Blazer Industries, Inc. a/k/a Blazer Corporation and Tru-Air Corporation *and* Sheet Metal Workers' International Association, Local 569, AFL-CIO. Case 22-CA-7281

May 16, 1978

DECISION AND ORDER

BY MEMBERS JENKINS, PENELLO, AND MURPHY

On August 3, 1977, Administrative Law Judge John F. Corbley issued the attached Decision in this proceeding. Thereafter, the General Counsel and Charging Party filed exceptions and supporting briefs; Respondent filed cross-exceptions and a brief in support of its cross-exceptions and an answer to the General Counsel's and Charging Party's exceptions; and General Counsel filed an answering brief to Respondent's cross-exceptions.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.[1]

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 complaint herein be, and it hereby is, dismissed in its entirety.

[1] In adopting the Administrative Law Judge's finding that the receiver is not the *alter ego* of Blazer Corporation and Tru-Air Corporation, we note that the facts surrounding the instant receivership are distinguishable from those in *Airport Limousine Service, Inc.*, 231 NLRB 932 (1977), and *Jersey Juniors, Inc.*, 230 NLRB 329 (1977). Member Murphy, who would have found the *alter ego* relationship in *Cagle's, Inc.*, 218 NLRB 603 (1975), also finds that case distinguishable on the facts.

DECISION

STATEMENT OF THE CASE

JOHN F. CORBLEY, Administrative Law Judge: A hearing was held in this case at Newark, New Jersey, on March 17 and 18, 1977, pursuant to: a charge filed by Sheet Metal Workers' International Association, Local 569, AFL-CIO, hereinafter referred to as the Union, on October 29, 1976, which was served by registered mail upon Blazer Industries, Inc., hereinafter referred to as Respondent, on October 29, 1976, and on a complaint and notice of hearing, issued on December 8, 1976, by the Regional Director of Region 22 of the National Labor Relations Board, which was also thereafter duly served upon Respondent. The complaint, which was amended on the record at the hearing, alleges that Respondent violated Section 8(a)(1) and (5) of the Act, variously, by refusing to recognize and bargain collectively with the Union, by refusing to honor a certain collective-bargaining agreement, and by unilaterally changing wage rates and other terms and conditions of employment. In its answer to the complaint, Respondent has denied the commission of any unfair labor practices.

For reasons which appear hereinafter, I find and conclude that Respondent has not violated the Act and I shall recommend that the complaint be dismissed in its entirety.

At the hearing all parties were represented by counsel. The parties were given full opportunity to examine and cross-examine witnesses, to introduce evidence, and to file briefs. Excellent briefs have subsequently been filed by all parties and have been considered.

Upon the entire record [1] in this case, including the briefs, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New Jersey.

At all times material herein Respondent has maintained its principal office and place of business at 700 21st Avenue, Paterson, New Jersey, herein called the Paterson plant, and is now, and at all times material has been, continuously, engaged at said place of business in the manufacture, sale, and distribution of air-conditioning equipment and related products.

In the course and conduct of Respondent's business operations during the 12 months preceding the issuance of the complaint, said operations being representative of its operations at all times material herein, Respondent caused to be manufactured, sold, and distributed at said place of business, products valued in excess of $50,000, of which products valued in excess of $50,000 were shipped from said place of business in interstate commerce directly to States of the United States other than the State of New Jersey.

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

[1] On July 11, 1977, I issued a telegraphic order upon all the parties to show cause why the record in these proceedings should not be corrected. No party having opposed this order the record is hereby noted and corrected.

At the conclusion of the hearing, I made arrangements for later reception in evidence by mail of a certain exhibit identified as G.C. Exh. 40. No such exhibit was forwarded to me, however, in the time allotted (or at any subsequent time). Accordingly, that exhibit number is cancelled and the record is hereby closed.

II. THE LABOR ORGANIZATION INVOLVED

Sheet Metal Workers' International Association, Local 569, AFL–CIO, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *A Synopsis of the Case*

The principal question involved in this proceeding is whether or not Blazer Industries, Inc. (Respondent), is bound by a collective-bargaining agreement entered into between Tru-Air Corporation and the Union on August 27, 1973. The case turns on the issue whether Blazer Industries, Inc., is the *alter ego* of Tru-Air Corporation and Blazer Corporation—which two latter corporations went into bankruptcy during the period 1974–75. If Respondent is not the *alter ego,* the second question is whether it is the successor to Blazer and Tru-Air and therefore obligated to bargain with the Union.

B. *Background and Sequence of Events*

1. Blazer Corporation and Tru-Air Corporation

Blazer Corporation was engaged in the manufacture and sale of air-conditioning equipment and related products for the computer industry. It had been founded in 1908 as M. Blazer and Son. Tru-Air Corporation supplied the labor to Blazer Corporation. Blazer Corporation and Tru-Air Corporation were a single-integrated enterprise, as Respondent stipulated at the hearing.

Except for one share of stock in each, Blazer Corporation and Tru-Air Corporation were owned until 1974 by members of the Blazer family. That other single share was owned by David Harrison (one-time lawyer for the Blazers), and, after Harrison's decease, by Harrison's estate.

In July 1974, a 50-percent interest in both corporations was sold by the Blazers to Clifford Lindholm. Thus, as of July 1, 1974, the stock ownership of Blazer Corporation and that of Tru-Air Corporation was as follows: Benjamin Blazer, his wife Clair Blazer, and the estate of David Harrison owned 50 percent and Clifford Lindholm, 50 percent. Notwithstanding the single share of stock owned by the estate of David Harrison in each corporation, it was considered that, for all practical purposes, the Blazers owned half of the stock and Lindholm owned the other half.

Also, as of July 1974, the officers and directors of Blazer Corporation and Tru-Air Corporation were identical, as set forth below:

Officers

Benjamin Blazer—President
Claire Blazer—Secretary/Treasurer
Clifford Lindholm—Executive Vice President
Michael Blazer (son of—Vice President
Benjamin and Claire)

Directors

Benjamin Blazer
Claire Blazer
Clifford Lindholm

Benjamin Blazer was the principal officer of both corporations and controlled their labor relations.

Claire Blazer did not take an active role in the day-to-day operations of Blazer Corporation and Tru-Air Corporation. Lindholm was brought into both corporations in 1974 to take charge of manufacturing and to find a new location for the plant in which both corporations operated.

Blazer Corporation and Tru-Air Corporation had been located, respectively, since 1962 and 1956 at a site in East Rutherford, New Jersey, which consisted of at least two buildings and some 10 acres. The East Rutherford site was owned by Blazer Realty Corporation of which the president and vice president were Benjamin Blazer and Claire Blazer.[2]

Sheet Metal Workers' International Association was certified by the National Labor Relations Board in 1963 as the exclusive collective-bargaining representative of the production and maintenance employees of Tru-Air Corporation. Thereafter, Tru-Air entered into a series of collective-bargaining agreements with Local 569, Sheet Metal Workers' International Association (the Union herein), the latest of which was effective from 1973 to August 20, 1976, with an automatic renewal clause.[3] This agreement also contained a union-security clause. The Union's business representative, who serviced Tru-Air Corporation, was Murray Silverstein, the Union president.

As of August 1974—and indeed for more than a year before—Blazer Corporation and Tru-Air Corporation were under pressure to move from the East Rutherford location as the result of an ongoing condemnation proceeding to make way for the New Jersey Sports Complex which would consist, *inter alia,* of a football stadium for the New York Giants and a racetrack.

The financial affairs of Blazer Corporation had also been deteriorating for several years to the point where its inventory and accounts receivable were both factored by Lincoln Factors, i.e., the latter advanced operating capital to Blazer Corporation which capital was secured by Blazer Corporation's inventory and accounts receivable.

2. The move from East Rutherford; the receivership; the bankruptcy and sale of assets of Blazer Corporation and Tru-Air Corporation

On July 16, 1974, the New Jersey Superior Court, before which the condemnation proceeding had been brought, issued an order directing that the East Rutherford premises be vacated by August 15, 1974, and giving the State of New Jersey the right physically to enter the property on that date.

After the condemnation proceedings had begun, Benjamin Blazer looked at approximately 80 buildings in an ef-

[2] The court order to vacate the premises in 1974, about which more will be said hereinafter, was directed to Blazer Realty Corporation.

[3] Neither party made any effort to forestall automatic renewal of this contract for the 1-year period, August 20, 1976, to August 20, 1977.

fort to find suitable plant and storage space for Blazer Corporation to continue in business. Eventually Blazer found a building in Hackensack, New Jersey, and was negotiating a lease with the landlord when he was notified by letter dated August 12, 1974, that a contract had been awarded by the State of New Jersey for the East Rutherford premises to be removed by the Main Trucking & Rigging Co., Inc., on August 15, 1974. But Blazer was unable to consummate the lease on the Hackensack location because Blazer Corporation and Tru-Air had insufficient funds for a security deposit on the lease and for the further reason that the Hackensack premises would not be ready by August 15, 1974.

On August 14, 1974, upon learning of the impending removal of Blazer Corporation and Tru-Air Corporation from East Rutherford, Lincoln Factors refused to advance any further moneys to Blazer Corporation and Tru-Air Corporation for operating expenses.

On August 15, 1974, Main Trucking arrived at the East Rutherford site to commence the move. After discussions with Lindholm it was agreed that the move would not begin until August 16.

In the meantime, on August 16, 1974, Benjamin Blazer, as president of both Blazer Corporation and Tru-Air Corporation, filed a petition with the U.S. District Court for the District of New Jersey under the provisions of the Bankruptcy Act (chapter XI). The petition sought, *inter alia,* an order enjoining the New Jersey Sports and Exposition Authority from interfering with the orderly removal of the assets of Blazer Corporation and Tru-Air Corporation, from entering into possession of the East Rutherford premises and from commencing the demolition of such premises. The petition also requested the appointment of a receiver to protect the assets of the two corporations. The reason—as described in the petition—why Blazer Corporation and Tru-Air Corporation sought this relief was because of the injury to their business which would be occasioned by a precipitous move. Further, as Benjamin Blazer testified, the impending move had also caused Blazer Corporation and Tru-Air Corporation to lose their funding from Lincoln Factors.

This petition was, in fact, granted by the court (Judge DeVito) on August 16, 1974, and Jerome La Penna, Esq., was appointed the receiver. The complement of Blazer Corporation and Tru-Air Corporation was immediately reduced from about 130 employees to about 15 to 25 employees. The latter, who were members of the Tru-Air collective-bargaining unit, and a supervisor completed some $100,000 worth of orders which had been pending when the receiver was appointed. The employees utilized for completion of the work were paid wages by the receiver but no fringe benefits under the Union's contract.

Also during late August and early September 1974, the physical assets of Blazer Corporation and Tru-Air Corporation were removed from the East Rutherford location by Main Trucking. Inasmuch as there was no place to move these assets they were stored in some 108 trucks of Main Trucking or on the premises of the latter concern. Despite the court order the move was accomplished in haste.

In September 1974, Benjamin Blazer acquired office space in Hackensack and some affairs of Blazer Corporation and Tru-Air Corporation continued at this location until May 1975, as will be described more fully hereinafter.

Sometime in late November or early December 1974, the assets of Blazer Corporation and Tru-Air Corporation were removed from the trucks and yard of Main Trucking to a plant in Paterson, New Jersey (where Respondent is now located). This property had been obtained by Benjamin Blazer at the request of Judge DeVito of the U.S. District Court in order to conserve the assets of Blazer Corporation and Tru-Air Corporation in the face of high storage claims by Main Trucking. The move to the Paterson location was completed in January 1975.

After the $100,000 of pending orders had been completed in early September 1974, all of the Tru-Air bargaining unit personnel were released.

However, certain other employees of Blazer Corporation and Tru-Air Corporation were retained by the receiver during the receivership on the recommendation of Benjamin Blazer. These employees, who operated out of the newly acquired Hackensack office, included three sales personnel—Michael Blazer (Benjamin Blazer's son), W. Lesco, and N. Droumbrouki. Other employees retained were the comptroller, Kerler, who collected accounts receivable, and Meyerdierks (who had previously worked for Blazer Corporation as a sales coordinator) and Robinson (who had worked for Blazer Corporation at an earlier time) who maintained control over the inventory which was stored on the trucks in the yard of Main Trucking.[4] In addition the receiver hired a secretary to assist in the collection of certain sales taxes claimed by New York State or in obtaining appropriate tax exemption certificates. Gentile, still another employee of Tru-Air, was hired by the receiver to estimate machinery damages caused by the move.

Some income was generated by the receivership in late 1974 or in 1975 by sales from inventory of refrigeration compressors as well as replacement parts for use in air-conditioning units which had been previously sold by Blazer Corporation.

Benjamin Blazer was active in the affairs of the receivership and was paid a salary by it. He went to the office in Hackensack each day and advised the receiver on the handling of matters affecting Blazer Corporation and Tru-Air Corporation. During this period Blazer likewise attempted to persuade former or potential customers that the indisposition of Blazer Corporation was only temporary. The three sales personnel retained by the receivership followed the same tack and tried to "retain some relationship with contractors and engineers" who might be in a position to provide future business.

However, except for the sales from inventory, previously described, the business did not improve. And the receiver, who directed the affairs of Blazer Corporation and Tru-Air from the receiver's office in Newark, New Jersey, adamantly refused Blazer's requests to resume manufacturing operations. Since there were no manufacturing operations (after the completion of a few outstanding orders in September 1974, as also previously described) no production

[4] Another former Tru-Air unit employee, O'Krinksy, also worked for the receiver.

or maintenance (Tru-Air unit) employees were employed thereafter by the receivership.

On February 24, 1975, while the receivership continued, Blazer Corporation and Tru-Air Corporation—as the debtor corporations—and their president, Benjamin Blazer, filed with the Bankruptcy Court a so-called "plan of arrangement" with the creditors of Blazer Corporation whereby the claims of these creditors would be satisfied. However, due to a continuing dispute with the Sports Complex and the trucking company over the expense of reconnecting the machinery of Blazer Corporation, the plan was never consummated.

Accordingly, on July 17, 1975, Blazer Corporation and Tru-Air Corporation were adjudged bankrupt corporations. Following a notice to show cause by Judge DeVito on July 21, 1975, he issued an order dated August 11, 1975, for a sale at public auction of all the assets of Blazer Corporation and Tru-Air Corporation to be held on August 20, 1975.

The auction sale was indeed held, as scheduled, at the Paterson location (where the assets of Blazer Corporation and Tru-Air Corporation had been moved in January 1975) and Benjamin Blazer was the successful bulk bidder through his attorney. Benjamin Blazer purchased the assets of Blazer Corporation and Tru-Air Corporation (with the exception of a couple of vehicles) for $150,000. The sale was confirmed by Judge DeVito in an order issued on August 28, 1975.

3. The formation of Blazer Industries, Inc. (Respondent)

Benjamin Blazer petitioned to incorporate Blazer Industries on September 5, 1975. The Secretary of State for the State of New Jersey issued him a certificate of incorporation on September 16, 1975. The assets of Blazer Corporation and Tru-Air purchased by Benjamin Blazer at the auction on August 20, 1975, were assigned to Benjamin Blazer by the trustee of bankruptcy (the former receiver, La Penna) by bill of sale dated September 12, 1975.

Benjamin Blazer became the president of Blazer Industries, Inc.

Between the time of the assets sale and the receipt of the certificate of incorporation there was no specific cut-off date in the sales operations of the receiver and calls were accepted for orders. These orders were not, however, filled until Blazer Industries became officially incorporated.

Blazer Industries (Respondent) began its operations at the same location in Paterson, New Jersey, as that to which the Blazer Corporation and Tru-Air Corporation assets had been moved in January 1975, and at which Benjamin Blazer had purchased said assets at public auction on August 20, 1975.

By September 20, 1975, Respondent had six employees working in the Paterson plant. These were: Analecto Gentile, a former Tru-Air unit employee also employed by the receiver; J. O'Krinsky, a former Tru-Air nonunit employee, also employed by the receiver; T. Robinson, who had been employed by the receiver and who had also been employed by Tru-Air or Blazer Corporation in 1968; O. Feliciano, a former Tru-Air nonunit employee, who had not been employed by the receiver; S. Hoppe, who had been employed by the receiver; and C. Kerler, a former Blazer Corporation comptroller (nonunit).[5]

From September to November 1975, Respondent did nothing except bill repairs and handle replacement parts orders. As previously noted, replacement of parts had also been undertaken by the receiver to generate income.

After a couple of months, Benjamin Blazer hired Larry Presti (a former Blazer Corporation employee from 1949 through 1968) who helped plan the layout of equipment at the Paterson plant. Presti is now the plant manager.

Respondent began its own production in November or December 1975, gradually, as orders came in. Production employees were also hired on an "as needed" basis. Former employees of Blazer Corporation or Tru-Air Corporation who had previously performed in the needed classification were offered these positions first. After the last of such former employees were exhausted, the positions were offered to individuals with whom Benjamin Blazer had no prior experience.

The employees who were hired between September 1975 and January 1, 1976, were told, usually by Benjamin Blazer, that there was no union in the plant but that they could have one if they wanted one after the employee complement became large enough, and that this was up to the men to decide. These employees were hired at the wage rates last in effect at the East Rutherford plant at the time of the receivership, but were not—initially—promised any benefits such as holidays, paid vacations, or hospitalization.

Production is now well underway and the employee complement had risen to between 35 and 40 at the time of the hearing herein.

A detailed comparison of the operations and organization of Respondent with those of Blazer Corporation and Tru-Air Corporation will follow later in this Decision.

4. Activities of the Union during the receivership and after the formation of Respondent

Within a day or two after the petition for appointment of a receiver was filed on August 16, 1974, by Benjamin Blazer, Blazer was visited by Silverstein, president of the Union. Silverstein told Blazer that the receivership was a terrible thing and that he hoped Blazer would get back into business. Silverstein also visited Blazer later before the move from the East Rutherford plant.

While Blazer was working out of his office in Hackensack under the direction of the receiver during the period from September 1974 until May 1975, Silverstein saw Benjamin Blazer on several more occasions. After May 1975, while the receivership continued and after the Hackensack office was closed, Silverstein visited Benjamin Blazer a couple of times at the Paterson plant. What was said by Blazer and by Silverstein in these later meetings at East Rutherford, Hackensack, and Paterson—during the period from September 1974 to August 1975—is not shown by the record. Only Blazer testified as to these events—in summary fashion. Silverstein is deceased.

About 2 days after Benjamin Blazer purchased the assets of Blazer Corporation and Tru-Air Corporation on August

[5] The spelling of these names is taken from the G.C. Exh. 9.

20, 1975, Silverstein visited Blazer at Paterson, congratulated Blazer and told Blazer "I hope we can get together again."

After the incorporation of Respondent in September 1975, Silverstein came to the Paterson plant in October 1975 and in December 1975, on each occasion stopping to speak to Respondent's employees.

During the course of one visit—which I conclude from the nature of Silverstein's remarks (to appear) was that in October—Silverstein spoke specifically to three employees including Analecto Gentile, a Respondent employee and former union steward at Tru-Air Corporation. Silverstein began by observing to the men that the place had opened up again. Silverstein went on that the employees did not have to get into the Union at that time but, if they wanted to, they should let him know. Silverstein added that there must be at least 16–20 men working in the shop before he accepted them back into the Union. Gentile replied that this would take years. Silverstein nonetheless rejoined that he would visit the shop from time to time in the future.[6]

Silverstein came by the plant in January 1976 and spoke with Benjamin Blazer. After noting to Blazer that a number of pieces of production machinery had been hooked up, Silverstein commented that "One of these days we'll probably get together again." Blazer responded, "perhaps some day."

Benjamin Blazer next noticed Silverstein in the plant in March 1976, speaking with the employees. After Silverstein's conversation had gone on for an extended period of time, Blazer requested Silverstein to come into Blazer's office. Blazer objected strenuously to the time Silverstein had spent talking to the employees during work hours on company property. Blazer further told Silverstein that he, Blazer, had never been informed that Silverstein represented Respondent's employees. Blazer then asked Silverstein point blank whether or not the Union did represent them. Silverstein replied in the negative.

Upon hearing this Blazer advised Silverstein that Silverstein had no right to come into the plant. Blazer further told Silverstein that, if Silverstein wished, Silverstein could visit Blazer in the office but could not speak with the men in the plant without first obtaining Blazer's permission. Silverstein retorted that this was not the way things were done in East Rutherford. Blazer then pointed out to Silverstein that this was not East Rutherford but Paterson. He further reminded Silverstein that Respondent was Blazer Industries and not Tru-Air Corporation. Blazer concluded the conversation with the concession that, if Silverstein returned with authorization cards from Respondent's employees, Blazer would talk to Silverstein. With this Silverstein left.

On March 8, 1976, Silverstein filed charges against Respondent with the Board's Regional office, alleging that Respondent, since December 15, 1975, had refused to bargain collectively with the Union in violation of Section 8(a)(1) and (5) of the Act (Case 22-CA-6854). The Regional Director approved withdrawal of these charges on March 24, 1976.

On May 12, 1976, the Union was placed under Trusteeship.

On September 22, 1976, Edward Carlough, president of the Union's International, sent a letter addressed to Tru-Air Corporation in which Carlough indicated that the Union had been placed under trusteeship on May 12, 1976. In the letter Carlough, on behalf of the Union, also demanded enforcement of its collective-bargaining agreement. This letter was received by Benjamin Blazer in late September or early October 1976.

In late October 1976, Ronald Jaworski, an International organizer of the Union's International and Ernest Miller, another organizer, visited Respondent's plant and spoke with Elmer Doppler, Respondent's vice president for sales. Jaworski advised Doppler of the Union's trusteeship and asked Doppler if Respondent had any agreement with the Union (copies of the Union's collective-bargaining agreement had, purportedly, been stolen from the offices of the Union along with the Union's records). Jaworski said that he and Miller were there to ask for bargaining and to see if any part of any agreement between Respondent and the Union was still in effect. Doppler told Jaworski that the employees did not want a union and, as far as Doppler knew, there was no agreement in the plant. Jaworski then asked to see Benjamin Blazer. Doppler said he would convey the message to Blazer.[7]

A week later Jaworski and Miller again came to see Blazer. They spoke to a receptionist who told them that Blazer was not available. Jaworski left his telephone number and asked that Blazer call him. On three other occasions in October and November 1976, Jaworski telephoned Respondent and left word for Blazer to call him back. Blazer has returned none of these calls.

5. Respondent's direct dealings with its employees and changes Respondent effected in its wages and other terms and conditions of employment; the shop committee

As previously noted, all of Respondent's employees who were hired in the fall of 1975 were brought on board at the wages last in effect under the Tru-Air collective-bargaining agreement at East Rutherford before the receivership but without any fringe benefits.

There is some confusion in the testimony of Respondent's witnesses, Benjamin Blazer and Gentile, whether the formation of the shop committee was originally Blazer's idea or the idea of the employees. In any event, as Blazer admitted, he held a meeting of all of Respondent's production employees after work in late January or early February 1976 and suggested to them that they elect a committee "to function for them, to establish work rules, to establish benefits. . . ."

[6] I have held that this meeting took place in October on the basis of Silverstein's remark that the place had opened up again. If, however, this is in error, the meeting clearly occurred before March or April 1976, i.e., before 14 or 15 employees were working in the shop and before the employees' shop committee, to be described, was established. Gentile so testified credibly.

[7] These findings are based on the credible testimony of Jaworski in this regard. To the extent that the testimony of Doppler disagrees, I do not credit it. Doppler admitted on the stand that he did not have a clear recollection of the conversation.

In late March or early April 1976, a committee was indeed elected by the employees. The committee included Gentile, George Fezza, and M. Gonzalez.

About a week of two after the committee was elected, Blazer and Plant Manager Presti began meeting with the committee to discuss wages and working conditions. The committee demanded the establishment of job classifications with work descriptions and also certain wage increases. Respondent agreed to the formulation of the job descriptions and, at the next meeting, a week or 10 days later, further agreed to make some wage increases and to prepare some job descriptions. Still other wage increases were put into effect subsequently.

Respondent has continued to hold meetings with the committee every 10 days to 2 weeks since April of 1976. As the result of these discussions Respondent has established, *inter alia*, a major medical plan, life insurance, and job classifications and has handled grievances. Blazer and Presti have participated in these discussions and Blazer made the decisions to establish the foregoing employment conditions.

The wage increases put into effect in April 1976, and later, are different from those set forth in the collective-bargaining agreement between the Union and Tru-Air Corporation.

The major medical plan and a life insurance benefit were put into effect on or about June 1, 1976.

6. Respondent's business, customers, suppliers, operations, etc.; a comparison with Blazer Corporation and Tru-Air Corporation

a. *Ownership and control*

All of the stock of Respondent is owned by Benjamin Blazer and his wife, Claire. The officers of Respondent are: Benjamin Blazer, president; Clair Blazer, secretary/treasurer; Elmer Doppler, vice president - sales; and Presti, vice president - plant manager.

The day-to-day affairs of Respondent are handled by Benjamin Blazer, assisted primarily by Presti and Doppler. Hirsch, Respondent's director of engineering and his engineer, Miller, were previously employed by Tru-Air Corporation. "Supervisory" personnel include Robinson, Shaw, Gentile, Ortiz, Haper, and Rodriguez. Presti, Doppler, and Robinson had worked for Blazer Corporation at one time but had left before the receivership in 1974. Gentile also previously had a supervisory position with Blazer Corporation or Tru-Air Corporation. The foregoing "supervisory" personnel are apparently working supervisors and there is no probative showing that they are supervisors within the meaning of Section 2(11) of the Act.[8]

Benjamin Blazer is Respondent's principal officer and controls Respondent's labor relations just as he was and did while Blazer Corporation and Tru-Air Corporation were in existence.

[8] Shaw and Ortiz were former employees of Tru-Air.

b. *Products and equipment*

Respondent, like Blazer Corporation, is engaged in the design, manufacture and sale of air-conditioning equipment, cooling coils, and cooling towers.

Respondent produces only small cooling towers, whereas Blazer Corporation produced large ones. Such large tower work constituted 20–25 percent of Blazer Corporation's business. Respondent does not wholesale refrigeration parts, which made up 5–8 percent of Blazer Corporation's business. Further Respondent does not operate a service department as did Blazer Corporation.

Respondent uses the same machinery, tools, and equipment for manufacturing which it purchased from Blazer Corporation replacing some damaged equipment with new machinery and also utilizing some improvements on old machinery. Respondent also purchased from Blazer Corporation the latter's patterns, drawings, and copyrights and Respondent is still using inventory materials purchased from Blazer Corporation.

c. *Advertising, customers, and suppliers*

Respondent uses promotional literature which it purchased from Blazer Corporation some of which has been updated.

Respondent also utilizes 80 percent of the suppliers formerly utilized by Blazer Corporation.

Approximately 80 percent of Respondent's customers had also at one time been customers of Blazer Corporation. Whereas Blazer Corporation had its own sales force and independent sales agents, Respondent uses independent sales agents only. However, Michael Blazer, (Benjamin Blazer's son), who had been Blazer Corporation's vice president in charge of sales, now works for the independent sales agent which handles 60–65 percent of Respondent's sales.

d. *Employees and skills*

As noted, Respondent's initial work force was recruited from among former employees of Tru-Air and Blazer Corporations. New employees were hired after these sources were exhausted.

Of some 53 personnel hired by Respondent (not all of whom remain) some 29 were formerly employed by Tru-Air or Blazer Corporations just prior to the receivership. Blazer Corporation and Tru-Air had 135 employees prior to the receivership working on two shifts. Respondent's employees work one shift.

Inasmuch as Respondent is manufacturing essentially the same products as Blazer Corporation using, largely, equipment it purchased from the latter (or improvements thereon) the skills exercised by employees are essentially the same.

Respondent's initial wage rates for employees were the same as for production and maintenance unit employees as those rates paid under the Union contract at East Rutherford.

e. *Financial*

Respondent uses the same factor, Lincoln Factors, as did Blazer Corporation and Tru-Air, to finance its operations. Respondent did not purchase the accounts receivable of Blazer Corporation nor did it assume the liabilities of Blazer Corporation and Tru-Air. Respondent took over no contracts, orders, or agreements of Blazer Corporation or Tru-Air.

f. *Location*

Respondent's plant at Paterson is some 12–16 miles away from Blazer Corporation's plant at East Rutherford.

g. *Miscellaneous*

Respondent uses new stationery and invoices, new tax identification numbers, new telephone numbers, new signs on plant and vehicles, a new mailing address and post office box—all being different from those of Blazer Corporation and Tru-Air Corporation.

Concluding Findings

1. Alter ego

The difference between a determination of *alter ego* status and a determination of successorship is that the *alter ego* is required to assume its predecessor's collective-bargaining agreement,[9] whereas a successor normally assumes only the obligation to recognize and bargain with the exclusive bargaining representative of its predecessor's employees.[10]

In its recent decision in *Crawford Door Sales Company, Inc. and Cordes Door Company, Inc.*, 226 NLRB 1144 (1976), the Board stated that it would find *alter ego* status "where the two enterprises have 'substantially identical' management, business purpose, operation, equipment, customers, and supervision, as well as ownership."

In the present case there are strong factors which favor the conclusion that Respondent is the *alter ego* of Blazer Corporation and Tru-Air Corporation based on the analysis and comparison set forth, *supra*. However, the resolution of this issue is not that simple. For Respondent's immediate predecessor was not the consolidated enterprise of Blazer Corporation and Tru-Air Corporation. Respondent's predecessor was rather the receiver of the latter two corporations.

A receiver in bankruptcy is not the same entity as a prebankruptcy company. It is rather a new entity for purposes of determining its obligations under the National Labor Relations Act and the Bankruptcy Act—with its own rights and duties, subject to the supervision of the bankruptcy court.[11] As such, it has, under the aegis of the National Bankruptcy Act and the National Labor Relations Act the obligation to comply with requirements of the latter.[12] Indeed the Board itself has asserted jurisdiction over a receivership.[13] On the other hand such an entity also has leave under the Bankruptcy Act to reject the collective-bargaining agreement of the corporation involved in the bankruptcy proceeding.[14]

In view of the separate entity nature of the receivership, it therefore becomes necessary to determine whether Respondent is the *alter ego* of Blazer Corporation and Tru-Air Corporation *and of the receivership as well.*[15] In so doing it must also be decided whether the receivership is the *alter ego* of the Blazer Corporation and Tru-Air Corporation.[16]

I conclude that the receiver was not the *alter ego* of Blazer Corporation and Tru-Air and that Respondent, which, as will appear, engaged in a substantially different activity from that of the receiver, was not the *alter ego* of Blazer Corporation and Tru-Air *and the receiver.*

Evaluating the operations of the receiver in the light of the Board's recent definition of an *alter ego* in *Crawford, supra*, it is clear that the operations of the receiver were different from the operations of Blazer Corporation and Tru-Air. Thus, the receiver did no manufacturing for more than a year after completing some $100,000 worth of orders in the first 2 or 3 weeks of the receivership despite Benjamin Blazer's request that the receiver resume. Indeed the Blazer Corporation machinery was not even laid out and hooked up after the move, but merely sat in the plant at Paterson essentially on a storage basis under a month-to-month lease. The control of the receivership was in the hands of the receiver and not in Benjamin Blazer or his fellow corporate officers. The work force was reduced to about six individuals none of whom were production and maintenance employees. While the receiver continued sales to customers, such sales were out of inventory only and consisted merely of replacement parts. The receiver had, earlier on, rejected the Union's collective-bargaining agreement, *de facto*, by paying only wages to production and maintenance employees (during the first 2 or 3 weeks of the receivership while some were still employed) and by not paying fringe benefits called for by the contract.

From the foregoing it is obvious that since the receiver operated the business, and on a substantially reduced basis, that the receivership could not be the *alter ego* of Blazer Corporation and Tru-Air within the meaning of the Board's Decision in *Crawford, supra.*

Contrasting the activities of Respondent with those of the receiver, it is clear that Respondent, unlike the receiver, is a vital, vibrant, and growing manufacturing enterprise. Its affairs are firmly in the hands of Benjamin Blazer and

[9] E.g., *Marquis Printing Corporation and Mutual Lithograph Company*, 213 NLRB 394 (1974).

[10] *N.L.R.B. v. Burns International Security Services, Inc., et al.*, 406 U.S. 272 (1972).

[11] *Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO v. Kevin Steel Products, Inc.*, 519 F.2d 698, 704 (C.A. 2, 1975).

[12] See *N.L.R.B. v. Baldwin Locomotive Works*, 128 F.2d 39, 43 (C.A. 3, 1942).

[13] *Gibraltar Industries, Inc., and International Trailer Company, Inc., et al.*, 133 NLRB 1527, 1537, enfd. 307 F.2d 428 (C.A. 4, 1962).

[14] *Shopmen's Local Union No. 455, et al. v. Kevin Steel Products, Inc.*, *supra* at p. 706; *Carpenters Local 2746 United Brotherhood of Carpenters and Joiners of America, AFL–CIO v. Turney Wood Products, Inc.*, 289 F.Supp. 143; *Klaber Bros., Inc.*, 173 F.Supp. 83 (D.C. N.Y., 1959); *Public Ledger, Inc.*, 63 F.Supp. 1008 (D.C. Pa., 1945).

[15] *West Suburban Transit Lines, Inc.*, 158 NLRB 794, 798 (1966).

[16] *Id.*

his supervisors—and not the receiver's. Respondent has set up its machinery and is actively engaged in production in a plant for which it has a long-term lease. Respondent has a production and maintenance work force—not merely a skeleton holding and sales cadre as did the receiver.

I, therefore, conclude from the foregoing that the receiver was not the *alter ego* of Blazer Corporation and Tru-Air and that Respondent is not the *alter ego* of Blazer Corporation and Tru-Air and the receiver.[17]

In reaching my conclusion that Respondent is not the *alter ego* of Blazer Corporation and Tru-Air and their receiver, I have also taken into account the facts that the demise in bankruptcy of Blazer Corporation and Tru-Air was not fraudulent or illusory and was involuntary. That is, the condemnation of the East Rutherford facility which triggered the receivership, was brought about by third parties not affiliated with Benjamin Blazer and indeed against whom he is continuing to litigate in other proceedings adverted to by this record. The ultimate adjudgment of bankruptcy came about from the failure of Blazer's plan of arrangement with creditors (which would have restarted the business) and was largely due to the fact that no agreement could be reached with these same third parties to undertake the reconnection of machinery which had been disconnected following the move from East Rutherford which they occasioned. Hence, by the time Benjamin Blazer bid on the assets of Blazer Corporation and Tru-Air those corporations had gone bankrupt despite Blazer's efforts. Thereafter Blazer stood in the shoes of a stranger and purchased their assets in an arms-length court-approved transaction. Finally, I note that there is no showing whatsoever that Respondent was formed for the purpose of avoiding the obligations under the National Labor Relations Act of Tru-Air Corporation pursuant to the latter's contract with the Union.

Thus, for all these reasons as well, I conclude that Respondent is not the *alter ego* of Blazer Corporation and Tru-Air and their receiver.[18]

Having concluded that Respondent is not the *alter ego* of Blazer Corporation and Tru-Air and their receiver, it follows that Respondent is not bound by the terms of Tru-Air's collective-bargaining agreement with the Union.

2. Successor

Inasmuch as I have held that Respondent is not an *alter ego*, the question then becomes whether it is a successor to Blazer Corporation and Tru-Air and, as such, has the obligation to bargain with the Union as the exclusive collective-bargaining representative of its production and maintenance employees.[19] I conclude that Respondent is not a successor and does not, for that reason, have the obligation to bargain with the Union.

The test developed by the Board and sanctioned by the courts in determining whether the successor employer has inherited the bargaining obligations of its predecessor is whether there has been a continuity in the employing industry after the transfer.[20] Application of this test involves consideration of the totality of the circumstances surrounding the transfer as well as a comparison of the operations of the predecessor and the successor enterprises.[21]

Here many of the same reasons which defeated the *alter ego* theory of the complaint apply with equal force against the claimed successorship. Thus, Respondent did not take over an on-going manufactoring enterprise. There had rather been a hiatus in production operations of more than a year under the receiver [22] which was not caused by Benjamin Blazer who tried, as I have noted, to have the receiver resume production operations and who also, unsuccessfully, developed a plan of arrangement with the creditors of Blazer Corporation and Tru-Air under which they might have gone back in business. Further, when Respondent began operations, it did so with a substantially reduced complement which (even accepting as valid the General Counsel's contention) included only a bare majority of 10 out of 19 employees in Respondent's production and maintenance force at the time of the hearing who had formerly worked in the Tru-Air collective-bargaining unit.[23] Further, unlike Tru-Air, Respondent has attempted to cross-train its smaller work force to give it a versatility not known in the larger Tru-Air force.

In all the foregoing circumstances I conclude that the evidence is insufficient to support a finding that Respondent is a successor employer to Blazer Corporation and Tru-Air.[24] What Respondent purchased was essentially the remains of a corporate shell—inventory and equipment stored in a shut-down plant—and an inventory sales business in which the receiver, when he last engaged in production on a limited scale, did not even honor the collective-bargaining agreement with Tru-Air.[25]

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[17] In reaching this conclusion, I am not unmindful that the Board has held that the mere purchase of the assets directly from a predecessor or from a third party is insufficient in and of itself to defeat an *alter ego* finding. *Marquis Printing Corporation, supra.* However, here, unlike *Marquis* and other cases of that line (e.g., *Interstate 65 Corporation d/b/a Continental Inn*, 186 NLRB 248 (1970)), the manner in which the business was last operated here by the third party receiver—differed significantly from the operations of the predecessor and further involved, as noted, the *de facto* rejection by the third party receiver of the collective-bargaining contract of the predecessor.

While such rejection requires court approval under the Bankruptcy Act, the fact remains that the receiver did not honor the fringe benefit requirements of the Tru-Air contract.

[18] *Davis Van & Storage; Great Western Van & Storage Co.*, 218 NLRB 1339 (1975).

[19] *N.L.R.B. v. Burns Security Service, supra.*

[20] E.g., *Radiant Fashions, Inc.*, 202 NLRB 938 (1973).

[21] *Cagle's Inc.*, 218 NLRB 603, 605 (1975).

[22] Which indeed continued for several more months after the formation of Respondent until its machinery could be installed and production got underway.

[23] Or again assuming the correctness of the General Counsel's contention, but counting the working supervisors, 12 present employees out of 23 were formerly in the Tru-Air unit.

[24] *Cagle's Inc., supra; Radiant Fashions, Inc., supra.*

[25] *Cagle's Inc., supra; Union Texas Petroleum, a Division of Allied Chemical Corporation*, 153 NLRB 849 (1965), affd. 362 F.2d 943, (C.A.D.C., 1966); *Norton Precision, Inc., A Subsidiary of Nortan Foundries Company*, 199 NLRB 1003, 1007 (1972).

Daneker Clock Company, Inc., 211 NLRB 719 (1974), relied on by the Charging Party, is inapposite. Here, unlike *Daneker*, there had been a disruption and significant reduction of the predecessor's business occasioned by an intervening receivership prior to the acquisition by the claimed successor. Indeed the decision in *Daneker* suggests that such a disruption caused by a bankruptcy proceeding might well have dictated a contrary result therein. *Id.* at 721.

It follows therefore that Respondent is not obliged to bargain with the Union as the exclusive collective-bargaining representative of its employees [26] and that any increases or changes in wages or benefits which it has instituted since it began operations could not have occurred in derogation of any duty to bargain.[27]

I shall, accordingly, recommend the dismissal of the complaint in its entirety.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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

3. The Respondent is not the *alter ego* of Blazer Corporation and Tru-Air Corporation and their receiver.

4. The Respondent is not the successor employer to Blazer Corporation and Tru-Air Corporation.

5. Changes in the wages and working conditions of its employees from wages and working conditions under the Tru-Air collective-bargaining agreement with the Union were not put into effect by Respondent in violation of Section 8(a)(5) and (1) of the Act.

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

ORDER [28]

It is hereby ordered that the complaint be, and it hereby is, dismissed in its entirety.

[26] This obligation to bargain could only have existed upon a finding that Respondent succeeded to the bargaining obligations of Blazer Corporation and Tru-Air. The Union has not made any demand for recognition upon Respondent based on any showing of union authorization cards from a majority of Respondent's employees.

[27] *Norton Precision, Inc., supra* at p. 1008. I am not unmindful that there is a suggestion in the evidence recited that Respondent hired former Tru-Air employees with the observation—perhaps unsettling to some—that there was no union in the plant and that Respondent later, in January and February, encouraged the formation of a shop committee. To the extent that such activities may have, respectively, violated Sec. 8(a)(1) and Sec. 8(a)(2) and (1) of the Act, they are not alleged as unlawful in the complaint and would, in any event, be barred by the 6-month statute of limitations of Sec. 10(b).

[28] 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.