

**Young's Metal Fabricators and Roofing, Inc. and Young's Sheet Metal and Roofing Inc. and Sheet Metal Workers International Association, Local Union No. 66, AFL-CIO, affiliated with the Sheet Metal Workers International Association, AFL-CIO.** Cases 11-CA-7307 and 11-CA-7391

April 18, 1979

### DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS  
AND PENELLO

On October 26, 1978, Administrative Law Judge Phil W. Saunders issued the attached Decision in this proceeding. Thereafter, Respondents filed exceptions and a supporting brief, and the General Counsel filed an answering brief in opposition to Respondents' exceptions and in support of the Administrative Law Judge's Decision.

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 briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below and hereby orders that the Respondents, Young's Metal Fabricators and Roofing, Inc., and Young's Sheet Metal and Roofing, Inc., Asheville, North Carolina, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete paragraph 1(b) and reletter the subsequent paragraphs accordingly.
2. Substitute the attached notice for that of the Administrative Law Judge.

<sup>1</sup> We do not adopt the Administrative Law Judge's finding that Respondents bargained directly with employees in violation of Sec. 8(a)(1) and (5), as the record evidence is insufficient to support that finding.

### APPENDIX

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

WE WILL NOT refuse to bargain collectively in good faith with Local 66, as the exclusive repre-

sentative of our employees in the appropriate unit described below, by refusing to sign the contract submitted to us and agreed to on May 26, 1977:

All journeymen roofers, kettle men, foremen, assistant foremen and apprentices employed by us at our Asheville, North Carolina, facilities, excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT withdraw and withhold recognition from Local 66, as the bargaining representative of our employees in the unit described above.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form, join, or assist the above-named Union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL recognize and bargain with Local 66 as the exclusive representative of the employees in the aforesaid unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

WE WILL, upon request, execute the contract submitted to us on May 26, 1977, by Local 66 on behalf of the employees in the unit described above, and apply all the provisions of the contract retroactive to May 15, 1977.

WE WILL jointly and severally make whole all unit employees for any loss of earnings they may have suffered because of our failure to apply all the provisions of the contract submitted to us by Local 66, with interest.

YOUNG'S METAL FABRICATORS AND ROOFING, INC.

### DECISION

#### STATEMENT OF THE CASE

PHIL W. SAUNDERS, Administrative Law Judge: Based on charges and amended charges filed by the Sheet Metal Workers International Association, Local Union 66, AFL-CIO, affiliated with the Sheet Metal Workers International Association, AFL-CIO, herein called the Union or Local 66,<sup>1</sup> a consolidated complaint was issued on February 22, 1978, against Young's Metal Fabricators and Roofing, Inc.,

<sup>1</sup> The charge in Case 11-CA 7307 was filed on November 17, 1977. The charge in Case 11-CA 7391 was filed on January 6, 1978, and amended on January 30, 1978. A second amended charge in Case 11-CA 7391 was filed on February 13, 1978.

herein called Metal Fabricators, and Young's Sheet Metal and Roofing, Inc., herein called Sheet Metal and Roofing, or collectively Respondents, alleging violations of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended. The General Counsel and Respondents filed briefs in this matter.

Upon the entire record in the case, and from my observation of the witnesses and their demeanor, I make the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF RESPONDENTS

Metal Fabricators is a North Carolina corporation with facilities at Asheville, North Carolina, where it is engaged in providing contractual services for sheet metal and roofing projects. Sheet Metal and Roofing is also a North Carolina corporation with facilities at Asheville, North Carolina, where it is engaged in providing contractual services for sheet metal and roofing projects. During the past 12 months, which period is representative of all times material herein, Respondents received goods and raw materials from points directly outside the State of North Carolina, valued in excess of \$50,000.

Respondents are now, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

### II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(6) and (7) of the Act.

### III. THE UNFAIR LABOR PRACTICES

It is alleged in the consolidated complaint, as amended, that Respondents are affiliated businesses with ownership, facilities, tools, equipment, and operators, and constitute a single integrated business enterprise. It is further alleged that commencing on May 15, 1977, the Union, as the exclusive bargaining representative, requested Respondents to bargain; and that since May 25, 1977, Respondents have refused to bargain collectively; and that on or about September 22, 1977, Respondents refused to sign a written agreement embodying rates of pay, wages, hours of employment, or other conditions of employment agreed upon between Respondents and the Union. It is further alleged that on or about September 26, 1977, Respondents withdrew and withheld recognition of the Union and continue to do so.<sup>2</sup>

The hearing in this case was held before me on April 5, 1978. However, on or about July 21, 1978, Sheet Metal and Roofing, through its recently hired counsel, Haynesworth, Bladwin, and Miles, entered a motion for leave to file a brief in these proceedings. The above-mentioned counsel

<sup>2</sup> All journeymen roofers, kettlemen, foremen, assistant foremen, and apprentices employed by Respondents at their Asheville, North Carolina, facilities, excluding all other employees, guards, and 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.

for Sheet Metal and Roofing points out that the complaint in the instant case alleges that Sheet Metal and Roofing is the "alter ego" of the primary Respondent herein, Metal Fabricators, and that the General Counsel is seeking to enforce contractual obligations of Metal Fabricators upon Sheet Metal and Roofing. Therefore, as further indicated in its motion, the above-mentioned law firm has now been retained by Sheet Metal and Roofing for the purpose of representing it in these matters, and because of their substantial interest in the outcome of these proceedings, it is requested that leave be granted for the filing of a brief on behalf of Sheet Metal and Roofing. The General Counsel opposes the said motion. At the hearing held before me on April 5, 1978, attorney Paul J. Smith entered an appearance on behalf of Sheet Metal and Roofing, and attorney John E. Shackelford entered an appearance on behalf of Metal Fabricators; both attorneys actively participated in the hearing and in all the issues involved in this case. Moreover, the brief filed by attorney Shackelford clearly and specifically states that it is filed on behalf of both Metal Fabricators and Sheet Metal and Roofing. As further pointed out, it is now several months since the hearing in this case, and it has also been quite some time since the briefs from the General Counsel, Metal Fabricators, and Sheet Metal and Roofing, were filed. It is also noted that all parties have the right to file exceptions to this Decision and to present their arguments in accordance therewith, and, of course, that right may then be exercised by the newly retained counsel for Sheet Metal and Roofing. Based on all of the above, I hereby deny this motion now before me.

It appears that in 1972 the businesses here in question were split into two enterprises—Emil Young, Sr., became president of Sheet Metal and Roofing when it was organized and Emil Dennis Young, Jr., is president of Metal Fabricators. Prior to the split, Sheet Metal and Roofing had no union of any kind in its operations, but Metal Fabricators have two groups represented by Local 66—their sheet metal workers and their roofers. During the periods material hereto, the sheet metal people of Metal Fabricators were under a contract with Local 66 and there is no issue as to them; but the contract between Metal Fabricators and Local 66, which covered the roofers in the unit mentioned, expired on May 15, 1977, and negotiations then followed in expectations of a new contract for the roofers. Dennis Young testified and maintains that Metal Fabricators is on the verge of bankruptcy; that in September 1977, or thereabouts, he informed his roofing employees that they no longer worked for Metal Fabricators and that they were then employed by Sheet Metal and Roofing;<sup>3</sup> and he further testified that he had never agreed with the Union on signing a new contract for his roofers.

I turn first to the threshold question of whether Sheet Metal and Roofing is the *alter ego* of Metal Fabricators, and whether they constitute a single integrated business enterprise.

In the instant case, it is apparent that both corporations are owned by the Young family—E.D. Young, Sr., and E.D. Young, Jr., both being incorporators and initial directors of Metal Fabricators. One year or so ago, E.D. Young,

<sup>3</sup> The sheet metal section or department of Metal Fabricators continued in its operations with seven or eight employees, but Dennis Young stated that Ralph Ellis, the president of Local 66, supervised this operation.

Sr. (John), sold a prior business on Broadway Street in Asheville, North Carolina, and moved his office to 20 Britt Drive, where he and his son, E.D. Young, Jr. (Dennis), own the building out of which the employees involved herein work. Moreover, at the inception of Metal Fabricators, John Young continued for some time in assistance to Metal Fabricators in securing credit arrangements for them and was a signatory on the loan granting credit to Metal Fabricators. Sheet Metal and Roofing owns no property, no machinery, and no equipment. It should also be noted that after Metal Fabricators declared that they were out of the roofing business in the late summer or early fall of 1977, Sheet Metal and Roofing then hired most or all of the roofing employees that had been working for Metal Fabricators; they continued to do the same work and stayed on the same jobs with the same equipment. It appears that at this time Sheet Metal and Roofing was performing work on a cost-plus-fee basis on jobs which had been formerly contracted by Metal Fabricators, but at the same time Metal Fabricators remained on these jobs as the designated subcontractor. Dennis Young admitted that he was now also a part-time employee with Sheet Metal and Roofing, and on occasion he sends or directs the men to their jobs, and that this is the same type of responsibility he exercised when these employees worked for Metal Fabricators.

Respondents argue that there is no common ownership between the two enterprises—that there was only blood relationship between the owners; and that the corporation John Young, Sr., owned, Sheet Metal and Roofing, was established 1 year or so ago in order to carry on the business operations as Metal Fabricators was financially unable to do so and had to close up. It is further argued that the above arrangements made “good economic sense” in that the work contracted for by Metal Fabricators could then be carried on without interruption, as Sheet Metal and Roofing agreed to do this work on a cost-plus-fee basis; that the costs were held down by Metal Fabricators furnishing the equipment and supervision; and that the work was more efficiently done by using the same employees.

The existence of an *alter ego* status between two enterprises is determined by their having substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership. *Crawford Door Sales Company, Inc., and Cordes Door Company, Inc.*, 226 NLRB 1144 (1976). Among the principal factors relied upon in determining whether two enterprises constitute a single employer are the interrelation of operations, centralized control of labor relations, common management, common ownership, or financial control. *Sakrete of Northern California, Inc.*, 137 NLRB 1220 (1962), enf.d. 332 F.2d 902 (9th Cir. 1964), cert. denied 379 U.S. 961 (1965).

As indicated, it is clear that John Young, Sr., was an incorporator and had a substantial financial interest in Metal Fabricators of which Dennis Young, Jr., is the president. It is also noted that John Young, formerly in business as Buncomb's Sheet Metal on Broadway Street in Asheville, disposed of that business in 1976 or 1977 and then moved his office to 20 Britt Drive in Asheville which is the address of Metal Fabricators and is now the address of Sheet Metal and Roofing as well.

I am in agreement that the circumstances of the instant case are similar to those of *P.A. Hayes, Inc., and P.H. Me-*

*chanical Corp.*, 226 NLRB 230 (1976), wherein the Administrative Law Judge noted the common situs and the continuing operation by the *alter ego* using the same employees, equipment and fulfilling the contracts of the other. In that case, as in the instant case, there was a claim of inability to meet financial obligations created by the union contract. However, the Judge noted, with Board approval, that a “contractual obligation may not be unilaterally erased merely because performance has become unprofitable or burdensome, or because it was providently entered into.” As further indicated, the absence of Dennis Young, Jr., from the corporate hierarchy of Sheet Metal and Roofing is immaterial when viewed in the total context of this case including his joint ownership of the building on Britt Drive and his admitted supervision of his roofing employees now working for Sheet Metal and Roofing, as aforesaid. The totality of the situation must be viewed in “realistic terms” as in *P.A. Hayes, Inc., supra*, at 236, where the Administrative Law Judge noted the ongoing enterprise with the same management, clientele, and manner of operations.

In the instant case, and by the admissions of Respondents, this record reveals that insofar as these two enterprises are concerned—the employees were the same, the contracts were the same, the supervision was the same, and the equipment used was the same. Indeed, Sheet Metal and Roofing owns no equipment or property. In the final analysis, there can be no question whatsoever that these are joint and affiliated businesses, that each is the *alter ego* of the other; they are, indeed, one single employer and are properly set forth in the complaint as affiliated businesses with common ownership, facilities, tools, equipment, and operators, and they constitute a single integrated business enterprise.

I turn now to the issue of whether the failure of Respondents to sign a contract and subsequent withdrawal of recognition from the Union violated Section 8(a)(5) of the Act.

William Fox, business agent for Local 66 during the initial time in question, credibly testified that sometime during the week before the contract with the roofers expired on May 15, 1977, he called President Dennis Young of Metal Fabricators and made arrangement for negotiations on a new contract; and on May 19, 1977, Fox presented Dennis Young with the Union's initial proposals.<sup>4</sup> Fox informed Young that the roofers wanted a 50-cent-per-hour increase in wages, and at this time they also discussed the apprentices, laborers, and others working for Metal Fabricators. The Union's proposal was also seeking a 5-cent-an-hour increase for their pension and welfare funds. Before the meeting terminated, Fox informed Dennis Young that the only change in the new proposal, as compared with their old contract, was the requested increase in wages and the 5-cent increase for the pension and welfare funds. Young then told Fox that he would get back in touch with him.

On or about May 23, 1977, Fox and Dennis Young got in touch with one another, and on this occasion Young presented a counterproposal. Dennis Young informed the Union that he could not see giving a 5-cent-per-hour increase on the roofers' pension funds but offered a 10-cent-per-hour increase on wages effective on the expiration of

<sup>4</sup> See G.C. Exh. 7.

the old contract and another 15-cent-per-hour increase in August 1977 or thereabouts. At a membership meeting on the evening of May 23 or 24, 1977, the roofers rejected this first counterproposal by Metal Fabricators.

On the next morning (May 25, 1977), the parties met again and on this occasion Dennis Young orally proposed and offered the Union a 15-cent-per-hour increase as of May 15 and also a 15-cent increase on August 1, 1977, or a 30-cent increase over the period of 1 year. This record also shows that by this time the roofers had agreed that they would disregard or drop their original demand for 5-cent-per-hour increase on pension and welfare funds.

The next day (May 26) business agent Fox presented to the unit roofers of Metal Fabricators the 30-cent package proposal made by Dennis Young on the preceding day; the roofers immediately ratified it, and Fox then notified Dennis Young that the roofers had accepted his latest proposal. Young replied, "I knew they would all the time." Fox then gave Young the original copy of the contract and requested that he sign it. Young stated that he wanted to review the contract and that he would take it home, review it, sign it, bring it back, and Fox could pick it up at the office the next morning. There were no indications at this time that Young would not sign the contract nor did he suggest any changes in it.

On the following day Fox inquired of Young if he had reviewed the contract and signed it. Young told Fox that he had forgotten and left it at home but indicated no disagreement with it. On the following day Fox inquired at the office of Metal Fabricators whether the contract had been brought in, but he was advised it had not been seen. It appears that for weeks thereafter, Fox was constantly asking Young for the contract, but on about 10 different occasions was told that it had either been forgotten or had been misplaced.

Fox admitted that over the years he has had numerous discussions with Dennis Young about financial problems of Metal Fabricators, and also discussions in respect to monies to be paid into the Union's pension, welfare, and health funds which payments have been delinquent for several years; but he testified that such matters were not brought out or discussed during their negotiations in May for a new contract, other than that Metal Fabricators could not afford a 5-cent increase in the pension and welfare funds, as aforesaid.

William Fox left the employment of Local 66 in August 1977 for a new job. On September 9, 1977, William Lytle, a sheet metal employee at Metal Fabricators, became the business agent for Local 66 and on the next day asked Young for the contract here in question and was advised it was still at home but would be brought in. On a later date in September, Lytle again asked for the contract, but Young once more replied it had been left at home.

On September 22, 1977, the unit roofers approached business agent Lytle and inquired if he had the contract. When he replied in the negative, they then informed Lytle that they would not go to work without a signed contract. Lytle imparted this message to Dennis Young, but Young then replied that he had not decided whether he would sign the contract. This is the first time Young had specifically stated his indecision with signing the contract. Lytle relayed this message to the roofers, and the roofers then indicated

that without a contract they would put up a picket line. When Lytle informed Young of this development, he asked Lytle if all the roofers were in agreement as to their decision to put up a picket line, and after Lytle had assured him that they were—Young stated, "I don't believe you." Lytle then polled the roofers individually about the picket line possibility, and all but one were in agreement and in favor of it. The picket line was then established.

On the afternoon of Friday, September 23, 1977, Lytle talked with Dennis Young about paychecks for the roofers and also informed Young that the roofers had indicated to him that they would be going back to work on Monday morning. Lytle testified that the roofers had told him that "word had come from Mr. Young" to the effect that if the roofers wanted to come back to work on Monday morning, it would be fine with him, and they would not be fired nor would they receive any cut in wages.

On Monday morning, September 26, there were no time-cards in the rack for the sheet metal workers, and as a result Lytle asked Dennis Young about it. Young informed Lytle that Metal Fabricators was closed, that he was "through with the Union," and that he did not want any more to do with it. However, shortly thereafter Lytle had additional conversations on the closing of Metal Fabricators and was then informed by Dennis Young and Ralph Ellis, superintendent for the sheet metal department of Metal Fabricators and president of Local 66, that there were plans for keeping the sheet metal shop open.

This record shows that the sheet metal people did, indeed, continue to work for Metal Fabricators, but Dennis Young then told Lytle that he had made "other arrangements" to get his roofing work done.

At a later date, Lytle did get the contract here in question back from Dennis Young through Ralph Ellis, but it still was not signed. On December 27, 1977, the Union's regional director sent a letter to John Young, president of Sheet Metal and Roofing, requesting that as the successor to Metal Fabricators, he sign the current contract here in question covering the unit roofers who were now in his employment and also requesting that he pay back wages and other benefits owing the roofers including payments to the national pension, health and welfare, and training funds (see G.C. Exh. 10). After receiving a copy of the above letter, Business Agent Lytle contacted John Young and asked that he sign the contract and assume the back funds owed by Metal Fabricators.

Dennis Young testified that at the outset of his negotiations with Fox for a new contract, as aforesaid, he informed the Union of the difficult financial position of Metal Fabricators so that he was not financially able to sign a contract; admitted that the wording of the new contract was very similar to the prior one but that he never agreed to sign the new contract; and stated that the discussions relative to pay increases were not on a "real firm basis" because he had not agreed to sign the contract. Young further testified that on the afternoon of September 22, 1977, several of the roofers or pickets assisted him in completing a job, and in his opinion they were not on strike. He also stated that on the next day, September 23, at the end of the day when the roofers came off the picket line, they told him that they did not "even know why" they were on strike, that they were satisfied with working conditions, and then each one

asked for his job back as they were not represented by the Union.

In their brief Respondents argue that over the past years the business of Metal Fabricators had been such that they could not pay the pension and welfare funds, and to agree to continue an obligation they could not pay—would be an agreement to go bankrupt; that in the past, Metal Fabricators had always signed contracts with the Union, and with this sort of precedence if Dennis Young had agreed on the contract he would have signed. It is further argued that Metal Fabricators was the only employer in the area who had an organized labor force, and such a situation was making it difficult for Young to compete.

#### Final Conclusions

As pointed out, there can be little question that over the past several years the bargaining on the contract for the roofers with Metal Fabricators has been an informal procedure in which Fox had talks with Dennis Young, and thereby indicated the changes which the Union desired to be incorporated into the new contract; and upon agreement he would then take the contract to the roofers; and upon their ratification or approval, Fox would present the contract to Dennis Young for his signature. The credited testimony of business agent Fox clearly established that this is also what happened in 1977. The Union came with a new wage proposal and also a 5-cent increase in the pension and welfare plans. In his testimony Young even admitted that these were the only changes which the Union desired to be incorporated into the new contract. A few days later, in further negotiations, Dennis Young informed Fox that he was not willing to increase his contributions to the pension and welfare plans; but no further comments were made with regard to any inability to make such payments, nor was there any unwillingness expressed to enter into a contract which called for such payments. Young then gave Fox his offers with regard to the wage rates which the Union had requested, and the same were then presented to the roofers; but they rejected this initial offer, as aforesaid. Fox went back into negotiations, indicating to Young that the roofers had agreed that the 5-cent increase in the pension and welfare funds could be dropped, but that the wage increase being offered by Metal Fabricators was insufficient. Young then raised his wage offers and the roofers accepted this counterproposal, and Young was given a copy of the contract. In accepting the contract, he told Fox that he would take it home, review it, sign it, and bring it back to the office. Throughout the entire summer, by Young's own admission, he never presented another counterproposal, never indicated that there was anything in the contract with which he disagreed, nor did he otherwise advise the Union that this was a contract he was unwilling to sign. As pointed out, even if he had done so at this time, he still would have been altering the terms of a contract to which he had previously agreed, since no objections or counterproposals had been made at the time the Union accepted the second counteroffer by Metal Fabricators on or about May 26, 1977. In any event, as further indicated, no counterproposal, alteration, or suggestion of change was made whatsoever until William Lytle became business agent of the Union in September 1977, and he then had to deal with

Dennis Young who had been procrastinating his return of the contract for some 3 months.

On September 22, 1977, it became readily apparent that Dennis Young was not going to sign the contract for Metal Fabricators which had been previously agreed to, and the roofers then decided to set up a picket line. However, later this same day, Young contacted several of the roofers on the picket line, and by doing so was able to get them to work on a job that he termed "critical."<sup>5</sup> On September 23, 1977, Young again bargained directly with the roofers or strikers by telling them that he would not take any action against them because of their going on strike, that he would not cut their wages or fire them, and that they could come back to work on Monday morning without a union.

It is clear that the unfair labor practice of refusing to sign the agreed contract precipitated the picket line and the strike, and there was additional violative conduct by Young's direct dealing with the roofers without giving a representative of the Union an opportunity to be present, as aforesaid.

On Monday morning, September 26, Dennis Young indicated that the shop was closed, and there were the ensuing discussions regarding the sheet metal workers. Later Young informed Lytle that he had made arrangements to get his roofing work done, and from this record it is apparent as to what those arrangements were. In the meantime, he had directly solicited employees to break the strike and to return to work without a contract. The above situation existed through October 1977, or thereabouts, when the Union learned that the roofing work was ostensibly being done by Sheet Metal and Roofing rather than by Metal Fabricators.

A reading of Young's testimony reveals that he does not deny making the wage offer which was then accepted by the Union. Rather, he persists in asserting that he never affirmatively stated that he would physically sign the contract. As pointed out, this misses the point—when an employer and union have agreed on all the terms of a collective-bargaining agreement, as in the case here, then it is a violation of Section 8(a)(5) of the Act for the employer not to sign the agreement. On May 26, 1977, Young made counterproposals to the Union's demand, and the Union accepted and ratified Young's final counterproposal. Moreover, Young does not dispute that Fox repeatedly sought return of the signed agreement, nor does he deny the last conversation he had with Fox in which he acknowledged that he would get the contract back to Fox.

Metal Fabricators appears to contend that it now has no obligation to bargain with the Union, and that no obligation may be imposed upon it because of the roofers' alleged disaffection with the Union. I am in agreement that such a contention is contrary to established precedent. In the final analysis, Metal Fabricators was obliged to sign the contract on May 26, 1977, and at this time Young certainly was not aware of any employee dissatisfaction with the Union. Indeed, there is no objective or credited evidence in this record that the Union did not enjoy the full support of its membership as late as September 22, 1977, when the picket

<sup>5</sup> Dennis Young testified that these employees had informed him that they were not going to strike, and that they came back to work to finish this job for him.

line and strike occurred for the purpose of forcing Young to sign the contract he was obligated to execute on May 26. As pointed out by the General Counsel—the question of whether the Union represented a majority of the employees in the appropriate unit after the date that the wage offer from Metal Fabricators was accepted by the roofers is irrelevant, and especially so under the circumstances here wherein Young solicited the roofers in order to break the strike and to return to work without a contract. In fact, the reliable evidence in this record reveals that the first hint of dissatisfaction with the Union arose after Young was able to persuade several employees to break the strike on the same day the picket line was established. Moreover, one of Respondents' own witnesses, Gary Mitchell, even agreed on cross-examination that on Friday afternoon, September 23, Young told the roofers that he would put them back to work, not take any action against them because of the strike, and that he was not going to be recognizing the Union. This testimony was similar to that of Charlie Crain, another witness for Respondents, who explained that he also agreed to go back to work on Monday without a contract and to forget the "union stuff" when Young threatened the roofers with replacement if they did not show up. Again, this was an adequate showing that Young bargained directly with the roofers and conditioned their return employment upon disavowal of the Union.

As previously detailed herein, Metal Fabricators compounded its misdeeds on Monday, September 26. Young then informed business agent Lytle that he "did not want to have anything to do with the Union, . . . wanted to be relieved of the contract, . . . wanted the union to stop organizing the roofers . . .," and that he had made "other arrangements" to get his roofing work done; but then he finally agreed to continue to recognize the Union as to the sheet metal workers but not as to the roofers. By this time Young had already withdrawn recognition from the Union as the bargaining representative of the roofers.<sup>6</sup>

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondents set forth in section III, above, found to constitute unfair labor practices occurring in connection with the operations of Respondents, described in section I, 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 thereof.

#### CONCLUSIONS OF LAW

1. Metal Fabricators and Sheet Metal and Roofing are each employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Sheet Metal and Roofing is the *alter ego* of Metal Fabricators, and they are affiliated businesses that constitute a single integrated business enterprise.

<sup>6</sup> The credibility resolutions herein have been derived for the reasons given, and from a review of the entire testimonial record and exhibits with due regard for the logic of probability, the demeanor of the witnesses, sequence of events, and the teaching of *N.L.R.B. v. Walton Manufacturing Company, and Loganville Pants Company*, 369 U.S. 404 (1962). All testimony has been reviewed and weighed in the light of the entire record.

3. Local 66 is a labor organization within the meaning of Section 2(5) of the Act.

4. The unit, as set forth herein, constitutes an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

5. The Union is now, and at all times material herein has been, the exclusive bargaining representative of the employees of Respondents in the aforesaid unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

6. In refusing since late May 1977 to bargain collectively with the Union as the exclusive bargaining representative of the employees in the aforesaid unit by refusing to sign a written agreement embodying rates of pay, wages, hours of employment, and other conditions of employment agreed upon between Respondents and the Union; by bargaining directly with employees;<sup>7</sup> and by withdrawing and withholding recognition of the Union, Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

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

#### THE REMEDY

Having found that Respondents have engaged in an unfair labor practice in violation of Section 8(a)(1) and (5) of the Act, I find it necessary to order Respondents to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

In particular, I find it necessary to order Respondents to recognize the Union, to execute the contract submitted to them on May 26, 1977, and to apply all the provisions of the contract retroactively to May 15, 1977, and to further make whole unit employees as appropriate for failure to do so in the manner described by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and with interest thereon computed in the manner and amount prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977),<sup>8</sup> making available necessary records for computation purposes, and posting the notice attached hereto.

Upon the basis of the foregoing findings of fact, conclusions of law, and upon the entire record in this case, I hereby issue the following recommended:

#### ORDER<sup>9</sup>

The Respondents, Young's Sheet Metal and Roofing, Inc., and Young's Metal Fabricators and Roofing Inc., Asheville, North Carolina, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain in good faith with Local 66 as the representative of its employees in the unit described

<sup>7</sup> This issue was fully litigated at the hearing, and there was even evidence supporting the violation elicited from Respondents' own witnesses.

<sup>8</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

<sup>9</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

herein, by refusing to sign the contract submitted to them and agreed to on May 26, 1977.

(b) Bargaining directly with employees.

(c) Withdrawing and withholding recognition from the Union.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

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

(a) Recognize Local 66 as the exclusive representative of the employees in the aforesaid unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(b) Upon request by the aforementioned Union, execute the contract submitted to them on May 26, 1977, and give retroactive effect to all the provisions to May 15, 1977.

(c) Jointly and severally make the unit employees of Respondent Metal Fabricators (roofers) whole in the manner and to the extent prescribed in "The Remedy" section of this Decision.

(d) Preserve and, upon request, make available to the

Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze and determine the amount of backpay due under the terms of this Order, if any.

(e) Post at their place of business copies of the attached notice marked "Appendix."<sup>10</sup> Copies of said notice, on forms provided by the Regional Director for Region 11, after being duly signed by Respondents' authorized representative, shall be posted immediately upon receipt thereof and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 11, in writing, within 20 days from the date of this Order, what steps Respondents have taken to comply herewith.

<sup>10</sup> 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."