without first giving the Union notice and an opportunity to bargain.

(g) Unilaterally implementing bonuses without first giving the Union notice and an opportunity to bargain.

(h) Engaging in direct dealing with the unit employees over terms and conditions of employment.

(i) Failing to produce and failing to timely produce information requested by the Union that is relevant and necessary to the Union's functioning as the collective-bargaining representative of the unit employees.

(j) Unilaterally laying off employees.

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

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

(a) Within 14 days from the date of this Order, offer employee Sandra Lesh full reinstatement to the position from which she was laid off in March 2000 or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority and any other rights or privileges previously enjoyed.

(b) Make whole employee Sandra Lesh for any loss of earnings and other benefits suffered as a result of her unlawful layoff.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful layoff and, within 3 days thereafter, notify employee Sandra Lesh in writing that this has been done and that the layoff will not be used against her in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Furnish to the Union in a timely manner any requested information that is reasonably necessary for it to perform its duties as the employees' collective- bargaining representatives.

(f) On request, bargain collectively concerning wages, hours, and other terms and conditions of employment with Local 505-M, Graphic Communications International Union, AFL–CIO, as the exclusive representative of its employees in the bargaining unit described below. If an understanding is reached, embody that understanding in a written, signed agreement. The appropriate bargaining unit is:

> All production and maintenance employees employed by Respondent at Respondent's St. Charles, Missouri facility, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

(g) Extend the period of certification and recognition of the Union as the exclusive collective-bargaining representative of the unit employees for 12 months from the date that the Respondent commences bargaining pursuant to this Order, as if the initial year of certification had not expired.

(h) On request by the Union, rescind the unilateral changes it made in shift schedules, wage differentials, and bonuses.

(i) Within 14 days after service by the Region, post at its facility in St. Charles, Missouri, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 14,

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

after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 2000.

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

CHAIRMAN BATTISTA, dissenting in part.

I do not agree with the extension of the certification year for a full 12 months. The Respondent's unlawful conduct was confined to the last 6 months of the certification year. Thus, the bargaining in the first 6 months of that year was untainted by any unlawful conduct. By extending the certification year for 12 full months, my colleagues give the union 18 months of certification protection. There is no basis for doing so.

I am particularly concerned about this matter because of the impact on Section 7 rights. During the certification year (as extended), employees are shorn of the fundamental Section 7 right to reject or change their representative. Accordingly, the certification year should be extended only when the record facts demonstrate the need to infringe on this fundamental Section 7 right. As noted, the record does not support an extension beyond a 6-month period.

The judge, who extended the certification year for 12 months, gave the following justification for doing so: "The Union was *never* given an honest opportunity to reach an accord with the Respondent." (Emphasis added.) There is no basis for this assertion. As noted above, the first 6 months of the certification year were free from violation. During this period, the Union had a full opportunity for bargaining. Although there were only four bargaining sessions during this period, there is not even an allegation that this was due to any "foot-dragging" by the Respondent. My colleagues rely upon "bargaining behavior" and a general wage increase during the first 6 months. However, neither was attacked as unlawful in this or any other proceeding.

My approach accords with precedent. In *Lamar Hotel*, 137 NLRB 1271, 1273 (1962), there was no bargaining for 6 months of the certification year, because of a pending 8(a)(5) charge. There was no comparable conduct for the other 6 months. The Board extended the certification year by only 6 months.

My colleagues rely on *Glomac Plastics* for their view that the certification year should be extended for 12 full months. That case is inapposite. As the Board made clear in its footnote 4, the 12-month extension of the certification year in that case was premised on the fact that there was bad-faith bargaining within the year. As the Board emphasized, it is difficult to ascertain the precise time at which that kind of violation can be said to begin. The instant case involves no such violation.

I recognize that the issue involved herein is not necessarily to be decided by arithmetic reasoning. However, because of the impact on Section 7 rights, the record must justify a result that gives more than the 12-month certification protection. As set forth above, the record fails to support a 12-month extension.[1]

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT tell you not to discuss your wages with other employees.

WE WILL NOT question you concerning your motives for your union activity and requests for more money.

WE WILL NOT tell you that profit-sharing funds will be used to pay for attorney fees as a result of your union activity.

[1] I join my colleagues' finding of additional violations not found by the judge, except I find it unnecessary to pass on my colleagues' additional finding that Production Manager Jim Recker's conduct towards employee Paul Brannan violated Sec. 8(a)(1). My colleagues' finding, that Recker unlawfully threatened Brannan with reprisals in retaliation for employees' support for the Union, is cumulative of another 8(a)(1) violation found (the Respondent's threat to take away profit sharing funds in response to union activity) and would not materially affect the remedy.

WE WILL NOT post notices encouraging you to engage in antiunion activity.

WE WILL NOT threaten you with unspecified reprisals for your union activity.

WE WILL NOT unilaterally change shift schedules and wage differentials without first giving the Union notice and an opportunity to bargain.

WE WILL NOT unilaterally implement bonuses without first giving the Union notice and an opportunity to bargain over those changes.

WE WILL NOT engage in direct dealing with unit employees over terms and conditions of employment.

WE WILL NOT fail to produce or fail to timely produce information requested by the Union that is relevant and necessary to the Union's functioning as the collective-bargaining representative of the unit employees.

WE WILL NOT unilaterally lay off employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer employee Sandra Lesh full reinstatement to the position from which she was laid off in March 2000 or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority and any other rights or privileges previously enjoyed.

WE WILL make employee Sandra Lesh whole for any loss of earnings and other benefits suffered as a result of her unlawful layoff, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful layoff and, WE WILL within 3 days thereafter, notify employee Sandra Lesh in writing that this has been done and that the layoff will not be used against her in any way.

WE WILL furnish to the Union in a timely manner any requested information that is reasonably necessary for it to perform its duties as the employees' collective-bargaining representative.

WE WILL, on request, bargain collectively concerning wages, hours, and other terms and conditions of employment with Local 505-M Graphic Communications International Union, AFL–CIO, as the exclusive representative of all the employees in the bargaining unit described below, and, if an understanding is reached, embody such understanding in a written, signed agreement. The bargaining unit is:

> All production and maintenance employees employed by us at our St. Charles, Missouri facility, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

WE WILL, on request, resume bargaining with the Union as the exclusive collective-bargaining representative of the unit employees for no less than 12 months thereafter as if the initial year of certification had not expired.

WE WILL, on request by the Union, rescind the unilateral changes we made in shift schedules, wage differentials, and bonuses.

NORTHWEST GRAPHICS, INC.

Sharon L. Steckler, Esq. and *Patrick Myers, Esq.,* for the General Counsel.

Lawrence P. Kaplan, Esq. (Kaplan & Associates, L.L.C.), of St. Louis, Missouri, for the Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT A. PULCINI, Administrative Law Judge. This case was tried in St. Louis, Missouri, on December 10 and 11, 2001. The charges were filed respectively on April 10, July 24, and August 22, 2000, and August 3, 2001. A complaint issued in Case 14–CA–25998 on May 31, 2000, and reissued on June 21, 2000, as amended. The parties entered in an approved settlement of this case on July 17, 2000. Related charges to this case resulted in an Order consolidating them (Cases 14–CA–26121 and 14–CA–26156) for hearing issued by the Regional Director for Region 14 on September 29, 2000. However, these cases also resulted in an approved settlement agreement on December 5, 2000. On October 10, 2001, the Regional Director issued an Order Vacating and Setting Aside all of the settlement agreements and consolidating them for hearing. These cases allege that Northwest Graphics, Inc. (the Respondent) coerced and threatened its employees in violation of Section 8(a)(1) of the National Labor Relations Act (the Act). They also allege that the Respondent violated Section 8(a)(5) of the Act by engaging in certain unilateral changes. Finally, they allege undue delay in providing Local Union 505-M Graphic Communications International Union, AFL–CIO (the Union) with information needed by it to collectively bargain; and then bypassing it to deal directly with bargaining unit employees.[1]

Issues

(1) Whether the Respondent threatened and coerced employees in violation of Section 8(a)(1) of the Act.

(2) Whether the Respondent acted unilaterally in violation of Section 8(a)(5) of the Act.

(3) Whether the Respondent unduly delayed providing the Union with requested information necessary to its bargaining obligation.

(4) Whether the remedy of an ordered extension of the bargaining year is appropriate.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

[1] The complaint includes a request for an extension of the bargaining year under the provisions of *Mar-Jac Poultry Co.,* 136 NLRB 785 (1962).

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation engaged in commercial printing at its facility in St. Charles, Missouri, where it annually ships to and receives from points directly outside of the State of Missouri goods valued in excess of $50,000. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Respondent's commercial printing operation does work for the American Medical Association. It has 15 employees, 10 of whom are in the bargaining unit. This unit was created through a representation election held on June 18, 1999, and Regional Director certification of its results on June 28, 1999. There were no objections filed after the election. The parties met 18 times since then through the date of the hearing in these matters. They did not reach agreement.

The Respondent is a family-owned enterprise in the persons of President Don Roberts, Vice President Timothy Roberts, his son and wife/mother, and corporate officer, Joan Roberts. Timothy Roberts was the principal actor and spokesperson for the Respondent in the events of this case. However, Don Roberts is deeply involved in the policies of the Respondent and was, as well, involved in the labor relations' positions taken during bargaining. The Respondent also has Production Manager Jim Recker to supervise the various departments. This includes scheduling of work and the appraisal of employees' performance relative to wage increases.[2]

On July 21, 1999, the Respondent advised the Union that Tim Roberts and Attorney Lawrence Kaplan would negotiate for it. On July 28, 1999, the Respondent gave a general wage increase to its bargaining unit employees without notice to the Union. The Respondent had not given such an increase before in its history. The parties met for the first time on August 11, 1999, in the offices of attorney Kaplan. The Union's bargaining team included Ralph Bruns, its local vice president and principal spokesperson, President Ken Truemper, Financial Vice President Chico Humes, and two bargaining unit employees, Joseph Napoli a. k. a. Pepe Napoli and Paul Brannan.[3]

The Union gave the Respondent a list of proposed economic and noneconomic issues for negotiation. This proposal stated in its penultimate paragraph that all agreements reached in negotiations were "tentative," subject to addition, modification, or deletion at any time during negotiations. The Respondent's reply to this was that it would bargain with "entire proposals" to which Bruns reiterated the Union's position that agreements were tentative. Attorney Kaplan periodically prepared what the Respondent calls "redline" copies of the contract proposals purportedly indicating what the parties had agreed to up to that point. Kaplan also prepared and distributed drafts of the proposals showing what had been agreed to and not up until that point. The Union never retreated from its position that anything agreed to in negotiation was tentative. The parties met on September 29, October 27, and December 2, 1999, January 6 and 30, 2000. The Union presented its wage proposal at the October 27, 1999 meeting but the Respondent did not respond. Similarly, they did not discuss shift scheduling.

B. Second-Shift Changes January–March 2000

In January 2000, Tim Roberts called employee Shayne Shelbourne to his office and gave him a performance review that resulted in Roberts saying, "Well, we're going to give you a $2 an hour raise. I would appreciate it if you would not discuss it with anyone." Shelbourne agreed. The Respondent unilaterally initiated the evening shift of 3:30 p.m. to midnight on January 31, 2000. The Respondent assigned employees Jim Coffey, John Borgmeyer, and Ray Hartling to this shift and, as well, gave them a 50-cent-an-hour shift differential. The Union got no notice of any of this.

The Respondent called a former employee named Sandra Lesh in January 2000 concerning its new shift schedule. Don Roberts called Lesh and asked her if she would be interested in this second shift which, he told her, the Respondent needed to use new equipment. Lesh called back the next day and informed Roberts that she could only work part time. He agreed to employ her this way and they negotiated a salary of $16.50 per hour without any shift differential. Lesh began work in February 2000. The establishment of this part-time position with its different wage scale was a unilateral act. The Respondent did not notify the Union.

Sometime in early March 2000, employee Jim Coffey approached and spoke to Production Manager Recker with a recommendation to eliminate the evening shift. Similarly, in and around the same time, employees Mark Boudreaux and Bill Cole recommended to Recker that he establish a 5 a.m. to 1:30 p.m. shift. Recker conferred with the Roberts, resulting in the unilateral implementation of the new shift schedule on March 20, 2000, again without notice to the Union. Simultaneously, the Respondent unilaterally stopped the shift differential implemented 2 months before. Again, this act was without notice to the Union. When it discontinued the shift differential, the Respondent gave one employee named John Borgmeyer a $1-per-hour raise despite his having received a merit increase in January 2000 of $2 per hour. This increase was unilateral. The Respondent did not notify the Union. The Respondent then called part-time employee Lesh after eliminating the evening shift, telling her to see Tim Roberts, which she did. Roberts told her, in meeting, he was letting her go due to the evening-shift elimination. This act like the others discussed was unilateral, without notice to the Union.[4]

[2] The Respondent's shift schedules are 7 a.m. to 3:30 p.m., 8 a.m. to 4:30 p.m., and 3:30 to 12 a.m.

[3] Union Attorney Art Martin only attended 3 sessions of the 18 involved and not until September 28, 2000.

[4] The Respondent called Lesh in May and offered her a full-time position which she declined, which the Respondent had reason to believe would be declined from its earlier contact with Lesh. President Roberts made this contact and told Lesh that he needed her to sign a piece of paper declining the position because of some "circumstances" with the Union. Lesh did sign such a statement when sent to her.

C. Information Requests

Union Vice President Bruns telephonically requested more wage information from Tim Roberts on February 14, 2000. Roberts told Bruns that employee Mark Boudreaux did not wish his information given to the Union. Later that day, attorney Kaplan spoke with Bruns and told him the Respondent refused to give the information. On March 15, 2000, the Respondent sent the Union a list of employees' current wages, with no information on wage progression. Information regarding Boudreaux and probationary employee Bill Cole remained absent. At hearing, Tim Roberts testified that he left out information on Boudreaux to honor his request, but had no recollection of why Cole's information was missing. At a bargaining session held on March 23, 2000, attorney Kaplan provided the Boudreaux wage information when asked to by Bruns. Bruns did not ask about Cole. The Respondent gave the information finally on April 26, 2000, explaining the reason for delay was Cole's probationary status.

D. Final Proposal

Attorney Kaplan sent the Union a letter on February 29, 2000 that included "Joint Draft Number 6" and a "final proposal" that failed to mention wages. On March 23, 2000, the parties exchanged proposals. The Respondent reviewed the proposals in caucus and then through attorney Kaplan told the Union, "With respect to wages, the Company has already given out wages. And that is as good as it is going to get."

E. Events of April 2000

The Union began an informational picket at the Respondent's facility on April 20, 2000. At the same time, some of the employees began wearing yellow buttons that said, "We want a contract." One of the nine employees wearing such a button was employee Paul Brannan also a member of the negotiating committee. Brannan came to work at 5 a.m. to his job running a machine in the bindery department. At around 7 a.m., Production Manager Recker called Brannan to the loading dock and engaged him in conversation.[5] Recker approached Brannan and threw a job jacket onto a nearby skid. He yelled, "What does it say? What does it say?" Brannan testified to his confusion by Reckers' question until he said, "This job had a weight limit on it." Brannan, it appears, had overfilled a box by 2 pounds, a mistake corrected by another employee. Recker then said, as he hit Brannan's union button, "With mistakes like these, how dare you shove this shit down my throat?" Brannan replied, "Was it the mistake or is it because I am wearing a button?" Recker replied, "It's the mistake. How dare you ask for more money?"

Brannan told other employees including Joe Napoli about the incident with Recker. Napoli approached Recker some hours later at mid-morning. He told Recker that anytime he made a threat involving union activity against one employee, he made it against all employees. Recker told him he did not understand. Napoli said that he did not want to identify anyone in particular and he repeated his admonishment to Recker. Naploi broke off the conversation and went to the nearby men's room. Recker followed. Recker asked Napoli how he dared to complain like this to him and he ordered Napoli to come with him to see President Roberts. Napoli refused to go, saying he felt threatened and wanted someone with him. Recker agreed but then said, "Are you talking about the Paul Brannan incident?" Napoli replied, "Yes," and Brannan told him to see him after he was finished in the men's room to discuss the matter.

Some 30 minutes later, Recker approached Brannan and asked him to come to the dock with him. Napoli was there. Recker discussed the mistakes made by Brannan and asked Napoli if he could correct an employee for such mistakes. Napoli told Recker he had the right to correct an employee but not as he had Brannan. Naploi told Recker that he was speaking of the negative comment Recker had made about the Union. Recker at first denied the comment then admitted it and said while pointing around the room, "that's right Jim. Look around you, there are nine out of eleven people in this room, in this building today that are wearing shirts and buttons, and no one is shoving this shit down our throats?" Napoli replied that the employees were exercising their rights and Recker then said that Napoli did not have a right to complain to him and that he should instead complain to his "Union watchamacallit."

Employee Thomas Watkins went to see President Roberts some few days after the picketing started. They were alone as Watkins told Roberts that there was nothing personal about employees including him wearing union buttons. Roberts replied, according to Watkins, that he would use profit sharing funds to pay attorney fees.[6]

F. Events of May 2000

The parties negotiated on May 9, 2000. The Respondent again presented proposals which, this time, included wages and a provision giving the Respondent complete discretion over amounts within salary ranges. The Union rejected these provisions and countered with language allowing incremental wage increases over a period of months to bring the employees up to scale. The parties could not reach an accord.

While the parties were at the bargaining table, the Respondent approached employee Shayne Shelbourne to discuss a wage increase for him. It did this in early May through Production Manager Recker and Vice President Tim Roberts.[7] Recker approached Shelbourne and asked him if he was interested in a raise. As Shelbourne demurred, Recker said, "You know, I could easily have a meeting arranged with Don Roberts without anyone knowing. I'll see what I can do." Tim Roberts did approach Shelburne soon after the Recker conversation, asking him to come to his office. In the ensuing conversation, the two discussed Shelburne's wages and Roberts told Shelburne he was getting a $1-an-hour increase. Shelburne did not get a work appraisal before receiving this raise. The Respondent did not notify the Union of this raise.

[5] The Respondent stipulated to Brannan's account of this encounter as accurate.

[6] It is undisputed that President Roberts made similar statements during the campaign in captive audience meetings. The Respondent does maintain a 401(k) plan that gave employees yearly settlement statements. Employer contributions stopped in 1998.

[7] There is no factual dispute with these accounts. The Respondent essentially stipulated to all of the contact details set out here.

G. Events of July 2000

The parties entered in a settlement agreement on July 11, 2000, to resolve many of the issues raised in the above facts.[8] Three days after this, Tim Roberts informed Bruns the Respondent wanted to give employee John Borgmeyer a wage increase as of July 19, 2000. There was a telephone conference on July 17, 2000, between attorney Kaplan, Tim Roberts, and Bruns about this with no resolution. There also was an exchange of faxes. Bruns wrote Roberts saying that it was inappropriate to give one employee a raise without addressing the needs of all the employees. Bruns went on to object to the one employee getting a raise. Tim Roberts replied by fax declaring impasse on the issue and informing Bruns that the raise would proceed.[9] Attorney Kaplan also faxed Bruns setting out the rationale for the Respondent's actions.[10] Borgmeyer got the raise as promised effective on July 17, 2000. As with Shelburne, there was no appraisal.

H. Further Requests for Information

On July 12, 2000, Tim Roberts admonished employee Rena Buford for clocking in too early. She then received a written copy of the oral admonishment. Roberts faxed the Union, i.e., Bruns with a copy. Bruns replied by asking by fax for information including timecards, pay stubs, and any disciplinary records relating to clocking in early. The Respondent did not contest the right of the Union to have this information. Bruns asked for the information by August 10, 2000, an arbitrary date selected by him. This date coincided with a negotiation session. Attorney Kaplan finally replied, saying that the Union would not receive the information. He gave no reason. This resulted in an additional unfair labor practice charge filed.[11]

On November 27, 2000, the Respondent produced the information, some 5 months after the initial request. The Respondent had the ability to produce the information at any time. Tim Roberts testified that a reason he did not provide the information was his opinion that the request was in the nature of "agitation."[12]

I. Events of May 2001, the Bonus Issue

Tim Roberts faxed Bruns a letter on May 23, 2001, stating that employees would receive a bonus equal to 2 weeks' pay to be distributed on May 25, 2001. The fax invited Bruns to contact Roberts on Thursday, May 24, the day before the scheduled distribution.[13] Bruns did not retrieve the fax until May 25, 2001. He replied at once demanding that the Respondent bargain over the bonuses and requesting information about them. The Respondent gave the bonuses out notwithstanding Bruns objection and request to bargain.[14] Tim Roberts responded to Bruns finally on May 29, 2001. Roberts wrote Bruns telling him that the Respondent had no policy with respect to bonuses and gave the one in question to employees in appreciation for their hard work. Roberts advised Bruns to contact attorney Kaplan to bargain over the issue.[15]

J. Events of June 2001

In the first week of June 2001, Recker approached employee and press operator James Coffey and asked him if he was willing to change to an evening shift the following week for a shift differential of 50-cents-per-hour. Coffey accepted the terms, beginning June 4, 2001. Roberts faxed Bruns about this shift change on June 4, 2001, nearly 2 hours into Coffey's working it.[16] Bruns replied to this fax on June 5, 2001, requesting that the changes not take place. Bruns said the Union "insists that that the company bargain over these and any other changes in wages, hours and working conditions before they occur." Bruns also asked for dates for bargaining. Attorney Kaplan faxed a response to Bruns on June 6, 2001. In it, Kaplan told the Union of the Respondent's willingness to bargain about the shift change but its unwillingness to delay it. Kaplan told the Union that the changes were temporary.[17]

In mid-June, Production Manager Recker approached Pepe Napoli and asked him to work the second shift. Similarly, he approached other employees with this same question, offering a 50-cent per hour differential. The Respondent failed to tell the Union as it failed before the previous January and March 2000.

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[8] As stated above, this was set aside due to the alleged continuing misbehavior of the Respondent at the bargaining table and in the workplace.

[9] The fax said in its relevant part, "We cannot permit a delay in a salary increase for an employee to be tied to the outstanding issues in our contract negotiations. We are at impasse over this particular increase; we will be increasing John's hourly pay from $15.00 to $16.00 per hour effective 7/17/00."

[10] Kaplan wrote in relevant part. "The Company believes it inappropriate for you to tie Mr. Borgmeyer's increase for other employees and, in fact, tying of one issue to other issues is generally illegal under the National Labor Relations Act. Once again, if you are interested in further discussing the wage increase for John Borgmeyer, please don't hesitate to contact the undersigned."

[11] The new charge and complaint alleged the failure to timely produce the information along with the unilateral wage increase to employee Borgmeyer.

[12] The events of July 2000, and the failure to timely provide information resulted in yet another round of charges which also became the subject of an approved settlement dated December 4, 2000. The Respondent again committed itself to observance of its duty to bargain by timely providing any information the Union is entitled to and to refrain from unilateral acts involving wages without notice and opportunity to bargain being given the Union.

[13] The Respondent calculated bonuses just before notification to the Union by fax. The Respondent contended that there was urgency in the matter dictated by the need to have its payroll agent act by close of business May 24, 2001.

[14] The paychecks noted the bonuses to employees, their first knowledge of them. The Respondent included a letter to the employees explaining that the bonuses were in appreciation for the recent work efforts. No mention was made of the Union.

[15] Kaplan sent a letter on June 6, 2001, to the Union on this subject which in relevant part said, "We don't believe that the union's position in the equation of employer, employee and union grants to the union the right to interfere with this cooperative relationship" In the same letter, the Respondent offered to bargain about the issue.

[16] Coffey began working the shift at 12 p.m. Roberts faxed Bruns at 1:45 p.m. This fax stated that Coffey and employees Borgmeyer had agreed to work a shift ending at midnight and would be receiving 50-cents-per-hour differential. Both employees worked the shift through June 7, 2001.

[17] Kaplan described this "accommodation" as "inherent in the day to day relationship between the employees and the Company."

Tim Roberts told Bruns two employees, Napoli and Coffey, agreed to work this shift from June 25 to 30, 2001, with differential. Bruns faxed a response to this again demanding that the Respondent negotiate before implementation. This time Bruns accused the Respondent of direct dealing with the employees and circumvention of its bargaining obligation. Attorney Kaplan responded, in part, saying:

> Northwest Graphics does not believe that every communication with employees is required to go through the Union. Everyday adjustments such as a temporary shift arrangement are included in the type of communications that all employees routinely have with their employees whether or not represented by a union. In a small shop such as Northwest Graphics, it is necessary for the Company and the employees to frequently make adjustments to accommodate work fluctuations.

The parties met on July 11, 2001. One of the topics discussed was the bonus system. The Respondent denied having any formal system in place while maintaining that the Respondent only wished to "share its good fortune" with employees. Attorney Kaplan told Bruns that the matter was closed and that the Union could run to the Labor Board about it. During discussion, Tim Roberts stated, "I will never sign a contract that says the union will decide the amount of bonuses."[18]

K. Events of September 2001 Through Date of Hearing

The Union filed another set of charges against the Respondent on August 3, 2001, on the issues of bonuses and shift changes with differentials. On September 4, 2001, Tim Roberts posted a notice to employees along with a copy of the new charge and its enclosed letter from the NLRB. His notice said in its relevant part, "I encourage you to look closely at this information, ask questions, get involved and decide if this is how you want to be represented." The parties had two additional bargaining sessions on September 18 and October 31, 2001, with no essential change in the positions of the parties on any of the issues raised by the charges consolidated for hearing.

III. DISCUSSION AND ANALYSIS

A. The 8(a)(1) Violations

The Respondent admits the encounter between Tim Roberts and employee Shelbourne in January 2000, when Roberts told Shelbourne not to discuss his wages with other employees. The General Counsel cites *American Automatic Sprinkler Systems*, 323 NLRB 920 (1997), enfd. in relevant part 163 F.3d 209 (4th Cir. 1998), cert denied sub nom *Road Sprinkler Fitters Local Union 669 v. American Automatic Sprinkler Systems*, 529 U.S. 821 (1999), as well as other cases[19] for the proposition that telling employees not to discuss his wages interferes with his Section 7 rights and is coercive. I concur. The Respondent failed to advance any defense to this allegation. I assessed this conduct in the context of the entire scope of the allegations. I find this incident conduct inherently interfering in the Section 7 rights of employees and a violation of Section 8(a)(1) of the Act. *Brunswick Food & Drug*, 284 NLRB 663 (1987).

The April 20, 2000 incident between Production Manager Recker and various employees Brannan and Napoli are, the General Counsel argues, 8(a)(1) violations, citing *Paul Mueller Co.*, 332 NLRB 312, 312 (2000), and *Emergency One, Inc.*, 306 NLRB 800, 802, 806 (1992).[20] I agree with the premise that this conduct violates Section 8(a)(1) of the Act. However, I find the proper characterization of the events is one of unlawful interrogation. Here, again, the Respondent offered no substantive defense and failed to call any witnesses on these issues conceding their reality. Thus, I find the witness accounts credible. In so doing, it is clear the context of the meeting between the employees and Recker was one of conflict and emotion. Recker intended his questions to cow employees Brannan and Napoli. It is irrelevant whether he intended them as a rhetorical device or not, inasmuch as his questions' content restrained and coerced the employees in their union conduct. *Rossmore House*, 269 NLRB, 1176, 1177 (1984), affd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985).

A similar result is reached on the issue of President Don Roberts' purported statement to employee Tom Watkins that he would use profit sharing funds to pay attorney fees. As the General Counsel points out, the statement was one of fact and not opinion. Profit sharing has not taken place since the advent of the Union, giving the Roberts comment all the more import. Don Roberts did not testify and the attributed statement is uncontested by the Respondent. Therefore, I find it occurred, as testified to, and that it was a threat in violation of Section 8(a)(1) of the Act. *EBY-Brown Co. L.P.*, 328 NLRB 496 (1999).

On September 4, 2001, Vice President Tim Roberts posted his admonishment to employees to ask questions and to get involved along with a copy of materials the Respondent received from the NLRB on new charges filed by the Union. The majority of his posting is innocent enough. However, Roberts closed his polemic with the question, "See if this is how you want to be represented?" The Respondent did not explain what the motivation for this posting was, leaving the matter susceptible to the interpretation offered by the General Counsel. The General Counsel contends that the circumstances of this statement, as against the totality of the factual allegations, makes out an 8(a)(1) violation, citing *Wire Products Mfg. Corp.*, 326 NLRB 625 (1998), enfd. 210 F.3d 375 (7th Cir. 2000). I find this argument persuasive and I agree. The Respondent's conduct leaves little room for any benefit of doubt. It conducted itself in a manner openly hostile and resentful of the Union before this "posting." Thus, this was not a plea for employee involvement in the state of collective bargaining. Rather, it was

[18] The Respondent purportedly gave nonseasonal bonuses some three or four times between 1994 and 1999. This allegation was undocumented. It did give a seasonal bonus in 1998 but not in 1999 when the Union arrived on the scene.

[19] See also *Automatic Screw Products Co.*, 306 NLRB 1072 (1992), enfd. mem. 977 F.2d 582 (6th Cir. 1992).

[20] Recker said, "With mistakes like these, how dare you shove this shit down my throat?" (referring to the Union by slapping the employee's shirt union button). He also said, "How dare you ask for more money?"

a clumsy and transparent attempt to invite procompany anti-union efforts with implied support.

B. The 8(a)(5) Allegations

There are a significant number of unilateral changes alleged in this matter. The defenses to them are minimal at best. There is little, if any, factual dispute between the parties. The Respondent elected not to challenge the allegations as presented at trial, opting to stipulate to the facts but not the conclusions as presented in the complaint. The Respondent did not call witnesses such as Production Manager Recker and President Don Roberts.[21] It relies on a few cases as legal support for its alleged unilateral actions.[22] In doing so, the Respondent states that its actions are nothing more than the maintenance of the status quo, which it is entitled to do. On the issues of alleged unilateral changes, the Respondent similarly cites cases finding a failure to grant customary wage increases and other benefits absent the Unions' agreement is a violation of the Act.[23] The Respondent then argues the Union's actions in negotiations violate the Act.[24] It does not even address the 8(a)(1) allegations beyond stating, "Other than several 8(a)(1) statements made in early 2000, the Respondent has been clean."[25]

There is no question that the Respondent made a number of unilateral changes in the figurative shadow of its entry into a settlement agreement with the NLRB to cease such acts. It embarked on this behavior as soon as the bargaining obligation perfected itself with the certification of election results. The Respondent's obligation to refrain from or avoid unilateral changes in wages, hours, and working conditions perfected itself when the Union won the election. *Mitchellace, Inc.*, 321 NLRB 191 (1996), and *LoveJoy Industries*, 309 NLRB 1085 (1992). It ignored this obligation consistently.

C. Unilateral Shift Changes

It is well established that work schedule changes and issues related to them are mandatory subjects of bargaining.[26] Here, the Respondent does not contest it engaged in such changes beginning in January 2000 when it established an evening shift, then disbanded it along with the pay differentials it unilaterally decided were appropriate. It gave no substantive notice to the Union or opportunity to discuss these issues. Thus, the Respondent began a pattern of ignoring its bargaining obligation in violation of Section 8(a)(5) of the Act. This pattern continued when, in June 2001, it unilaterally altered the shift schedules and pay differentials of employee Coffey. The exchange of correspondence about this, detailed above, shows a cavalier dismissal of the Union, as does the last minute notice of the proposed changes, creating a fait accompli.[27] The Respondent offered business reasons as explanation for these actions but produced no evidence to support an economic exigency argument.[28] It also failed to establish waiver as a defense. As the General Counsel points out, the Union requested bargaining over the issues. The Respondent simply did not engage the Union in any dialogue remotely resembling bargaining on this or other issues, thus violating Section 8(a)(5) of the Act.[29]

I reach a similar result viewing the Respondent's layoff of employee Lesh. The Respondent unilaterally created the position for Lesh and its wages and then unilaterally eliminated it. The General Counsel argues that these actions are impermissible, absent impasse in negotiations violating Section 8(a)(5), citing *Flambeau Aimold Corp.*, 334 NLRB 165, 172 (2001); and *Monroe Mfg.*, 323 NLRB 24 (1997). I agree wholeheartedly. The Respondent's manipulation of shifts, pay differentials, and employee positions, without the slightest nod to the Union, is a classic violation of the duty to bargain. Moreover, the Respondent then compounded this by offering a full-time position to Lesh some months later to cure its actions, knowing that she could not accept such a position.[30]

D. Unilateral Grant of Bonuses

The grant of bonuses by the Respondent is yet another example of conduct violating the Act. The evidence established a pattern for bonuses in years before the advent of the Union. These bonuses usually came at the end of the fiscal year. However, the Respondent gave no bonus in 1999 coinciding with the arrival of the Union. Then, in 2000, the bonus given was once more without recourse to the Union. As the General Counsel argues, it is a violation of the Act to unilaterally alter or abolish a bonus program.[31] It is clear that the Respondent

[21] The General Counsel requested that I draw an adverse inference from the Respondent's failure to call these persons. In view of the fact that the Respondent stipulated most of the salient facts, I see no need to draw such inferences. The facts speak for themselves loudly and need no further amplification.

[22] For example, the Respondent cites *EIS Brake Parts*, 331 NLRB 1466 (2000), for the proposition that found certain job changes lawful as a continuation of the status quo; see also *Our City of Lourdes*, 306 NLRB 337 (1992).

[23] See *Rural/Metro Medical Services*, 327 NLRB 49 (1998), and *Kurdziel Iron of Wauscon*, 327 NLRB 155 (1998).

[24] It argues, "Here, the Union did not ask for different or greater wages or bonuses than those granted. It continuously attempted to link the payment of such wages and bonuses to the negotiation of a completed agreement. Requiring agreement on certain subjects of bargaining as a prerequisite to further negotiation is evidence of bad faith, *Vanderbilt Prods*, 129 NLRB 1323 (1961), as is refusing to negotiate economic proposals without agreement on non-economic issues. *Eastern Maine Medical Center*, 253 NLRB 224 (1980). By conditioning wage increases, shift differentials, starting wages and bonuses on a completed agreement, the Union has violated Sec. 8(b)(3) of the Act."

[25] I construe this as a tacit admission of the alleged 8(a)(1) violations weighed against the fact that critical witnesses were not called such as Recker and Don Roberts. The stipulated nature of the factual record as a whole is also a factor in my view of this.

[26] See *Raven Government Services*, 331 NLRB 651 (2000), and *Keeler Die Cast*, 337 NLRB 585, 589 (1999).

[27] Attorney Kaplan's letter is revealing in its exclusion of the Union as a bridge between the Respondent and the employees. It undoubtedly reflects the true attitude of the Respondent in its relations with the Union.

[28] *RBE Electronics of S.D.*, 320 NLRB 80 (1995).

[29] *Burrows Paper Corp.*, 332 NLRB 82, 83 (2000).

[30] This is another instance of unrebutted evidence. President Roberts was the principal actor for Respondent here and he did not testify.

[31] *Bonnell/Tredegar Industries*, 313 NLRB 789, 794 (1994) enfd. 46 F.3d 339 (4th Cir.1995).

again engaged in conduct designed to ignore or diminish the role of the Union, making out a clear violation of Section 8(a)(5) of the Act.[32] This is further exemplified in the Respondent's actions surrounding the May 25, 2001 bonus where it gave the Union less than 48 hours to respond to its notice of intent to give a bonus.[33] The General Counsel stresses this as more evidence of the Respondent's "intent to disregard it's bargaining obligations and undermine the Union." I concur.[34]

E. Direct Dealing with Employees

There are a number of instances in which the Respondent bypassed the Union and dealt with employees directly. The formula for this finding is a three part one.[35] Each of the instances alleged in the consolidated complaint discussed above satisfies the formula beginning with the January 2000 negotiations between employee Lesh and President Roberts. The Union existed, Lesh was part of the bargaining unit, and the Respondent set her wages and schedules after bargaining directly with her. It is difficult to imagine a clearer violation of Section 8(a)(5). The Respondent swiftly followed this with soliciting and then discussing shift changes with employees, once more, without consideration of the Union's existence and in derogation of its collective-bargaining status. See *Morgan Services*, 336 NLRB 290, 293 (2001).

It is also relevant and noteworthy that this predilection to engage in unilateral action existed at levels below the Roberts. In May 2000, Production Manager Recker negotiated the raise of employee Shelbourne directly with him swearing him to secrecy. In June, Recker did the same thing with employees Coffey and Napoli. The Respondent sees nothing wrong with this sort of conduct. The Respondent continued to fail to notify the Union, failed to discuss its proposals with it, sought out employees directly to negotiate terms, and then implemented them over the Union's objection. All of these facts make out the violation of Section 8(a)(5) as alleged.

F. The Requests for Information

The Union through Bruns asked for wage information on February 14, 2000, and did not receive all of it until April 26, 2000. At least as to two employees, Boudreaux and Cole, the Respondent refused or failed to give over the information requested. The General Counsel argues that this conduct falls within the ambit of *Woodland Clinic*, 331 NLRB 735, 736–737 (2000), and cases cited therein. *Woodland* and related cases hold that responses to requests for information must be timely answered, where a failure to do so constitutes as much of a violation of Section 8(a)(5) as not giving the information at all. This is particularly the case here. The Respondent chose a course of delay as it made a half-hearted attempt to bargain out a contract. As it did this, its other conduct detailed above, revealed its true motive of undermining and obstructing the Union trying to represent the Respondent's employees.[36]

CONCLUSIONS OF LAW

By telling employees not to discuss their wage increase; questioning motives for their union activity, and requests for more money; by engaging in unilateral acts, such as, altering shift schedules, changing wage differentials, granting bonuses, delaying responding to information requests; bypassing the Union to deal directly with employees concerning mandatory subjects of bargaining and posting notices intended to stimulate decertification attempts, the Respondent engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The General Counsel requests an extension of the bargaining year as an additional remedy to the unfair labor practices found.[37] The facts that come into play here include the nature and type of violations found, along with the number, extent, and dates of bargaining sessions. *Wells Fargo Armored Car Services Corp.*, 322 NLRB 616, 617 (1996). The impact of the unfair labor practices on the bargaining process and the conduct of the Union during negotiations is germane as well.[38] I weighed the facts of this case in their totality and I believe that the standards enunciated in *Mar-Jac* and its progeny apply, without question, to this case. The Union was never given an honest opportunity to reach an accord with the Respondent. This, in significant part, was due to the Respondent's sporadic yet continuous commission of unfair labor practices. It's consequence muddled the collective-bargaining effort of the parties. The Union thus became a reactive entity engaged in defense of its status as this was steadily eroded by the Respondent's misconduct. It is clear the Respondent was frustrated with the collective-bargaining process. That, however, was not a license to embark on a course of action impliedly designed to eliminate the Union as a factor in business. Accordingly, I recommend that the bargaining year be extended for an additional year along with the usual remedy.

[Recommended Order omitted from publication.]

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[32] There is no factual dispute about the history of these bonuses, as there is no credible explanation as to why the one in 1999 was not given or the one in 2001 was.

[33] I find this another clear example of a fait accompli and bad faith.

[34] See *Nortech Waste*, 336 NLRB 912 (2001), and cases cited therein.

[35] (1) The Respondent communicated directly with employees represented by a Union, for the purpose of (2) setting or changing wages, hours, and conditions of employment or undercutting the Union and finally (3), the communication excluded the Union. *Southern California Gas Co.*, 316 NLRB 979 (1995).

[36] There is also the information issue surrounding the discipline of Rena Buford, produced 5 months after the union request. This is another example of unreasonable delay. It is simply one more violation of Sec. 8(a)(5) in a long list of them.

[37] *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962).

[38] I noted previously that the Respondent asserted the Union at fault in negotiations to the point of its committing unfair labor practices. There is not a scintilla of evidence that this is a credible defense, and I reject it totally. The primary actor in all that transpired was the Respondent. It acted in derogation of its obligations, dismissive of the Union and its attempts to fulfill its obligations to its employee members.