

Douglas Lantz d/b/a and or a/k/a Alcan Forwarding Company, Transportation Consultants, and AFCO; Douglas Lantz d/b/a and or a/k/a Alcan Forwarding Company; Douglas Lantz d/b/a and or a/k/a Transportation Consultants; and Douglas Lantz d/b/a and or a/k/a AFCO and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 959, State of Alaska. Cases 19-CA-9523, 19-CA-9354, 19-CA-9353, and 19-CA-9439

April 20, 1978

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND
TRUESDALE

On December 21, 1977, Administrative Law Judge Richard J. Boyce 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 briefs and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order, as modified herein.³

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Douglas Lantz d/b/a Transportation Consultants, Alcan Forwarding Company, and/or AFCO, Anchorage, Alaska, his agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete the phrase "at 7 percent per annum" from paragraph 2(c) of the recommended Order.
2. Substitute the attached notice for that of the Administrative Law Judge.

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), enf. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

² Respondent contends that the complaint did not allege that Douglas Lantz' statement to employee Charles Clark on or about February 1, 1977, that Respondent intended to operate with "gypos"—independent contractors—in order to circumvent union scale, violated Sec. 8(a)(1) of the Act

and, therefore, excepts to the Administrative Law Judge's finding of such a violation. We find, however, that this issue was fully litigated at the hearing and that Respondent was not, therefore, prejudiced by this finding.

³ In fn. 17 of his Decision, the Administrative Law Judge stated that interest on backpay shall be computed in the manner set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977). However, in par. 2(c) of the recommended Order and in the corresponding paragraph of the notice, the Administrative Law Judge inadvertently assessed interest at the rate of "7 percent per annum" rather than the "adjusted prime rate" used by the United States Internal Revenue Service as *Florida Steel* prescribes. We have, therefore, modified the Order and notice accordingly.

APPENDIX

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

The National Labor Relations Act gives all employees the following rights:

- To organize themselves
- To form, join, or support unions
- To bargain as a group through a representative they choose
- To act together for collective bargaining or other mutual aid or protection
- To refrain from any or all such activity except to the extent that the employees' bargaining representative and employer have a collective-bargaining agreement which imposes a lawful requirement that employees become union members.

I WILL NOT tell my employees that I will go out of business or operate on a "gypo" basis to avoid paying the wages and benefits set forth in the bargaining agreement with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 959, State of Alaska; and I WILL NOT tell my employees that I will get rid of them in favor of "gypos" in response to their statements of intention to go to the Union to obtain the benefits of the bargaining agreement.

I WILL NOT discontinue the employment of, or otherwise discriminate against, employees because of their efforts to obtain my compliance with the above bargaining agreement and their statements of intention to go to the Union for assistance in that regard.

I WILL NOT violate the terms of the above bargaining agreement, signed January 7, 1976, by Gayle A. Yotter in the name of Alcan Forwarding Company and also binding on Transportation Consultants and AFCO as components of the same integrated enterprise.

I WILL NOT refuse to bargain with the Union with respect to wages, hours, and other terms and

conditions of employment of drivers and mechanics employed by me or any of my components.

I WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of rights protected by Section 7 of the Act.

I WILL offer Charles Clark and Larry Harness immediate and full reinstatement to their former jobs or, if their jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings and benefits they may have suffered because of the discrimination against them, plus interest.

I WILL, upon request, recognize and bargain with the Union concerning the wages, hours, and other terms and conditions of employment of my drivers and mechanics who are represented by the Union, constitute an appropriate bargaining unit under the Act, and are covered by the above bargaining agreement.

I WILL, on the Union's request, give retroactive effect to the above bargaining agreement, making the drivers and mechanics covered by it whole for any losses they may have suffered from the agreement's inception in January 1976, with interest, and paying all contractually prescribed pension and health and welfare contributions on behalf of such employees which have become due since the agreement's inception and are as yet unpaid.

DOUGLAS LANTZ D/B/A
TRANSPORTATION
CONSULTANTS, ALCAN
FORWARDING COMPANY,
AND/OR AFCO

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge: This case was heard before me in Anchorage, Alaska, on September 13 and 14, 1977. The charge in Case 19-CA-9353 was filed on March 28, 1977, that in Case 19-CA-9354 on March 29 and amended April 28, that in Case 19-CA-9439 on April 29, and that in Case 19-CA-9523 on May 20, all by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 959, State of Alaska (herein called the Union). The complaint issued May 27, 1977, was amended during the hearing, and alleges certain violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (herein the Act) as amended, by Douglas Lantz doing business as and/or also known as Alcan Forwarding Company, Transportation Consultants, and AFCO (herein called Respondents).

The parties were permitted during the hearing to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally.

I. ISSUES

The complaint alleges that Respondents, as a single employer, repudiated a collective-bargaining agreement with the Union in August 1976, and thereafter refused to adhere to its terms, violating Section 8(a)(5) and (1); by alleged agents Lantz and Jodi Collins, committed certain verbal acts in violation of Section 8(a)(1) in December 1976 and January 1977; and discharged Charles Clark and Larry Harness in violation of Section 8(a)(3) and (1) in January or February 1977. The answer denies any wrongdoing.

An underlying issue is whether Lantz, by whatever business name, was party to the bargaining agreement in question and the employer of Clark and Harness.

II. JURISDICTION; RELATIONSHIP OF RESPONDENTS

A. Facts

Lantz has been in the trucking business in Alaska since 1951, when he established a firm known as Alaska Truck Transport (herein ATT). In 1972, he formed a corporation known as Alcan Forwarding Company (herein Alcan Forwarding), and he also has engaged in business under the name of Transportation Consultants (herein TC). There is no dispute that TC satisfied the Board's link-in-commerce jurisdictional criteria at relevant times, and is an employer engaged in and affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. It is so found.

Lantz withdrew from ATT in December 1975, taking with him some rolling stock that he had leased to ATT in the name of TC—10 truck tractors and 8 trailers designed for the transport of bulk materials, such as cement and gypseal, used in oil well exploration. Lantz, as TC, thereupon entered into an agreement with Dowell, a Division of Dow Chemical (herein Dowell), committing TC to furnish rolling stock and its maintenance in aid of Dowell's hauling activities between Fairbanks and Alaska's North Slope.

At or about the same time, according to Lantz, a firm known as AFCO contracted with Dowell to provide drivers and fuel for TC's rolling stock. Lantz testified that AFCO was operated by a James Taylor; and that he, Lantz, had no interest in or control over it. AFCO's inclusion in the arrangement was necessitated, Lantz continued, by an Interstate Commerce Commission (ICC) prohibition against both equipment and drivers being under common control absent common-carrier authorization. Lantz would have it that any violations of Section 8(a)(3) and (5) in the present case were perpetrated by Taylor's AFCO and not by any venture with which he was or is associated.

Lantz testified that Dowell's representative in the arrangements just described was a Richard Mettle. The record contains no documentation of the arrangements, and neither Mettle nor Taylor, AFCO's reputed entrepreneur, testified.

In contradiction of Lantz' avowed noninvolvement with AFCO—which is to say, with the driver aspect of the Dowell venture—the record contains a written contract dated January 7, 1976, in which Alcan Forwarding, *identified in the contract as AFCO for short*, agreed to provide “experienced line drivers and arrange truck fueling as requested by Dowell.” The document was signed for Alcan Forwarding by Gayle A. Yotter, Lantz' stepdaughter and corporate secretary-treasurer, and for Dowell by Mettle—the person who supposedly had extracted the same commitment from Taylor's AFCO the month before.

Also on January 7, 1976—the day she contracted with Dowell in the name of Alcan Forwarding—Yotter signed a collective-bargaining contract with the Union in the same name, to cover those “employed as Teamsters, Drivers, Chauffeurs, Warehousemen, or as employees under any classification within the jurisdiction of the Union.”¹ Several drivers, mechanics, and other employees thenceforth were referred from the Union's exclusive hiring hall in furtherance of the Dowell venture; and contributions began to be made for them, in the name of Alcan Forwarding, to the pension and health and welfare trusts specified in the contract. In June 1976, incidental to a problem over delinquent payments to the trusts, Lantz gave assurances to the administering agency, the Alaska Teamsters Employee Service Corporation, that the delinquencies would be cured, and they were.²

Lantz testified that Yotter's entry into these contracts was unauthorized, and that the Dowell contract could not have been and was not implemented both because of the ICC's common-control ban and because it conflicted with the earlier arrangement between Dowell and Taylor's AFCO. In a presumed effort to lend credence to his story, Lantz asserted that Alcan Forwarding no longer was active at the time in question, noting that the State of Alaska had dissolved its certificate of incorporation in September 1975 for failure to file annual reports and/or pay annual fees.³

The first load for Dowell departed Fairbanks on January 14, 1976. About the same time, according to Lantz, Taylor disengaged from the “actual operation” of AFCO, designating Jodi Collins as AFCO's “day-to-day representative.” Collins, like Mettle and Taylor, did not testify. TC and AFCO—i.e., Collins—occupied the same office premises in Fairbanks, which were owned by TC, and had a single telephone. The office structure was adjacent to the building in which the rolling stock was garaged and maintained, and from which the drivers were dispatched. TC's compensation for letting AFCO share the office space was not monetary, Lantz testified, but in the form of “minor services” performed by Collins for TC, such as answering the telephone. TC also provided Collins with a motor vehicle and living quarters.

For monthlong periods relevant to this proceeding, Lantz was away—often in Hawaii—up to 90 percent of the time, during which he relied upon Collins to “tell me what's

happening” in Fairbanks by frequent telephone contact between the two. Regarding TC matters, Lantz testified that Collins was “merely a pipeline,” despite the admission in his pretrial affidavit that Collins “supervised my [TC's] mechanics . . . in my absence.” Collins discharged some TC employees, but only, according to Lantz, on his direction. Both Lantz and Collins interviewed some of the same job applicants, and Lantz admittedly had the right to veto AFCO's hire of a given driver—a right that he exercised at least once. Lantz testified that this did not imply control by him over AFCO's affairs, but rather was a right basic to the suppliers of equipment to protect it from misuse.

For the first 1 or 2 months of the Dowell venture, all employees, both driver and mechanic, were treated as AFCO employees for payroll purposes. Lantz explained that this was because TC had contracted out its maintenance commitment under its contract with Dowell to AFCO, to spare Lantz from being involved with payrolls. TC supposedly paid AFCO's costs, plus 20 percent, for this service. This lasted into March, when maintenance time began being paid from a TC account, with driving time continuing to be paid from an AFCO account. TC and AFCO had separate books, but Lantz's wife, Jean, did the payroll computations for both. TC's checks were signed by Jean, AFCO's by Collins.

All billings to Dowell in connection with the venture were in the name of AFCO. Lantz explained that, in a transaction “unrelated to business,” AFCO had loaned money to him, as TC, to enable the purchase of an oceangoing freighter, and that this was a means of repayment. Unexplained is Dowell's willingness to pay AFCO for services rendered by TC if AFCO and TC truly were separate, unrelated entities.

B. Conclusions

Lantz' efforts to attribute any 8(a)(3) and (5) misconduct to AFCO, and to insulate himself from responsibility for AFCO through the device of AFCO's being an independent enterprise run by the evanescent James Taylor, were contrived to the point of insult.

Even if it were believable that Yotter, when entering into the driver contract with Dowell, was on some kind of frolic of her own, it is utterly implausible that Mettle would have drawn Dowell into the same frolic had there been a prior, identical deal with a different and unrelated AFCO. It also defies belief that Yotter's same-day entry into a bargaining agreement with the Union, which plainly meshed with the driver contract and obviously anticipated the start of operations, was yet another unauthorized frolic—particularly since the Lantz organization, by whatever name, complied with the agreement in significant detail for a time afterwards.

legal obligation, and that he made no promises to make up the delinquencies. Lantz was an evasive, generally unimpressive witness, and is not credited.

³ Resp. Exh. 2, being the State's certificate of involuntary dissolution, was tendered after the hearing in conformity with guidelines set forth on the record. It hereby is received.

¹ It is concluded that the contract unit, consisting in essence of drivers and mechanics and excluding by implication office clerical employees, professional employees, guards, and supervisors as defined in the Act, is an appropriate unit for purposes of the Act.

² Cheryl Breager, a supervisor for the Service Corporation, credibly testified that Lantz made such assurances. Lantz admitted meeting with Breager, but said he did so only to protect Yotter, not out of any sense of

Beyond the rank incredibility of Lantz' testimony concerning AFCO and Yotter's authority, the record is replete with indicia that the Lantz organization—be it called TC, Alcan Forwarding, AFCO, one or all—serviced both the equipment and driver aspects of the Dowell venture as a single, integrated entity.⁴ Jurisdiction over that entity therefore attaches by virtue of the undisputed appropriateness of its being asserted over the TC component, and the components comprising the entity, jointly and severally, are bound by and responsible for conduct in the name of any. See *Don Burgess Construction Corporation*, 227 NLRB 765 (1977); *Pacific Pollution Control*, 227 NLRB 293 (1976); *Transcontinental Theaters, Inc., Douglas Krutilek and Robert Shaw, a Partnership d/b/a Cynatron Enterprises*, 216 NLRB 1110 (1975).

The entity hereafter will be referred to, in the singular, as Respondent.

III. LABOR ORGANIZATION

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

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

As indicated, Respondent entered into a bargaining agreement with the Union on January 7, 1976, covering in essence Respondent's drivers and mechanics.⁵ Among those later referred to Respondent through the Union's hiring hall were the two alleged discriminatees, Charles Clark and Larry Harness. Harness' referral date was January 16, 1976; Clark's January 28. Both worked as mechanics for the first 2 or 3 weeks, after which they did driving for the most part. In accordance with the practice described above, they were treated as AFCO employees for all payroll purposes until March 1976, when they began to be treated as TC employees, for payroll purposes, for what little time they continued to do maintenance work.

Coincident with the change in payroll handling, Respondent stopped making pension and health and welfare contributions for maintenance—i.e., TC—hours. That was followed by a failure to institute a July 1, 1976, wage increase as prescribed by the bargaining agreement, and by a cessation of pension and health and welfare contributions for driver—i.e., Alcan Forwarding or AFCO—hours after September 1976.

In July or August 1976, upon learning that fringe benefit contributions no longer were being made for maintenance time, Clark confronted Lantz. Lantz explained that he no longer could afford the contributions for maintenance

⁴ That the State of Alaska previously had dissolved Alcan Forwarding's certificate of incorporation is of no moment. As this case indicates, Lantz nevertheless continued to operate under that style, among others, as it suited his fancy.

⁵ The agreement by its terms was to "remain in effect until June 30, 1977, and shall remain in effect thereafter from year to year," subject to renegotiation on proper notice before June 30, 1977, and each anniversary thereafter.

⁶ Clark is credited that this conversation occurred substantially as set forth. There seems to be no explicit denial by Lantz on the record. To the extent that denial might be inferred, it is discredited. Lantz, as indicated before, generally was unimpressive as a witness, given to all manner of incredible assertions, whereas Clark was impressively forthright.

work, and stated that Clark would have to be willing to work nonunion if he wished to continue doing that work. Lantz added that he was prepared to use "gypos"—i.e., independent contractors—to do the work his employees would not or could not handle. Clark responded that he would not work nonunion.⁶ Clark thereafter was relieved of maintenance work other than that on the road, incidental to driving.

Similarly, Harness asked Lantz in August 1976 about the nonpayment of fringe benefit contributions for maintenance work, saying that he would not work unless they were forthcoming. Lantz replied that the maintenance shop was going nonunion and that, if the employees were unwilling to work on that basis, they would just have to do without the income they had been receiving for maintenance work. Harness answered that he would not put in time not "sanctioned" by the Union.⁷ Harness, like Clark, did no further maintenance work.

As mentioned above, Respondent stopped making pension and health and welfare contributions for driver time after September 1976, the last remittance being made October 26. Upon learning this in November, Clark confronted Lantz once more. Lantz explained that he was short of funds, but would make up the arrearage when able. About a month later, probably in December, Clark again raised the subject with Lantz, declaring that he was going to the Union to try to get the situation straightened out. Lantz replied that Clark could go to "the f—ing Union," but would be "shitting in [his] own nest" if he did. Lantz added that he was going to get rid of his employee-drivers and operate "strictly" on a gypo basis.⁸

In December 1976, at or about the time of the conversation just described between Clark and Lantz, Harness questioned Lantz about his failure to grant the July wage increase as prescribed by the bargaining agreement. Lantz answered that he could not afford it and that, if the time came when he had to pay it, he "would shut the doors and close the son-of-a-bitch down."⁹

In January 1977, Harness asked Jodi Collins about the discontinuance of fringe benefit contributions for driving time. She replied, much as Lantz had to Clark in November, that Respondent was short of funds, but would make up the payments when able. Harness countered that he was going to call the matter to the attention of the Union, to which Collins stated that Lantz had said he would "close the doors when it gets too tough."¹⁰

Clark's last trip for Respondent ended January 19, 1977; Harness' January 20. They thereafter called Respondent's office more or less daily, as was the practice, to see if they had been assigned further runs. They usually spoke with Collins, but sometimes with Lantz, and were told each time

⁷ Harness is credited that this conversation occurred substantially as set forth. To the extent that a Lantz denial might be inferred, it is discredited for the reasons previously given regarding his credibility and for the further reason that Harness, like Clark, was impressively believable.

⁸ Clark's renditions of these conversations are credited, Lantz' denials notwithstanding, based upon credibility factors previously stated.

⁹ This is Harness' credited version of the conversation. Lantz' denials are discredited for reasons earlier stated.

¹⁰ This is Harness' credible and unrefuted version of the conversation. Collins, as earlier mentioned, did not testify.

that there was no work. They eventually gave up, and quit calling. Once, when told by Lantz that there was no work, Clark asked about a rumor that trips were still being made. Lantz responded that it was none of Clark's business, to which Clark said that Lantz would have enough money to run the Company if he did not go to Hawaii "every other week." Lantz told Clark to keep his nose out of Lantz' business.¹¹ Either in this or another conversation at or about the same time, Lantz repeated to Clark his intention to operate on a gypo basis, explaining that he could not afford union scale and that this would be a way to circumvent it.¹²

Clark and Harness had some difficulty obtaining their final paychecks. Two or three weeks after their last trips, the two of them went to Collins about the problem. She demurred that the Company was broke, prompting Harness to refer to Lantz as "kind of a crook" and not "such a hotshot" after all. With that, Collins demanded that they get off the property. Clark and Harness eventually were paid—from Collins' personal funds, according to Lantz' dubious testimony.

In all, Respondent had made some 300 round trips on behalf of Dowell, each consuming about 3 days, to the time of the hearing. The record intimates, but does not clearly establish, that the venture concluded sometime before the hearing. Harness credibly testified that he observed Al Kaiser, who hauled for Respondent as an independent contractor all along, making runs after he and Clark ceased being used.

Lantz admittedly has "very strong [negative] feelings relative to labor," and admittedly had "various arguments [with Clark and Harness] relative to the merits of what the Teamsters did and didn't do." He further admitted:

I think that I have at one time or other made it very clear that if our overhead reached the point where the overhead exceeded our income that I would—I would just shut my operation down.

B. Conclusions

Alleged independent 8(a)(1) violations: The complaint alleges, in substance, that Lantz threatened in December 1976 to shut down the business if an employee complained to the Union about Respondent's failure to grant a scheduled raise; that Lantz threatened an employee in January 1977 for complaining to the Union of Respondent's failure to make fringe benefit contributions; and that Collins threatened in January 1977 that the business would be shut down should the employees complain to the Union of Respondent's failure to make fringe benefit contributions. The complaint further alleges that each incident violated Section 8(a)(1).

The credited testimony has established:

(a) That Lantz declared to Harness in December 1976, when Harness questioned Respondent's failure to institute a wage increase the previous July as prescribed by the

¹¹ Clark's version of this conversation is adopted. Lantz admitted such a conversation in substance, but could not recall it with Clark or Harness.

¹² Clark is credited that Lantz so expressed himself, Lantz' denials notwithstanding, based upon the earlier-cited credibility considerations.

bargaining contract, that he "would just shut the doors and close the son-of-a-bitch" if required to grant the increase.

(b) That, in December 1976, when Clark spoke of going to the Union over Respondent's nonpayment of fringe benefit contributions, Lantz asserted that Clark would be "shitting in [his] own nest" if he did, and that Respondent was going to get rid of its employee-drivers and operate strictly on a gypo basis.

(c) That, sometime after Clark's last trip—probably around February 1—Lantz told him of an intention to operate on a gypo basis to circumvent union scale.

(d) That, in January 1977, Collins stated, to Harness' announced intention to go to the Union over the fringe benefit matter, that Lantz had said he would "close the doors when it gets too tough."

The activities of Clark and Harness to which Lantz and Collins reacted as described were grounded in perceived rights under the union contract, and therefore were protected by the Act. E.g., *Bunney Bros. Construction Company*, 139 NLRB 1516 (1962). The responses of Lantz and Collins doubtless were intended to, and carried the likely effect of, restraining Clark and Harness in their exercise of those activities. Lantz and Collins consequently violated Section 8(a)(1) substantially as alleged.¹³

Alleged 8(a)(3) and (1) violations: Respondent regularly used Clark and Harness for about 1 year before abruptly stopping the practice with the cryptic explanation, when they called in for work, that none was available. What little evidence there is on the point has established that the Dowell venture continued after that, and, if the contrary were the case, it surely was within Respondent's capability to so prove with conclusiveness, rather than leaving the record in limbo as it did.

Beyond that, the sudden shelving of Clark and Harness was preceded by their repeated and determined efforts to compel Respondent's compliance with the union contract, sometimes accompanied by threats to take their cause to the Union; and Lantz regularly evinced a deep distaste for those efforts by reacting variously that Respondent would "shut the doors" or eliminate its employee-drivers in favor of a gypo operation to frustrate their success.

Finally, Lantz' egregious want of veracity under oath betrayed his overwhelming awareness that, if the truth were known, his position could not prevail on this issue.

It is concluded, based upon the considerations just stated, that Respondent's failure to employ Clark and Harness after January 19 and 20, 1977, respectively, was motivated in large part by their protected efforts to enforce the union contract and their threats to go to the Union to that end. Respondent therefore violated Section 8(a)(3) and (1) as concerns both.

Alleged 8(a)(5) and (1) violation: Respondent plainly was intent upon a piecemeal escape from the union contract. Respondent first extracted the mechanics from coverage in March 1976 by shifting them from the AFCA payroll to that of TC and stopping their fringe benefit contributions. Then, Respondent quietly ignored the contractual mandate

¹³ It is concluded that Collins was a supervisor and otherwise an agent for Respondent at relevant times, based upon her primacy in Respondent's operation during Lantz' protracted absences and upon manifold other indicia of her inclusion in the management family.

of a July 1 general wage increase, after which Respondent stopped—beginning with hours worked in October 1976—to make fringe benefit contributions for its drivers. With this final step, the escape was complete; the contract had been repudiated in all notable respects and the bargaining relationship [was] no more.¹⁴

By repudiating the contract and, by implication, disavowing the bargaining relationship in this manner, Respondent violated Section 8(a)(5) and (1). E.g., *Cartwright Hardware Co., Inc.*, 229 NLRB 781 (1977); *Don Burgess Construction Corp.*, 227 NLRB 765 (1977).

CONCLUSIONS OF LAW

1. By telling his employees that he would go out of business or operate on a “gyppo” basis to avoid paying the wages and benefits set forth in his bargaining agreement with the Union, and that he would get rid of them in favor of “gypos” in response to their statements of intention to go to the Union to obtain the benefits of the bargaining agreement, all as found herein, Respondent in each instance violated Section 8(a)(1) of the Act.

2. By discontinuing the employment of Charles Clark and Larry Harness after January 19 and 20, 1977, respectively, because of their efforts to obtain Respondent’s compliance with the above bargaining agreement and because of their statements of intention to go to the Union for assistance in that regard, as found herein, Respondent in each instance violated Section 8(a)(3) and (1) of the Act.

3. By repudiating his bargaining agreement with the Union and, by implication, disavowing his bargaining relationship with the Union, as found herein, Respondent violated Section 8(a)(5) and (1) of the Act.

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

Upon the foregoing findings of fact, conclusions of law, and the entire record,¹⁵ and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹⁶

The Respondent, Douglas Lantz d/b/a Transportation Consultants, Alcan Forwarding Company, and/or AFCO, Anchorage, Alaska, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Telling his employees that he would go out of business or operate on a “gyppo” basis to avoid paying the wages and benefits set forth in his bargaining agreement with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 959, State of Alaska; and from telling his employees that he

would get rid of them in favor of “gypos” in response to their statements of intention to go to the Union to obtain the benefits of the bargaining agreement.

(b) Discontinuing the employment of, or otherwise discriminating against, employees because of their efforts to obtain Respondent’s compliance with the above bargaining agreement and their statements of intention to go to the Union for assistance in that regard.

(c) Violating the terms of the above bargaining agreement, signed January 7, 1976, by Gayle A. Yotter in the name of Alcan Forwarding Company and also binding on Transportation Consultants and AFCO as components of the same integrated enterprise.

(d) Refusing to bargain with the Union with respect to wages, hours, and other terms and conditions of employment of drivers and mechanics employed by him or any of his components.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of rights protected by Section 7 of the Act.

2. Take this affirmative action:

(a) Offer to Charles Clark and Larry Harness immediate and full reinstatement to their former jobs or, if their jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings and benefits they may have suffered because of the discrimination against them.¹⁷

(b) Upon request, recognize and bargain with the Union concerning the wages, hours, and other terms and conditions of employment of Respondent’s drivers and mechanics who are represented by the Union, constitute an appropriate bargaining unit under the Act, and are covered by the above bargaining agreement.

(c) On the Union’s request, give retroactive effect to the above bargaining agreement, making the drivers and mechanics covered by it whole for any wage losses they may have suffered from the agreement’s inception in January 1976, with interest at 7 percent per annum, and paying all contractually prescribed pension and health and welfare contributions on behalf of such employees which have become due since the agreement’s inception and are as yet unpaid.¹⁸

(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 the amount of backpay due under the terms of this recommended Order.

¹⁴ Although the deception underlying Respondent’s efforts to escape the Union would seem to moot the point (*Don Burgess Construction Corporation, supra*), it perhaps should be noted that this final step—the discontinuance of fringe benefit contributions for the drivers—occurred well within the 6-month limitation period of Sec. 10(b).

¹⁵ Errors in the transcript have been noted and corrected.

¹⁶ All outstanding motions inconsistent with this recommended Order hereby are denied. 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.

¹⁷ Backpay and interest thereon to be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

¹⁸ Because of the deception practiced by Respondent to extricate himself from the bargaining agreement, it is appropriate that the remedy not be confined to the 6-month limitation period of Sec. 10(b). “To find otherwise would allow Respondents to escape from providing a full remedy as a result of the successful concealment of [its] unlawful conduct.” *Don Burgess Construction Corporation, supra* at 7660.

(e) Post at his Fairbanks, Alaska, facilities copies of the attached notice marked "Appendix."¹⁹ Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by him for 60 consecutive days thereafter, in conspicuous

¹⁹ 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

places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."