

**Van Note-Harvey Associates and Nassau Surveying
and Local 825 A, B, C and D, International Union
of Operating Engineers. Case 22-CA-8511**

February 6, 1980

DECISION AND ORDER

**BY CHAIRMAN FANNING AND MEMBERS
PENELLO AND TRUESDALE**

On October 24, 1979, Administrative Law Judge Henry L. Jalette issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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 brief and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.

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 and hereby orders that the Respondent, Van Note-Harvey Associates and Nassau Surveying, Princeton, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

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

DECISION

STATEMENT OF THE CASE

HENRY L. JALETTE: This proceeding involves allegations that Van Note-Harvey Associates and Nassau Surveying (herein called Respondent) violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended (herein called the Act). The proceeding was initiated by the charge filed in Case 22-CA-8511, on June 8, 1978.¹ On July 28 a complaint thereon issued, and on January 15 and 16, 1979, a hearing was held before me in Newark, New Jersey.

¹ Unless otherwise indicated, all dates hereinafter are in 1978.

Upon the entire record, including my observation of the witnesses, and after consideration of the briefs of the parties, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Van Note-Harvey Associates (hereinafter referred to individually as Van Note and collectively with Nassau Surveying as Respondent) is a consulting engineering firm engaged in business in Princeton, New Jersey. The complaint alleges, and Van Note admits, that Van Note derived in excess of \$500,000 in 1977 in the performance of services, of which at least \$50,000 was derived directly from customers located outside the State of New Jersey. The complaint alleges, Van Note admits, and I find that Van Note is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The complaint also alleges that Nassau Surveying (hereinafter referred to individually as Nassau and collectively with Van Note as Respondent) is an *alter ego* of Van Note and/or a single employer with Van Note within the meaning of Section 2(2) of the Act. For reasons hereinafter set forth, I find that Nassau is an *alter ego* of Van Note and that it and Van Note constitute a single employer within the meaning of Section 2(2) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. The 8(a)(5) Allegations

1. The facts

In 1972 Local 825 A, B, C and D, International Union of Operating Engineers (herein called the Union), was certified as bargaining representative of that portion of Van Note's employee complement engaged in surveying work. Thereafter, successive collective-bargaining agreements were entered into, the most recent of which was for the period March 19, 1977-March 19, 1978. After due notice, negotiations for a new agreement were begun on January 31.

At the January 31 meeting the Union, represented by Business Representative Raymond Polgar and Steward Louis Tramontana, presented a written proposal containing 14 items. Van Note was represented by its executive vice president, Robert Jamieson. The parties discussed each item briefly and reached agreement on none.

On March 1 the same individuals held a second meeting, at which Jamieson presented a written counterproposal patterned on the Union's proposal, the details of which are not here relevant except with regard to Jamieson's proposal relative to the recognition clause and scope of the work to be covered by the agreement. The contract then in effect provided as follows:

ARTICLE I—RECOGNITION

1. The Employer recognizes the Union as the sole and exclusive bargaining agent of all employees in the following collective bargaining unit:

All survey crew personnel including party chiefs, instrument men, and rod-chain men assigned to and working out of the Employer's Princeton, New Jersey location, but excluding office clerical employees, professional employees, draftsmen, engineers, junior engineers, guards and supervisors as defined in the Act and all other employees.

2. This Agreement shall apply to all work and activities of the Employer in connection with engineering survey, preliminary survey, property surveys, soil and percolation tests and soil log and any work pertaining to surveying and field engineering as now carried on by the employees of the Employer.

In his March 1 proposal Jamieson proposed that paragraphs 1 and 2 be modified to provide as follows:

1. The Employer recognizes the Union as the sole and exclusive bargaining agent for all employees in the following collective bargaining unit:

All survey crew personnel including party chiefs, instrument men and rod-chain men assigned to do engineering surveys and construction stakeout working out of the Employer's Princeton, New Jersey location, but not including surveying crews working on property surveys, office clerical employees, professional employees, draftsmen, engineers, junior engineers, guards and supervisors as defined in the Act and all other employees.

2. This agreement shall apply to all work and activities of the Employer in connection with engineering surveys, construction stakeout.

This proposal effected certain changes in the unit. It excluded preliminary surveys, property surveys, and soil percolation and soil log work, theretofore covered by the contract. Jamieson's asserted reason for these changes was that Van Note was no longer doing such work due to its excessive costs as compared with the costs of its competitors. In this connection, Jamieson stated he was considering subcontracting the work out. The proposal added construction stakeout to the work done by the unit. As to his reason for this addition, Jamieson asserted that it was because the employees were engaged mostly in construction stakeout work. Polgar told Jamieson that the Union could not agree to a provision including construction stakeout work under the conditions and wages paid by Van Note because of the Union's construction agreements with various associations throughout the State of New Jersey and certain counties of New York State precluding the Union from negotiating an agreement with anyone for less than the wages and conditions provided in such agreements. Polgar indicated that his understanding of the term "construction stakeout" was not the same as Jamieson's, but that in any event the Union was willing to do the work in question, avoiding the use of the term "construction stakeout" in the agreement.

The next meeting was on March 6 with the same individuals present. The Union presented a modified proposal, deleting certain of its demands, but no significant progress was made. Jamieson still adhered to his proposal for a change in the recognition provision, but the Union would not agree.

The same individuals met again on March 14. At this time Jamieson made an oral proposal of a 5-percent wage increase per year across the board for a 3-year period. The Union accepted the proposal with certain modifications, and, after some further discussion, according to Polgar, they came to agreement on wages, sick pay, holidays, vacations, and the recognition clause that had been in effect in prior years. The parties were not in agreement, however, on a union proposal for a successor clause, an 8-hour day and 40-hour workweek, and a provision to cover loss of work due to inclement weather. It appears, nevertheless, that the Union was willing to drop these demands, because Polgar agreed to return to the employees to see if the package agreed to was acceptable. In Jamieson's case, he testified that he already had authorization within the range of wage increases he had agreed to.

On March 21 the employees rejected the proposal because of the absence of provisions for an 8-hour day and 40-hour workweek. Jamieson was informed of this rejection, and the same individuals met again on March 27. At this meeting Jamieson, in effect, withdrew his agreement to the wage increases and fringe benefits agreed to on March 14, because it provided for a 5-percent wage increase plus fringe benefits which were costly. In 1977 the parties had agreed to a contract without fringe benefits in return for a higher wage increase. In 1978 not only did the Union want yet another wage increase, but it also wanted to reintroduce fringe benefits that were costly. Jamieson's March 1 proposal had indicated that his wage proposal was based on a lower wage rate than that which the Union relied upon because the Union wanted to reintroduce fringe benefits. In other words, Jamieson correlated the wage rate with the cost of fringe benefits. Despite this, it is clear, and I find, from Polgar's and Tramontana's testimony, that on March 14 Jamieson had agreed to a wage increase based on the Union's figures, plus fringe benefits. Polgar reminded Jamieson of this, and Jamieson indicated that he was sorry, but that he had made a mistake. Polgar said that was unacceptable, and after further exchanges the parties agreed to meet on March 29.

On March 29 the same individuals met with a state board mediator. After they had reviewed with him what had preceded this meeting, Jamieson presented a written proposal (G.C. Exh. 9). Upon examining it, Polgar noted that the recognition clause was a modification of what it had been prior to March 19 and was also a modification of Jamieson's position on March 1 wherein Jamieson had included construction stakeout and eliminated property and preliminary surveys and soil and percolation tests. In this proposal he was still including construction stakeout, and while he was reinserting soil percolation and soil log work, he had not included property and preliminary surveys. Polgar pointed out to Jamieson that they had agreed to the old recognition clause on March 14, but Jamieson rejoined that he did not know if he was going to be doing that work any more, that the Company had not been doing it because it was noncompetitive in that area, and that they might subcontract

that work out. Polgar reminded him that he had an agreement with the Union covering these people, and Jamieson denied it, saying that the agreement had expired on March 19.

Turning to the wage proposal, Polgar noted that it was based on a lower wage figure than that from which the Union was computing its demand for an increase. Jamieson said there were certain things Van Note was not doing anymore, that they were out of preliminary surveys and property surveys, and he had made his offer.

The Union met with the mediator and afterwards made a proposal to Jamieson wherein it dropped demands for vacation and holiday pay in return for an increase of 10 percent across the board. Jamieson said, "[n]o," there was his proposal; take it or leave it. He added that he did not know if he was going to be in business anyway, because he and a few professionals had formed a new company, and they were going to do the work. He said that he no longer had to do business with the Union, because the contract was over. Polgar told him that if he persisted in trying to ram a contract down their throat, the men probably would not report for work the next day, and Jamieson said he did not give a damn if they did or not, that he was not going to be in business anyway. He also said that if they did not come back to work, it was fine with him and that he could get somebody else to do the work. Polgar decided to leave and told Jamieson that he was going to talk with the men and that he would be talking to him later. Jamieson said he would not be talking to him, because the contract was over, and he did not have to talk to him anymore. Polgar said that if he was not talking to him he would be talking to his lawyer.

Polgar left the meeting and reported to the employees what had happened in the meeting with Jamieson. The men decided to strike, and the strike began on March 30. The 11 unit employees participated in the strike.

On March 31 Van Note sent a letter to all the strikers, notifying them that it considered them no longer to be employees.

During the first week of April Jamieson proceeded to reactivate Nassau Engineering, a dormant corporation whose sole stockholders were Jamieson and Harvey, who were also the principal stockholders of Van Note. The name "Nassau Engineering" was changed to "Nassau Surveying," and Harvey and Jamieson, who were the officers of Nassau, resigned from their positions, and Conrad Brennflek and Don Allen, who were vice presidents of Van Note, resigned from their positions, and Brennflek became president and treasurer of Nassau, and Allen became vice president and secretary. In the first week of April Van Note authorized Nassau to complete the survey work it had outstanding. Since that time Nassau's business has consisted of 50 percent referrals from Van Note and 50 percent generated by itself. It has employed as many as 12 employees (6 as of the date of the hearing), and they are supervised by Brennflek and Allen, who were the supervisors of the work crews under Van Note before the strike.

Nassau occupies the same office as Van Note, using the same facilities and equipment. Assertedly, the arrangement between Van Note and Nassau is pursuant to a lease,

although no lease was produced at the hearing. The arrangement is terminable at will.

On May 19 Van Note, by Attorney Richard Casey, advised Region 22 relative to a charge filed by the Union in Case 22-CA-8330 that it was withdrawing its demand for changes in the unit description as set forth in its March 28 proposal and would abide by the unit description in the last agreement of the parties. A copy of Van Note's letter was sent to Polgar.

On May 22 Van Note sent a letter to all the strikers, withdrawing from its position that they were no longer employees.

The next meeting was held on June 6. It was attended by the same individuals, plus Attorney Casey for Van Note and Attorney Morton List for the Union. After review of what had happened before, the Union asked to negotiate on behalf of the employees of Nassau, and Casey refused to recognize the Union for that company on the grounds that it was a different company and that the Union did not represent its employees. Casey was willing to discuss conditions relative to Van Note, but he pointed out that the work had been subcontracted, and there was no longer any work to do, and he did not know if VaniNote could get it back in the future. However, wages were discussed, and the Union asked for a substantial wage increase, adverting to the understanding reached on March 14. According to Polgar, Casey said that Van Note could not afford to pay wage increases of the nature sought by the Union, or "that you could not compete. That there were other people doing this work and that you couldn't afford the wage increases." List asked how much the Company was willing to pay, and Casey said, "[W]e couldn't afford the wage increases." List said then that he would like to see the Company's books. Casey refused.

On July 7 the Union sent a letter to Van Note, advising it of its position that Nassau and Van Note constituted either a single employer and/or that Nassau was the *alter ego* of Van Note and accordingly demanding recognition. No reply was received.

On July 21 the Union sent a letter to Jamieson, confirming a conversation of that date wherein an unconditional offer to return to work was made on behalf of the employees. The strike and picketing ceased on that date.

The next meeting was on August 10. Again there was a discussion of recognition of the Nassau employees with recognition being denied. As to reinstatement of employees, it appears three employees were reinstated by Van Note, two of whom were subsequently transferred to nonunit work and one of whom was laid off. Tramontana was never reinstated.

Around August 31 the Union received a new contract proposal. There were no meetings after that proposal.

2. Analysis and conclusions

Except as noted hereinafter, the foregoing facts are essentially undisputed. On the basis thereof, General Counsel contends that a finding is warranted that Van Note violated Section 8(a)(1) and (5) of the Act by bargaining with no intention of reaching agreement, unilaterally transferring unit work, withdrawing recognition from the Union, and refusing to provide information upon request.

The contention that Van Note bargained with no intention to reach an agreement finds support in Jamieson's position throughout the negotiations relative to certain unit work, in particular property and preliminary surveys. It appears from Jamieson's statements to Polgar that Van Note believed it had become noncompetitive in property and preliminary surveys, and assertedly for that reason Jamieson excluded such work from his March 1 proposal. The Union refused to accede to this exclusion. Jamieson appeared to have receded from his position when a tentative agreement was reached on March 14. However, when it later developed that there had been no meeting of the minds on wages, he submitted his March 29 proposal, wherein he again excluded property and preliminary surveys, and this time he was adamant about the exclusions, as he was about his wage proposal.

The obligation to bargain imposed by the statute does not require an employer to abandon a position fairly held, but Van Note's position cannot be so characterized. It has long been established that the duty to bargain about wages, hours, and other terms and conditions of employment includes the duty to bargain about subcontracting out unit work,² and while it could be said that by excluding survey work from its contract proposal, Van Note was, in effect, giving notice to the Union of its intention to subcontract and offering to bargain about the matter, the record militates against a finding to such effect. The fact of the matter is that Jamieson did not offer to bargain about the survey work; rather, he claimed not to be doing the work. While referring to his inability to compete, he did not once point out what relief he needed or seek relief. This is not what the statute contemplates as bargaining over the issue of subcontracting.

As to his inclusion of construction stakeout work, Jamieson never indicated what problem existed which gave rise to his inclusion of the term in his proposal. The employees were doing whatever work was required of them, and there is no showing of a need for a change in the recognition clause. The inference is therefore warranted that the proposal was made to obstruct negotiations.

After the strike Van Note continued in its resolve not to bargain not only over survey work, but apparently over all aspects of the work previously performed by Van Note's unit employees. It did this by reactivating Nassau and assigning the unit work to it. This action can be viewed in two ways.³ On the one hand, it can be viewed as a subcontracting of work. So viewed, the action was unlawful, as it was taken without giving the Union an opportunity to bargain. Certainly, Jamieson's statements that Van Note was not competitive and was no longer doing the work and it was considering subcontracting did not constitute either an offer to bargain or bargaining. To the contrary, such statements conveyed the idea there was nothing to bargain about and precluded any discussion.

On the other hand, if Nassau was the *alter ego* of Van Note, the reactivation of Nassau and the assignment of the work to it can be viewed as a subterfuge to avoid bargaining with the Union. In my judgment, this is the proper view of the case.

² *Fibreboard Paper Products Corp. v. N.L.R.B.*, 379 U.S. 203 (1964).

³ Arguably, the action could be viewed a third way; namely, that the assignment of the work to Nassau was only a temporary expedient to remain

in operation during the strike. As the subsequent events show, this was not the case.

It is too clear to require extended discussion that Nassau was the *alter ego* of Van Note. Nassau occupies the same office as Van Note and uses the same facilities and equipment. The work performed is the same as had previously been performed by Van Note, and the supervisors, Brennflek and Allen, are the same. While there has been a change in the officers of Nassau, there has been no change in ownership. Jamieson and Harvey are sole owners of both corporations, and there is no showing that Brennflek and Allen have any authority to direct the labor relations policies of Nassau or are anything other than figureheads. (The record indicates that Jamieson interviewed and hired one applicant for employment with Nassau.) Finally, Jamieson's own testimony indicates the complete dependence of Nassau on Van Note inasmuch as 50 percent of its work is obtained from Van Note, and the arrangement between the two is terminable at will.

For the foregoing reasons I find that Nassau is the *alter ego* of Van Note and that Nassau and Van Note constitute a single employer within the meaning of Section 2(2) of the Act. The creation of this *alter ego*, coupled with Jamieson's statements at the bargaining table and Van Note's and Nassau's refusal to recognize and bargain with the Union for the unit of employees of Nassau doing the work previously performed by Van Note employees demonstrate that Van Note had no intention of reaching an agreement with the Union and that from on or about March 29 it did not bargain in good faith. It should be added that Van Note's purported retraction of its earlier proposals on contract coverage and its asserted willingness to meet with the Union were meaningless acts inasmuch as, when it did meet thereafter, it claimed it did not have the work anymore and refused to recognize the Union for the work being done by Nassau. Furthermore, it should be noted that the fact that the employees of Nassau may not have designated the Union to represent them is no defense. As the strike was an unfair labor practice strike, the strikers were entitled to reinstatement upon their unconditional offer to return. Moreover, in view of its unfair labor practices, Respondent could not question the Union's majority status.

In summary, I find that Van Note violated Section 8(a)(1) and (5) of the Act by bargaining with no intention of reaching agreement and by transferring the unit work to Nassau, its *alter ego*. I further find that Van Note and Nassau violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with Union for the employees doing the unit work previously performed by Van Note.

The allegation that Van Note refused to furnish information poses a threshold question of fact. As set forth above, Polgar testified that on June 6 Casey told the Union that the Company could not afford the wage increases sought by the Union. Thereupon, the Union requested to see the Company's books, and Casey refused. According to Casey, however, at the June 6 meeting the Company had pointed out that it was not in a competitive position, that there were many licensed surveyors in the area whose prices the Company could not match. In the course of the discussion

in operation during the strike. As the subsequent events show, this was not the case.

Attorney List, "Mr. Casey, you said earlier that you can't afford to pay us any wage increase," and he asked to see the Company books. Casey replied that he did not believe the Union had a right to see the books. He told List he had never said the Company could not afford increases, because the Company was a big one, and surveying was a small part of it, so there was no question of affording a wage increase. The question was one of the Company's competitive position, and Casey offered to show the Union its cost analysis in that particular. List said he had every right to see the books generally, without reference to the offered information.

Jamieson also testified on this point, but his testimony added nothing to Casey's. Steward Tramontana testified that Jamieson said he could not afford a wage increase because it would make him noncompetitive.

Upon weighing all the foregoing testimony, I am persuaded that Casey's testimony, which was clearly more detailed than that of the other witnesses, is the more accurate, and I credit it. On the basis thereof, I conclude that Van Note did not violate the Act by its refusal to furnish the Company's books. In *N.L.R.B. v. Truitt Mfg. Co.*, 351 U.S. 149 (1956), wherein the Supreme Court laid down the principle underlying the obligation of an employer to provide information in the context of a claim of inability to pay, the Court stated at 153:

We do not hold, however, that in every case in which economic inability is raised as an argument against increased wages it automatically follows that the employees are entitled to substantiating evidence. Each case must turn upon its particular facts. The inquiry must always be whether or not under the circumstances of the particular case the statutory obligation to bargain in good faith has been met.

Applying this approach, I find that Van Note did plead an inability to pay when it adverted to its competitive position. However, the plea related only to a portion of its business, and, as to that portion, Van Note offered to substantiate its position by offering to show the Union a cost analysis. Whether this would have been sufficient information cannot be determined on this record, but that is because the Union rejected the offer. In the circumstances, as Van Note's position was not that the Company as a whole could not afford wage increases, the offer of a cost analysis was a sufficient response. Accordingly, I shall recommend dismissal of the allegation relative to this issue.

B. *The 8(a) (3) allegations*

The complaint alleges that Van Note violated Section 8(a)(1) and (3) of the Act by transferring the unit work from Van Note to Nassau and by imposing nonmembership in the Union as a condition of employment with Nassau.

I find the evidence insufficient to warrant a finding that either Van Note or Nassau imposed nonmembership in the Union as a condition of employment. The only evidence to support such a finding is the testimony of Jerome Sadowich, a union member, who applied for employment with Nassau and was interviewed by Jamieson. Sadowich testified that he asked Jamieson if he would have to join the Union and that Jamieson told him he would not and that Jamieson said if he did join the Union he would be dismissed.

Jamieson did not expressly deny that he made such a statement to Sadowich; nevertheless, I do not credit Sadowich. It is abundantly clear that Sadowich did not apply for a job because he really wanted a job (he was told to report to work and never did); rather, he applied to learn what he could about Nassau. Significantly, it was he who brought up the subject of belonging to the Union, not Jamieson. It appears to me that, if it was Jamieson's intent to impose nonmembership in the Union as a condition of employment with Nassau, he would have broached the subject, not the applicant.

In addition to Sadowich's testimony, General Counsel relies on evidence that two striking employees resigned from the Union and were employed by Nassau. That fact does not support a finding that Van Note or Nassau imposed nonmembership as a condition of employment. The resignations may have been to avoid union fines. In the case of one striker, Brennflek testified he learned of the resignation only because the employee volunteered the information.

While I do not deem the evidence sufficient to warrant a finding that Van Note and/or Nassau imposed nonmembership in the Union as a condition of employment, I am persuaded and find that the transfer of the unit work to Nassau was motivated by a desire to avoid bargaining with the Union and that Van Note thereby violated Section 8(a)(1) and (3) of the Act. I predicate this on the fact that Van Note created an *alter ego*, refused to recognize the Union as bargaining representative of the employees of Nassau, and denied reinstatement to the striking employees assertedly because there was no work for them, although Nassau had a crew of nine employees hired after the strike. Although three strikers were reinstated by Van Note, after a brief period two were transferred to nonunit work, and one was laid off. Steward Tramontana was never reinstated. In these circumstances a finding that the transfer of work to Nassau was unlawfully motivated is warranted.

Although it appears that more than one employee was discriminated against relative to reinstatement, either by not being reinstated, by being reinstated and laid off, or by being transferred to nonunit work, the complaint alleges only the denial of reinstatement to Tramontana. As the record indicates that Tramontana was denied reinstatement, although work was available with Nassau, I find that Van Note and Nassau violated Section 8(a)(1) and (3) of the Act by denying him reinstatement since on or about July 24.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth above, occurring in connection with its operations described above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act, I shall recommend that it be ordered to cease and

desist therefrom and to take appropriate and affirmative action designed to effectuate the policies of the Act. In particular, as I have found that Respondent unlawfully denied reinstatement to Louis Tramontana, I shall order it to offer him immediate and full reinstatement to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and to make him whole for any loss of earnings he may have suffered by reason of the unlawful refusal of reinstatement by payment to him of a sum of money equal to that which he normally would have earned as wages from the first workday after his unconditional offer to return to work to the date of the offer of reinstatement, less net earnings, to which shall be added interest to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).⁴

CONCLUSIONS OF LAW

1. Van Note-Harvey Associates and Nassau Surveying constitute a single employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. At all times material herein, Nassau Surveying has been the *alter ego* of Van Note-Harvey Associates.

3. Local 825 A, B, C and D, International Union of Operating Engineers, is a labor organization within the meaning of Section 2(5) of the Act.

4. All survey crew personnel employed by Respondent at its Princeton facility, including party chiefs, instrument men, and rod-chainmen, engaged in engineering surveys, preliminary surveys, soil or percolation tests and soil log, and any work pertaining to surveying and field engineering, but excluding office clerical employees, draftsmen, engineers, junior engineers, guards, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. The Union has been at all times material herein the exclusive representative of the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

6. By meeting and bargaining with the Union with no intention of reaching an agreement and by transferring unit work from Van Note-Harvey Associates to Nassau Surveying without bargaining with the Union, Van Note-Harvey Associates has engaged in, and is engaging in, unfair labor practices within the meaning of Sections 8(a)(1) and (5) and 2(6) and (7) of the Act.

7. By refusing to recognize and bargain with the Union with respect to the employees in the unit described above employed by Nassau Surveying, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Sections 8(a)(1) and (5) and 2(6) and (7) of the Act.

8. By transferring unit work from Van Note-Harvey Associates to Nassau Surveying for the purpose of avoiding its obligation to bargain with the Union, Van Note-Harvey

Associates has engaged in, and is engaging in, unfair labor practices within the meaning of Sections 8(a)(1) and (3) and 2(6) and (7) of the Act.

9. By failing and refusing to reinstate Louis Tramontana upon his unconditional offer to return to work, Respondent engaged in, and is engaging in, unfair labor practices within the meaning of Sections 8(a)(1) and (3) and 2(6) and (7) of the Act.

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

ORDER⁵

The Respondent, Van Note-Harvey Associates and Nassau Surveying, Princeton, New Jersey its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in or activities on behalf of Local 825 A, B, C and D, International Union of Operating Engineers, or any other labor organization, by transferring unit work from Van Note-Harvey Associates to its *alter ego*, Nassau Surveying, for the purpose of avoiding the obligation to bargain with said labor organization as the representative of its employees in the appropriate unit and by denying reinstatement to unfair labor practice strikers upon their unconditional offer to return.

(b) Refusing to bargain with the above-named labor organization as the representative of its employees by meeting and bargaining with no intention to arrive at an agreement, by transferring unit work to *alter ego* Nassau Surveying without bargaining with the above-named labor organization as the exclusive bargaining representative of the employees of Nassau Surveying in an appropriate unit.

(c) 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 designed to effectuate the policies of the Act:

(a) Upon request, bargain with the Union with respect to the unit employees employed by Van Note-Harvey Associates and Nassau Surveying.

(b) Offer Louis Tramontana full, immediate, and unconditional reinstatement to his former job or, if such job no longer exists, to a substantially equivalent job, and make him whole by paying to him a sum of money equal to the amount he normally would have earned as wages from the date of the failure to reinstate him to the date of his reinstatement in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the National Labor Relations Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records relevant and necessary to a determination of the amount of backpay due under the terms of this recommended Order.

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.

⁴ Sec. generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

⁵ 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

(d) Post at its Princeton, New Jersey, facility copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and 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.

(e) Notify the said Regional Director, in writing, within 20 days from the date of this Decision, what steps Respondent has taken to comply herewith.

⁶ 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

After a hearing at which both parties had the opportunity to present their evidence, the National Labor Relations Board has found that we violated the law and ordered us to post this notice.

WE WILL NOT discourage membership in Local 825, A, B, C and D, International Union of Operating Engineers, or any other labor organization, by transferring work from the firm of Van Note-Harvey Associates to Nassau Surveying for the purpose of avoiding our obligation to bargain with the above-named union.

WE WILL NOT discourage membership in Local 825, A, B, C and D, International Union of Operating Engineers, or any other labor organization, by refusing to reinstate strikers upon their unconditional offer to return to work or otherwise discriminating against

employees in regard to hire or tenure of employment or any other term or condition of employment.

WE WILL NOT refuse to bargain with the above-named union as the representative of our employees by meeting and bargaining with no intention to arrive at an agreement, by transferring work to Nassau Surveying without bargaining with the above-named union, or by refusing to recognize the above-named union as the representative of employees employed by Van Note-Harvey Associates and Nassau Surveying in the appropriate unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

WE WILL offer Louis Tramontana full, immediate, and unconditional reinstatement to his former job or, if such job no longer exists, to a substantially equivalent job, and WE WILL make him whole for any loss of pay he may have suffered as a result of our refusal to reinstate him.

WE WILL, upon request, bargain with the above-named union in the appropriate unit described below concerning rates of pay, wages, hours of work, and conditions of employment of our employees, and, if an understanding is reached, embody such understanding in a signed agreement. The appropriate unit is:

All survey crew personnel employed by Van-Note Harvey Associates and Nassau Surveying at its Princeton facility, including party chiefs, instrument men and rod chainmen, engaged in engineering surveys, preliminary surveys, soil or percolation tests and soil log, and any work pertaining to surveying and field engineering, but excluding office clerical employees, draftsmen, engineers, junior engineers, guards and all supervisors as defined in the Act.

VAN NOTE-HARVEY ASSOCIATES

NASSAU SURVEYING