

A-1 Fire Protection, Inc., and Corcoran Automatic Sprinklers, Inc. and Road Sprinkler Fitters Local 669, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. Case 7-CA-12659

October 18, 1977

DECISION AND ORDER

BY MEMBERS JENKINS, PENELLO, AND MURPHY

On December 28, 1976, Administrative Law Judge Phil W. Saunders issued the attached Decision in this proceeding. Thereafter, the Respondents filed exceptions and a supporting brief; the Charging Party filed cross-exceptions and a brief in support thereof and in answer to the Respondents' exceptions; and the General Counsel filed a brief in answer to the Respondents' 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,¹ and conclusions of the Administrative Law Judge to the extent consistent herewith.²

Contrary to the Administrative Law Judge, we find, for the reasons set forth below, that the Respondents did not violate Section 8(a)(5) of the Act by refusing to extend the terms of its collective-bargaining agreement with the Union to the employees of A-1 Fire Protection, Inc. (herein A-1), or by transferring work from Corcoran Automatic Sprinklers, Inc. (herein CAS), to A-1. According to the testimony of George Corcoran, in 1973 he separately incorporated CAS and A-1 with the intention of operating the former as a union company and the latter as a nonunion company. Since that date he has been both owner and president of both corporations. Corcoran admitted that both corporations were incorporated to perform sprinkler installation, operated from the same facilities, commonly used the same tools, trucks, equipment, and materials without reimbursement, and frequently interchanged employees.

¹ The Respondents and the Charging Party have 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'd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

² The Administrative Law Judge found, and we agree, that the

On August 2, 1973, before any employees were hired, Corcoran executed a collective-bargaining agreement between CAS and the Union for a unit of journeyman and apprentice sprinkler fitters. Corcoran admitted that he did not reveal the existence of A-1 at that time. When, in December 1973, Corcoran learned that the Union may have seen a postcard advertisement for A-1, he informed Business Agent Pantall that A-1 was bidding on jobs as a nonunion company. When Pantall told Corcoran that he could not do this, that it was part of the Union's work, and that A-1 would have to join the Union, Corcoran refused.

In January 1975, Corcoran informed Pantall that lack of business for CAS necessitated the layoff of its employees, but that A-1 had work which they could perform. Thereafter, Corcoran employed several CAS employees to work for A-1 and paid them union wages, but did not pay any benefits. Corcoran testified that although Pantall told him that he "didn't like the idea" the Union acquiesced in this procedure in order to avert the consequences of layoff of the CAS employees.

On May 1, 1975, Corcoran executed a second contract between CAS and the Union. The Union did not request that the A-1 employees be covered by that contract. The intent of the parties to limit this contract to CAS employees is not questioned. The Union, however, thereafter, began to monitor the operations of CAS and A-1. On November 11, 1975, the Union demanded that the A-1 sprinkler fitters be included with those of CAS as a single unit and that all such employees be covered by the May 1, 1975, contract. This request was denied by Corcoran.

The Administrative Law Judge found that since early 1975 George Corcoran operated A-1 with the purpose of ultimately dissolving CAS, based on the credited testimony of employees that Corcoran told them he planned to phase out CAS, on Corcoran's admission that much of the work now being done by A-1 is for former customers of CAS, on evidence that in 1976 CAS had reduced its acquisition of work assignments to only one new job, and on evidence that CAS had reduced its complement of sprinkler fitters from approximately 10 in 1975 to 2 in 1976, as opposed to an increase in A-1's complement from no sprinkler fitters in 1973 and 1974 to 7 by 1976. Accordingly, the Administrative Law Judge found

Respondents violated Sec. 8(a)(3) and (4) by discharging and/or refusing to hire employee Nunn. The Administrative Law Judge, although requiring the Respondents to make Nunn whole for any losses suffered by reason of the discrimination against him, failed to include an appropriate provision in his recommended Order requiring that the Respondents make an offer of employment to Nunn. In addition, the Administrative Law Judge inadvertently omitted broad cease-and-desist language from his recommended Order. We therefore shall include such provisions in our Order.

that by transferring work from CAS to A-1 the Respondents withdrew recognition from the Union in violation of Section 8(a)(5). In so doing, the Administrative Law Judge found no merit in the Respondents' argument that the Union had acquiesced in the "double-breasted" operation, concluding that, although Pantall may have agreed to a few tentative arrangements concerning A-1, the Union was unaware at the time of the May 1975 contract of the Respondents' intention to ultimately abolish the CAS unit and after the execution of the contract the Union monitored the CAS/A-1 operations and demanded recognition.

In support of his finding of an 8(a)(5) violation, the Administrative Law Judge properly found CAS and A-1 to be a single employer. But the Supreme Court recently held in *South Prairie Construction Co. v. Local No. 627, International Union of Operating Engineers, AFL-CIO*, 425 U.S. 800 (1976), that a finding that two affiliated companies constitute a single employer does not require that a collective-bargaining agreement with one of the companies be extended to the employees of the other and does not imply that the employees of each of the two companies do not comprise separate appropriate bargaining units. 425 U.S. at 805. In *South Prairie*, as here, one company had a union contract and the other company, to enable it to compete with nonunion contractors, did not.

The Board has recognized that in the construction industry a common owner may have one company to perform contracts under union conditions and another to operate under nonunion conditions and, even though they constitute a single employer, has refused to include the nonunion company employees in the same bargaining unit with those of the union company. *Central New Mexico Chapter, National Electrical Contractors Association, Inc., et al.*, 152 NLRB 1604 (1965). Very recently, in *Temple-Eastex, Incorporated, et al.*, 228 NLRB 203 (1977), the Board treated as appropriate a unit of employees in which the Union petitioned for and won an election although the unit did not include a group of employees of the same employer who performed the same work. And in *B & B Industries, Inc., and Fred Beachner, an Individual d/b/a Fred Beachner Construction Co.*, 162 NLRB 832 (1967), where two companies were found to be a single employer, performed identical types of construction work for the same class of customers in the same general area, shared office space and the services of clerical personnel, and maintained a common post office box, the Board held that the collective-bargaining agreement entered into by one company did not

cover the employees of the other because the evidence did not establish an intention of the parties to provide such coverage.

In the present case, it is clear from the facts previously set forth that the parties did not intend to include the employees of A-1 when the contract between Corcoran and the Union was entered into on May 1, 1975. The contract covered the same unit of CAS employees as that encompassed in the 1973 contract between the same parties and the parties thereby, at least inferentially, stipulated as to the appropriateness of the unit. Cf. *Temple-Eastex, Incorporated, supra*. The Union should not now be permitted to avoid the terms of the contract or the scope of the unit to which it voluntarily agreed by claiming an unfair labor practice in the Respondents' refusal to extend the CAS contract to A-1. There is no basis in the record for a finding that the Respondents would have agreed to a contract for a combined unit of CAS and A-1 employees and the Board, of course, cannot impose a contract to which the parties have not agreed.

Moreover, on November 11, 1975, when the Union demanded that the employees of A-1 and CAS be treated as a single unit and that the contract cover A-1 employees, as well as CAS employees, it does not appear that it attempted to show that it represented a majority of the employees of either A-1 or both Companies. In any event, since this was a different unit from that which the Respondents had voluntarily recognized, it was not even under a duty to grant recognition without an election.³ *Linden Lumber Division, Sumner & Co. v. N.L.R.B.*, 419 U.S. 301 (1974). The Respondents' refusal to extend the contract to A-1 employees, therefore, was not a violation of Section 8(a)(5). If the Union was dissatisfied with the scope of the existing unit and had majority support in a claimed unit of CAS and A-1 employees, the proper recourse upon the Respondents' refusal voluntarily to recognize the larger unit, if the existing contract did not interpose a bar, was to petition for an election.

We also disagree with the Administrative Law Judge's further finding that the Respondents violated Section 8(a)(5) by transferring work from CAS to A-1, thereby withdrawing and withholding recognition from the Union. There is evidence that since 1975 the work of CAS decreased and that of A-1 increased. There is no suggestion, however, that the CAS unit no longer exists as a viable bargaining unit. In evaluating any reduction in the size of the CAS unit, its history is quite pertinent. It must be remembered that CAS and A-1 were organized on the same day to handle union and nonunion business, respectively.

³ Since the employees of A-1 were in existence when the Union knowingly entered into a contract limited to CAS employees, no question of accretion is presented.

When CAS signed the first collective-bargaining agreement in 1973, it had no employees and sought out the Union. Its recognition of the Union was a completely voluntary act, unaccompanied by any organizing efforts of the Union, to serve the business purpose of qualifying for contracts which required union conditions. The organization and operation of the nonunion Company served the similar business purpose of allowing CAS to compete economically with nonunion bidders where the jobs permitted nonunion wages and working conditions. The Union was cognizant of and accepted this situation. We find, therefore, that the Administrative Law Judge erred in concluding that the Employer here is not free to employ one company or the other in whatever fashion may enable him to get the work.

Consequently, any increase in A-1's work and decrease in CAS's can hardly be attributed to any sinister purpose or unlawful motive on the part of the Respondents, but must be considered the result of changes in the demand for contracts to be performed under union conditions. There is no finding that union work was transferred from CAS to A-1 and such transfer seems most unlikely in view of A-1's inability to qualify to perform such work. The Administrative Law Judge's conclusion that the Respondents violated Section 8(a)(5) by transferring work from CAS to A-1 and thus withdrawing recognition from the Union is accordingly untenable. We therefore dismiss the 8(a)(5) allegations of the complaint.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, A-1 Fire Protection, Inc., and Corcoran Automatic Sprinklers, Inc., Clio, Michigan, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging and/or refusing to hire employees or otherwise discriminating against them in regard to hire or tenure of employment or any other term or condition of employment because said individuals have filed, or the Union has filed on behalf of said individuals, unfair labor practice charges.

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

2. Take the following affirmative action which will effectuate the purposes of the Act:

(a) Offer Michael Nunn immediate employment at the Alma College job or, if that job has been completed, substantially equivalent employment, and make him whole for any loss of earnings he may have

suffered by reason of the discrimination against him by payment of a sum equal to that which he would normally have earned from the date of the discrimination, January 19, 1976, to the date of Respondents' offer of employment. The backpay and interest thereon is to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).⁴

(b) 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 Order.

(c) Post at their place of business copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondents' representative, shall be posted by Respondents 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.

(d) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps the Respondents have taken to comply herewith.

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

⁵ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

WE WILL NOT discharge and/or refuse to hire employees or otherwise discriminate against them in regard to hire or tenure of employment or any other term or condition of employment because said individuals have filed, or the Union has filed on behalf of said individuals, unfair labor practice charges.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join or assist labor organizations, including the Union herein, to bargain collectively through

a representative agent chosen by our employees, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any such activities.

WE WILL offer Michael Nunn immediate employment at the Alma College job or, if that job has been completed, substantially equivalent employment, and make him whole for any loss of earnings he may have suffered as a result of the discrimination against him, with interest.

A-1 FIRE PROTECTION,
INC.

CORCORAN AUTOMATIC
SPRINKLERS, INC.

DECISION

STATEMENT OF THE CASE

PHIL W. SAUNDERS, Administrative Judge: Based on an original charge filed on January 13, 1976, by Road Sprinkler Fitters Local 669, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, herein the Charging Party or Union, an amended complaint against Corcoran Automatic Sprinklers, Inc., herein called Respondent Corcoran, and A-1 Fire Protection Inc., herein called A-1, and collectively called Respondents, was issued on May 18, 1976, alleging violations of Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act, as amended. Respondents filed an answer to the complaint denying it had engaged in the alleged unfair labor practices. A hearing in this proceeding was held before me, and the General Counsel, the Union, and Respondents filed briefs.

Upon the entire record in this case, and from my observation of the witnesses and their demeanor,¹ I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

At all times material herein Respondents have maintained their only office and place of business at 571 W. Vienna in Clio, Michigan. Respondents are engaged in the installation of fire sprinkler systems and related products. Respondents' office located at Clio, Michigan, is the only facility involved in this proceeding.

During the year ending December 31, 1975, which period is representative of their operations during all times material herein, Respondents, in the course and conduct of their business operations, sold and installed at their Clio, Michigan, place of business, and at various jobsites within the State of Michigan, fire sprinkler systems valued in

excess of \$100,000, of which systems valued in excess of \$50,000 were sold to and installed for enterprises, each of which had retail sales during said period in excess of \$500,000. During the same year Respondents also purchased and caused to be transported and delivered at their Clio place of business, and at various jobsites within the State of Michigan, sprinkler pipe, and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to their place of business in Clio and to other Michigan jobsites directly from points located outside the State of Michigan.

Respondents are 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(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

It is alleged in the complaint that Respondents Corcoran and A-1 constituted a single-integrated business enterprise, and that since April 1, 1975, Respondents have refused to recognize, bargain, or abide by its collective-bargaining agreement with the Union for work performed by A-1, which work was encompassed by the terms of the collective-bargaining contract executed between the Union and Respondent Corcoran. It is further alleged that since on or about January 1, 1975, Respondents, through biddings, subcontracting, and other practices, have shifted work covered, or which would have been covered by the collective-bargaining contract with Respondent Corcoran, which was considered a union company, to A-1, which was considered nonunionized, and by so doing, Respondents have attempted to operate their business so as to reduce the amount of work which was, or would have been covered by the above-mentioned collective-bargaining contract, and, instead, utilized A-1 to perform the work involved; and that Respondents undertook such practices for the purpose of reducing the amount of work performed by its employees under the bargaining agreement.

The complaint also alleges that on or about January 19, 1976, Respondents, by their agent George Corcoran, discharged and/or refused to hire Michael Nunn and another individual at Respondents' jobsite located at Alma College in Alma, Michigan, and have since that date failed and refused to reinstate and/or hire these individuals, and did so because such individuals were members of the Union.

George Corcoran had worked for a number of years in the sprinkler installation trade, but in 1973 decided to become an employer and in late July 1973 he incorporated two separate businesses, Respondents Corcoran and A-1. Both companies were incorporated for the same purpose and on the same day. George Corcoran testified that it was

¹ The facts found herein are based on the record as a whole upon my observation of the witnesses. The credibility resolutions herein have been derived from a review of the *entire testimonial record and exhibits* with due regard for the logic of probability, the *demeanor* of the witnesses, and the teaching of *N.L.R.B. v. Walton Manufacturing Co. et al.*, 369 U.S. 404, 408

(1962). As to those witnesses testifying in contradiction to the findings herein, their testimony had been discredited, either as having been in conflict with the testimony of credible witnesses or because it was in and of itself incredible and unworthy of belief. *All* testimony has been reviewed and weighed in the light of the *entire* record.

his intention to operate one company as a union company (Respondent Corcoran), and one as a nonunion company (A-1), and stated that A-1 would bid on those jobs where nonunion contractors were permitted, and where competition was among similar companies. George Corcoran thereupon contacted Roy Pantall, at this time the business agent for the Union, and indicated to Business Agent Pantall that he wished to enter into a contract with the Union for Respondent Corcoran, but admitted he did not reveal the existence of A-1 at this time. On August 2, 1973, a contract was entered into between Respondent Corcoran and the Union covering employees working in the Union's local jurisdiction in the maintenance and installation of fire protection systems.²

In advertising the services offered by A-1, postcards were sent to numerous potential customers around the State of Michigan. George Corcoran testified that in December 1973, he learned of the possibility that Business Agent Pantall may have seen these postcards, and as a result he then called Pantall and explained to him the existence of A-1 and the fact that A-1 was being operated as a nonunion company engaged in installation of sprinkler systems, and would continue as such as long as there were other nonunion companies (scabs) bidding on jobs in the area and being permitted to do so by the Union. Pantall then informed George Corcoran that he could not do this, that it was part of the Union's work, and that he (A-1) would have to join the Union. George Corcoran then told Pantall that he "was not joining the Union."

It appears that the first nonfamily sprinkler fitters were employed by Respondent Corcoran in late 1973, and thereafter the number of sprinkler fitters in the unit represented by the Union continued to grow through 1975 when approximately 10 fitters were employed by Respondent Corcoran.

In January 1974, George Corcoran and Pantall engaged in another conversation. On this occasion George Corcoran asked Pantall how Sparten Fire Protection Company, a nonunion sprinkler contractor in the area, could work on a union job with union employees, and he also wanted to find out from Pantall if he could do the same thing. Pantall then informed George Corcoran that as long as the employees belonged to the Union, and were paid out of a company which was a signatory to a contract with the Union, it would be all right. However, it appears from this record that A-1 did not hire any employees to engage in the maintenance and installation of fire protection systems until later, and since 1975 the number of sprinkler fitters employed by A-1 has increased steadily.

The next contact between the parties occurred in January 1975. At this time George Corcoran informed Pantall that the lack of business for Respondent Corcoran was putting him in a position of having to lay these employees off, but that he had work for A-1 and told Pantall he could put employees of Respondent Corcoran to work for A-1. According to George Corcoran, Pantall then indicated to him that while he didn't like this idea, it was

² The composition or makeup of the unit as set forth in the complaint is as follows: All journeymen and apprentice sprinkler fitter employees of Respondents employed at or out of their Clio offices, excluding office clerical employees, guards, and supervisors as defined in the Act, and all

still preferable to having more men placed on his layoff list. George Corcoran then employed several employees in this fashion and paid them union wage scale through A-1, but did not pay any benefits for them.

In January 1975, Pantall moved to a new position with the Union and, in late April 1975, Business Agent Michael Johnson took over this particular area for the Union. In or about the same period of time, May 1, 1975, George Corcoran also signed his *second* contract with the Union for Respondent Corcoran, but the Union did not request that A-1 be added or be covered by this contract.

Business Agent Johnson stated that when he took over his new duties for the Union, he and Pantall discussed problems within his jurisdiction and at which time Pantall informed him that George Corcoran had two companies, but that A-1 was only selling fire extinguishers and smoke detectors. However, Johnson gained further information about A-1 in late April or May 1975, when he talked to a nonunion contractor, Daniel Corcoran, no relation to George Corcoran, at a jobsite in Bay City. On this occasion Johnson wanted Daniel Corcoran to join the Union, but he replied that A-1 had "lots of jobs" and seemed to be doing all right operating nonunion — so why should he join the Union. Business Agent Johnson then answered by stating that "they were after A-1."

In the late summer or early fall of 1975, Gary Sears, a member of the Union, informed Business Agent Johnson at a union meeting that A-1 had more work than Respondent Corcoran, and it appeared to him that "something funny" was going on as A-1 was a nonunion company. Sears then mentioned the possibility of his employment with A-1, and Johnson told him to go ahead and to also find out where their work was located. Sears then contacted George Corcoran in September or October 1975, and applied for a job with A-1, but did so on the basis of a newspaper want-ad wherein A-1 had advertised for help. Shortly thereafter, Sears was hired and went to work for A-1. Sears admitted that upon commencing work for A-1, he then made it his business to keep his "eyes open for bits of evidence" that he had been told to look for, and that on a regular basis he also reported his observations back to Business Agent Johnson.³

At or about the same time the Union also commenced keeping a close watch on employees of Respondent Corcoran, who, of course, were union members, and this was done in regard to such employees working on jobs with nonunion people where they were employed by A-1, or where A-1 employees happened to be participating on a job. Moreover, internal union charges were also filed by Johnson and heard in this regard during October 1975, and which resulted in fines (later rescinded) to employees Francis Corcoran, the son of George Corcoran, and Peter Ostrander. On the occasion of the hearings, George Corcoran, in a side conversation with Business Agent Johnson and others present at the time, stated that he had 45 jobs for A-1, and in about a 6-month period there would be less men working for Respondent Corcoran.

other employees, and which constitute a unit appropriate for the purpose of collective bargaining within the meaning of Sec. 9(b) of the Act.

³ Additional aspects of Sears' testimony will be detailed later on.

By letter dated November 11, 1975, the Union demanded that A-1 be included with Respondent Corcoran as a single unit, and be covered by the current or second contract between the Union and Respondent Corcoran. By letter dated November 14, 1975, George Corcoran informed the Union that A-1 was not a part of Respondent Corcoran, and if the Union wanted any information about these companies to contact them separately.

Respondents contend that an examination of the pertinent testimony and the relevant document reveal it was not the intention of the Union nor George Corcoran, even though the Union had notice of the existence of A-1 and the work it was doing, for A-1 to be a party to, covered by, or included within the 1973 or 1975 labor agreement. It is also argued that during the negotiations of the *current* contract in April or May 1975, the Union made no attempt to make A-1 a party to this labor agreement, or to include A-1 employees within its coverage, and such demonstrates a clear intent to exclude A-1, and the Union should now be estopped from attempting to create indirectly a collective-bargaining agreement with A-1 when it never attempted to establish one directly. Respondents further maintain and argue that an 8(f) prehire contract cannot be used to establish a presumption of a continuous majority status as to Respondent Corcoran, let alone using it as the basis for demanding recognition from A-1 or extending Respondent Corcoran's contract to cover A-1, and that there has never been a showing that the Union represented a majority of the A-1 employees separately, or in a combined unit of A-1 and Respondent Corcoran employees, during any of the relevant periods. Further, that the demand for recognition of A-1 made on November 11, 1975, as aforesaid, did not specify any unit, nor did it designate what class of A-1 employees were to be put under Respondent Corcoran's contract, and that even a single-employer determination does not necessarily establish that an employerwide unit is appropriate.

I will turn first to the allegation that Respondent Corcoran and A-1 constitute a single-integrated business enterprise. The Board, in considering whether an alter ego or single-integrated enterprise relationship exists between two employers, has often considered the following factors: common control of labor relations, common supervision, common office, commingling of tools and equipment, whether the two employers were engaged in the same type of industry, whether the companies bid on the same work and the identity of the people or person who determined the amount of the bids, identity of the corporate officers of the two companies, and whether employees are shuttled between the two companies; and, of course, if the Board concludes that the companies are not being operated separately but are, instead, operated as a single-integrated enterprise, it will impose the bargaining obligation of the union employer on the nonunion employer.

In the instant case it is admitted that George Corcoran has always been the sole owner and the president of both companies, and since August 1974, has been the sole director of both corporations. Moreover, Respondents also admit that both corporations operate out of the same

facilities, that for all practical purposes the business nature and the operations of the two corporations are identical, that both corporations commonly use the same tools, trucks, equipment, and materials, and that employees were interchanged between the two companies with such regularity so as to cause one employee to quip that he had enough layoff slips from one company to the other "to paper his wall." Finally, George Corcoran even admitted that when A-1 uses the tools, equipment, and material of Respondent Corcoran, and vice versa, they do so without any reimbursement from one company to the other.

As further pointed out, both the management and the labor relations of the two supposedly different entities are handled by the same individual. George Corcoran makes all the management decisions for both corporations such as determining which jobs the corporations will bid on, what equipment will be purchased, and makes all decisions including determining whether the corporations will sign a collective-bargaining agreement. Moreover, the employees of the two corporations are commonly supervised by George Corcoran and by his construction supervisor or foreman, Darrel Ochs.

In summary, Respondent Corcoran and A-1 are commonly owned, commonly managed in all respects including labor relations decisions, have predominately the same arrangements for day-to-day operations and supervisors, and also have interchangeable equipment and work forces. I find that Respondent Corcoran and A-1 are a single employer for collective-bargaining purposes.

It is alleged, as aforesaid, that Respondents changed work arrangements so as to reduce the amount of work for the employees of Respondent Corcoran. The record in this case amply supports this allegation. As indicated, since early 1975 George Corcoran operated A-1 with the apparent purpose of ultimately dissolving Respondent Corcoran. Thus, in November 1975, George Corcoran, in reply to a question by Gary Sears regarding his employment security as a sprinkler fitter for A-1, stated that he generally only laid off union members but that nonunion employees of A-1 were never laid off. On this occasion George Corcoran also advised Sears that he would shortly phase out Respondent Corcoran and that A-1 would take over the sprinkler work. Similarly, at a hearing in the fall of 1975 involving internal union charges against his son, as aforesaid, George Corcoran told Business Agent Johnson and others present that in a 6-month period there would be less people working for Respondent Corcoran. Moreover, the General Counsel's exhibit also clearly indicates that the gross earnings of A-1 have continually increased.⁴ In 1976 Respondent Corcoran had just one job, and George Corcoran likewise conceded that much of the work now being done by A-1 is being done for customers like Kroeger stores and K-Mart, which were previously customers of Respondent Corcoran. Plainly, but for George Corcoran's attempts to rid himself of Respondent Corcoran and the Union, Respondent Corcoran would have performed this work. These arrangements, of course, had a serious and adverse impact on the work of the unit employees working for Respondent Corcoran and, in

⁴ See G.C. Exh. 2.

relation thereto, this record shows that while A-1 employed no sprinkler fitters until 1975, it now employs approximately 7 fitters, but just the opposite has occurred at Respondent Corcoran, who now employs only 2 sprinkler fitters while not so long ago it employed approximately 10. It follows from the foregoing that by so doing, and transferring work from Respondent Corcoran to A-1, Respondents withdrew and withheld recognition from the Union in violation of Section 8(a)(5) and (1) of the Act.

I am also in agreement that any contention to the effect that the sprinkler fitters of Respondent Corcoran and A-1 combined are not an appropriate unit is untenable. It is admitted that the operations of both corporations are identical, and further that the sprinkler fitters employed by these corporations do "exactly" the same work. Furthermore, as aforesaid, these employees work out of the same facility; use the same tools, equipment, and material; work under the same supervisors; have the same starting and quitting time; and are readily transferred from one company to the other. The above-related factors clearly demonstrate the appropriateness of a sprinkler fitter unit covering the employees of both Respondent Corcoran and A-1.

I turn briefly to the argument by Respondents that the 1973-75 agreement between the Union and Respondent Corcoran was an 8(f) prehire contract which cannot be used to show a continued majority status.⁵

First of all I will accept the Respondents' argument that the contracts here in question were prehire agreements under Section 8(f) of the Act. However, it is well recognized Board law that a prehire contract need not establish its majority status prior to the entering of such an agreement. *Bear Creek Construction Co.*, 135 NLRB 1285, 1286 (1962). Nor, when two or more entities constitute a single employer, and one of them is party to a valid prehire agreement, then the union's majority status need not be established among the employees of the other entity or entities, but all are bound by the contract's terms. *Oilfield Maintenance Co., Inc.*, 142 NLRB 1384, 1387 (1963). Thus, in the instant case, A-1 is bound by the contract between the Union and Respondent Corcoran, and in April or May 1975, there was no need for the Union to express a desire to negotiate any agreement with A-1, any more than there was a need to initially establish a majority status. Similarly, in *Williams Enterprises, Inc.*, 212 NLRB 880, 885 (1974), enfd. 519 F.2d 1401 (C.A. 4, 1975), the Board held that while 8(f) contracts may not carry an irrebuttable presumption of majority status in some circumstances, "the doctrine is applicable only to initial 8(f) agreements, and not to succeeding contracts." I find that the Union was the majority representative of the unit employees in both companies, and Respondents could not refuse to deal with it.

Respondents further contend and argue that the Union should now be estopped from attempting to create indirectly a contract with A-1 when it never attempted to establish one directly, and that the Union had previously

⁵ It is noted that the second contract in effect between the Union and Respondent Corcoran when the Union made its written demand for recognition was executed on May 1, 1975, and at this time there were some

agreed to all the unfair arrangements and practices. I reject this contention. Business Agent Pantall initially learned of the existence of A-1 as a nonunion company in December 1973, as aforesaid, and at this time and on this occasion Pantall specifically informed and advised George Corcoran that he could "not do it," that it was part of the Union's work, and that A-1 would have to be covered. In January 1975, Pantall and George Corcoran had another conversation relative to layoffs and employee transfers from Respondent Corcoran to A-1. While Pantall apparently agreed to the transfers in question because the Union already had too many people on layoff, he also, at the same time, let George Corcoran specifically know that "he didn't like the idea." Moreover, when Johnson took over in April 1975, he continued and intensified the Union's opposition to A-1, which eventually culminated in the activities of Sears, and later the November 1975 demand letter from the Union that A-1 be included with Respondent Corcoran as a single unit.

In the final analysis, even though Pantall may have temporarily concurred to a few tentative arrangements with George Corcoran as to his suggestions relating to A-1, nobody in the early periods involved herein, or at the time when the current contract was executed on May 1, 1975, was aware of Respondents' ultimate intent to literally abolish the work force and unit of Respondent Corcoran. As pointed out, even assuming that the Union knew that A-1 was engaging in some unit work prior to the execution of the current contract on May 1, 1975, it certainly, at this time, did not know that within a few months A-1 would take over virtually all of the work bid on and assigned previously to Respondent Corcoran.

In this case the Charging Party presents a strong closing argument by stating: "We are concerned [here] with the protection of historic bargaining unit jobs from complete abolition. Respondents were not content to operate both sides of their double-breasted entities simultaneously. Instead, as the record plainly shows they are now engaged to an overt effort to transfer all work to the nonunion corporation thereby causing the demise of the represented unit. Surely in these circumstances the contention that the Local somehow waived the employment rights of its members must be supported by evidence which is most clear and unmistakable. Of course, this evidence does not exist."

In early January 1976, George Corcoran was considering hiring men on a job for A-1 at Alma College and had contacted Michael Nunn, a member of the Union, in this regard. However, Nunn expressed some concern over working for a nonunion company, and wanted time to think it over. George Corcoran, in the meantime, had contacted Business Agent Johnson, and in the course of resolving a grievance which had been filed, suggested that maybe the parties could "make peace" if the job for A-1 at Alma College was subcontracted over to Respondent Corcoran, and then employing Mike Nunn, and another employee on the Alma project, as a union job. George Corcoran then contacted Nunn and told him he had

eight sprinkler fitters employed by Respondent Corcoran, and only one employed by A-1. (See Resp. Exhs. 8 and 9.)

decided to let the Alma job go union, and made arrangements with Nunn for him to go to work on this job. At this time he apparently also made arrangements with another one of his employees working for Respondent Corcoran to also work on the job at Alma.

At or about this time, on or about January 12 and 13, 1976, George Corcoran received in the mail a letter from the Union stating that they had filed charges against Respondents. George Corcoran testified that upon receiving this letter, with a copy of the charge attached, he then called Michael Nunn and told him not to report to work on the Alma job, that he would have to wait until he found out what was "going on," and that he did not want Nunn to get "caught up" between him and the Union. A few days later Nunn again inquired as to the status of the Alma job, and on this occasion George Corcoran told him that the only way Nunn could get on this job was to get permission from Business Agent Johnson, and that he would then pay him union wages and benefits. Nunn did not call back and did not work on the Alma job.

Respondents point out and argue that the reason George Corcoran advised Nunn to obtain authorization from the Union to work on the Alma project for A-1 was to avoid the problems experienced previously by his employees Peter Ostrander and Francis Corcoran, who had been severely fined by the Union. Respondents further maintain that the testimony shows that George Corcoran never withdrew his offers of employment on the Alma project, and that this record supports the conclusion that from the time George Corcoran first offered Mike Nunn the foreman position at the Alma project the offer to employ him continued, but that Nunn declined the work, apparently either not seeking or not obtaining union approval.

It appears to me that an extended discussion is not required to show that Respondents' refusal to employ Union Member Nunn constituted a violation of Section 8(a)(3) and (4) of the Act. George Corcoran offered Nunn employment at the Alma College project just prior to receiving the unfair labor practice charges herein, and admitted that upon receiving copies of the charge he then called Nunn and canceled his job offer. Moreover, all the parties stipulated at the hearing that Corcoran made the following statement in his affidavit given to the Board during its initial investigation:

After getting the charges I decided to do the job as A-1 and not subcontract it to Corcoran. I didn't feel there was any reason for me to show the Union a sign of good faith after they filed the charges against me.

Additionally, Gary Sears testified that in February 1976 he called George Corcoran to ask him if he had any work, and Corcoran then told Sears that

. . . he had already hired Mike Nunn to do a job at Alma College . . . but he just received the unfair labor practice charges from the Union and that if the Union wanted to play that game, that he didn't have to hire Union membership.

The only possible conclusion based on the above evidence is that George Corcoran took the Alma College

job away from Respondent Corcoran and from Union Member Nunn, and returned the job to A-1 in retaliation against the Union's filing of unfair labor practice charges against Respondents, and, accordingly, I so find.

The complaint in this case also alleges that Respondents refused to hire Nunn and "another individual" at the Alma College job. However, the exact name of this second individual was never specifically supplied, but the names of Bates, Braden, and Killinger have all been suggested. Moreover, it appears that whoever the other individual or employee was, he was already working for Respondent Corcoran and was simply retained or sent to another project, even though he was never actually sent to the Alma College job. The remedy provided herein will only be for discriminatee Nunn.

IV. THE REMEDY

Having found that Respondents have engaged in unfair labor practices in violation of Section 8(a)(1), (3), (4), and (5) of the Act, I shall recommend that they be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

To fully remedy the failure of Respondents to apply the terms of the agreement to the employees of A-1, I shall order that they do so, retroactive to November 11, 1975, the date of the Union's initial and definite notification and written demand that A-1 employees be included with Respondent Corcoran as a single unit. Further, Respondents shall be required to make the employees whole for any losses of pay they may have suffered by reason of Respondents' unlawful refusal to apply the terms of the current contract since the above date; and shall also, during the same period, make payments or contributions on behalf of such employees to the fringe benefit funds or plans as established in such agreement. Backpay shall be computed in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Further, I shall recommend that Michael Nunn be made whole for any loss of earnings he may have suffered as a result of the discrimination against him by payment of a sum equal to that which he would normally have earned from the date of the discrimination, January 19, 1976, to the date of Respondents' offer of employment with backpay and interest computed in accordance with the Board's established standards in *F. W. Woolworth Co.*, and *Isis Plumbing & Heating Co.*, *supra*. It will be further recommended that Respondents preserve and make available to the Board, upon request, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and useful to determine the amount of backpay and the rights to reinstatement or employment under the terms of these recommendations.

CONCLUSIONS OF LAW

1. Respondents Corcoran and A-1, Respondents herein, are joint employers.
2. Respondents are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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

4. At all times material herein, the Union has been the exclusive representative of the employees of both Respondent Corcoran and Respondent A-1 in the appropriate unit described herein and as set forth in the complaint.

5. By failing and refusing upon request to give effect, bargain, or extend the terms and conditions of the current contract to employees of A-1, Respondents have engaged

in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By discharging and/or refusing to hire Union Member Michael Nunn after receiving unfair labor practice charges, Respondents have violated Section 8(a)(3), (4), and (1) of the Act.

7. The aforesaid practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act. [Recommended Order omitted from publication.]