

The Walls and Ceiling Contractors Association affiliated with the Builders Association of Eastern Ohio and Western Pennsylvania, Inc. and Wood, Wire and Metal Lathers International Union, AFL-CIO, Local No. 28. Case 8-CA-10321

December 5, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND PENELLO

On July 26, 1977, Administrative Law Judge Morton D. Friedman issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.

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

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order, except that the remedy is modified so that interest is to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).²

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, The Walls and Ceiling Contractors Association affiliated with the Builders Association of Eastern Ohio and Western Pennsylvania, Inc., Vienna, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

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

² See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

DECISION

STATEMENT OF THE CASE

MORTON D. FRIEDMAN, Administrative Law Judge: This case was heard at Youngstown, Ohio, upon a complaint issued by the Regional Director for Region 8 on September 9, 1976, which complaint is based upon a charge filed on July 26, 1976, by Wood, Wire and Metal Lathers
233 NLRB No. 140

International Union, AFL-CIO, Local No. 28, herein called the Lathers or the Charging Party. The complaint alleges, in substance, that The Walls and Ceiling Contractors Association affiliated with the Builders Association of Eastern Ohio and Western Pennsylvania, Inc., herein called the Respondent, has violated and is violating Section 8(a)(5) and (1) of the Act by refusing to execute a written collective-bargaining agreement submitted by the Lathers, the terms of which agreement had been orally agreed to by the officers and agents of the Respondent who had also orally agreed to execute the said agreement when reduced to writing.

The Respondent's duly filed answer denies the commission of any unfair labor practices and alleges affirmatively that the Lathers has submitted to the Respondent a collective-bargaining agreement containing terms and conditions not agreed upon by the parties, and, also, in the alternative, denies that the parties reached an agreement upon all the terms and conditions as alleged in the complaint. Thus, the issues are drawn.

Upon full consideration of the contentions and arguments of the parties in their duly submitted posthearing briefs, and upon my observation of the witnesses as they testified, and the entire record in the case, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a nonprofit Ohio corporation with approximately 350 members, maintains its principal office in Vienna, Ohio, where, among other things, it is engaged on behalf of its members in collective-bargaining negotiations with the Lathers and other unions on matters pertaining to wages, hours, and other conditions of employment and in executing such collective-bargaining agreements reached for and on behalf of its members.

During the course of a typical year, the members of the Respondent, either individually or collectively, in the course of their respective business operations annually derive gross revenues in excess of \$50,000 for goods shipped out of, or services furnished directly outside of, the States in which such members are located (Ohio and Pennsylvania).

It is admitted, and I find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted, and I find, that the Lathers is a labor organization within the meaning of Section 2(5) of the Act. In connection therewith, it is admitted, and I find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen lathers and apprentice lathers, employed by employers who comprise The Walls and Ceiling Contractors Association affiliated with the Builders Association of Eastern Ohio and Western

Pennsylvania, Inc. excluding all professional employees, guards and supervisors as defined in the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Facts*

The Lathers and the Respondent have maintained a bargaining relationship for some years prior to the incidents herein. Their most recent collective-bargaining agreement executed and effective May 1, 1972, remained in full force and effect until May 1, 1975. Among other things, this collective-bargaining agreement recognized the Lathers as the collective-bargaining agent of the employees of the members of the Respondent in the unit above described.

Historically, the approximately 25 or 26 separate building and construction trade unions with which the Respondent negotiates have had contracts which expire, with but few exceptions, on April 30 of the contractual expiration year. In 1975, all but the Ironworkers contract, and perhaps some others not here involved, expired on April 30 and, on May 1 of that year, all of the trade unions not having a renewed contract went on strike. During this period of time, both before and after the expiration of the contracts and the ensuing strikes, the Respondent set about negotiating with the various unions. During the 1975 negotiations, the Lathers, among other positions, desired to establish an increase for its members' hourly rate because their rates had fallen behind that of the Carpenters.¹ Accordingly, the Lathers desired to catch up with the Carpenters and the Respondent's negotiators were willing to have them do so.

During the negotiations with the various unions, in the period following the expiration of the contracts on April 30, 1975, one of the first unions to come to agreement with the Respondent was the Carpenters whose representatives thought they had reached an agreement with the Respondent on July 3, 1975. The settlement with the Carpenters union included, among other matters not here material, a 65-cent-per-hour increase plus provisions for wage reopeners on the anniversary dates of May 1, 1976, and May 1, 1977. Included in this reopener provision was a so-called "Me too" clause, which was proposed by the Respondent's negotiators, which would guarantee to the Carpenters increases on those dates equal to increases the Respondent had settled with other trade unions. This so-called "Me too" clause and the wording thereof and its implications are important inasmuch as they basically constitute the issues in the current case inasmuch as the Lathers business representative and their other negotiators claim that they were promised and they agreed to accept the same "Me too" clause offered to the Carpenters. However, as will hereinafter be related, the "Me too" clause of the Carpenters has never resulted in a written agreement with the Carpenters by reason of the fact that sometime subsequent to July 3, 1975, the Carpenters ultimately entered into a joint contract with the Respondent along with other building trade unions for which the Building

Trades Council negotiated. The Carpenters accepted and became part of the group for which the Building Trades Council negotiated and became parties to that later agreed upon collective-bargaining agreement with the Respondent.

The initial meeting toward a new contract between the Respondent and the Lathers took place on March 24, 1975. A number of bargaining sessions ensued. The Respondent's bargaining team was headed by Laird Smith, the Respondent's wage chairman for the Lathers and Plasterers, who also sits on the Carpenters negotiating team for the Respondent, and who also is a member of the Respondent's wage policy committee. Smith was assisted by John Logue, a staff representative for labor relations of the Respondent whose duty, among other things, was to keep and maintain notes and minutes of the negotiations. Negotiating for the Lathers were James Cessna, business agent, and, among others, Mark Thompson, a member of the Lathers negotiating committee.

At the sixth meeting between these individuals on August 14, 1975, Laird Smith proposed to Cessna, Thompson, and the Lathers' negotiating committee that the Union would receive an increase of 65 cents an hour plus, on December 1, 1975, the difference between that 65 cents and the average of the settlements negotiated by the Respondent with the Bricklayers, Cement Masons, Plasterers and Roofers. Additionally, Smith, for the first time, offered a "Me too" clause to the Lathers. The minutes, kept by Logue, of that August 14 meeting state "Effective May 1, 1976 the Lathers would receive equal to the best settlement made by the Builders Association. A provision as agreed to with the Carpenters that provides for no strike. The money to be received retroactive to May 1, 1976, the same to apply on May 1, 1977. Management stated that they would want the Union to vote on this and report the results of the vote on Tuesday, August 19."

After this offer was made to the Lathers, the latter held a caucus and returned to the meeting with a counterproposal which offered 90 cents to be received by the Lathers to return to work, the average of the Bricklayers, Cement Masons, Plasterers and Roofers, and any difference to be made up the month following any settlement made with those unions, and on May 1, 1976, a provision for wage increases like the Carpenters (probably referring to the Carpenters "Me too" clause). Additionally, if management would accept, the committee would recommend it for a vote. The representatives of the Respondent refused to accept the Lathers 90-cent proposal and asked that the Lathers representatives have their members take a vote on Respondent's 65 cents and the proposed "Me too" clause, as related above.

Thereafter, at a meeting of its 20 or so members, the Lathers voted down the Respondent's proposal.

The next meeting between the Respondent's negotiating team headed by Smith, and the Lathers negotiating team headed by Cessna, took place on September 4, 1975, at the Respondent's headquarters in Vienna, Ohio. After some discussion of what had occurred earlier, and after the

they perform, in some respects, is quite similar and there have been disputes over the years as to which of the two unions should be assigned certain work.

¹ I take notice of the many jurisdictional dispute matters which have come before the Board and various other agencies for the settlement of such disputes between the Carpenters and the Lathers because the work which

Respondent's negotiator, Smith, reminded the Lathers that many of its jobs had been changed because of the increased use of drywall by reason of the strike, he felt that the 65-cent offer was a good one. Cessna reminded Smith, however, that the Roofers was settling for \$1.05 and that the Bricklayers had gone up to a 90-cent-increase over their previous wage rate. Thereafter a caucus was requested. Following the same, Smith proposed a 75-cent increase for the Lathers to return to work and, following settlement of the Roofers, Cement Masons, and Bricklayers contracts, that those settlements be averaged and the Lathers receives the difference between the 75 cents and that average 30 days following such settlements. It should be noted that the "Me too" clause proposal was not particularly discussed at that meeting, but there is no disagreement that the parties intended to include the same also in Respondent's offer.

After a caucus by the Lathers, the parties agreed to a 78-cent increase immediately for the Lathers to return to work, and then the averaging of the Bricklayers, Roofers and Cement Masons contracts, as set forth above, 30 days following the settlements with those other unions. The Lathers agreed to take the proposal back to its members. On September 5, the Lathers members voted to ratify the contract and as a result thereof returned to work on September 8, as their business agent, Cessna, and the members felt that there was complete agreement on both the present wage structure and future increments pursuant to the "Me too" clause.

The Lathers having returned to work, on November 6, 1975, the Respondent submitted to Lathers business agent, Cessna, galley sheets of the proposed agreed-upon contract between the parties which had been reached on September 4. However, this written document did not provide for any future wage provisions or, most important, the "Me too" clause, providing only for the agreed-upon increase of 78 cents for 1975 which had been reached on September 4. Upon receipt of these galley sheets, Cessna called Logue, who had been a conegotiator with Smith on behalf of the Respondent during the Lathers negotiations. When the omission was called to Logue's attention, he informed Cessna that there was a dispute between the Respondent and the Carpenters negotiating committee with regard to the "Me too" clause. Logue informed Cessna that, when the Carpenters "Me too" clause dispute was resolved, the Respondent and the Lathers would draw up the same agreement. Thus the matter remained unresolved at that time. Cessna again called Logue at the end of January 1976. In this later conversation, Cessna stated that he wanted an agreement signed incorporating all of the wage proposals including the "Me too" clause. At this time Logue informed Cessna that as far as Logue was concerned the agreement reached in September was a legitimate agreement.²

However, no final resolution of the matter ensued and no further documents were passed between the parties or discussed between them until April 19, 1976, when, at the request of the Lathers, the Respondent and the Lathers met to discuss, once again, the terms of the new proposed agreement.

At that lengthy meeting, the parties reviewed the entire preceding negotiations and, at the meeting, the Respondent's representatives informed the Lathers representatives that during the intervening period the Respondent had reached an agreement with the Building Trades Council and that a number of resulting agreements had been reached or were subject to ratification by the various building trades locals, among them the Carpenters. Cessna and the other representatives of the Lathers informed the Respondent's representatives that the Lathers were completely unaware that any agreements had been reached and, in any event, the Building Trades Council was not authorized to negotiate on behalf of the Lathers. Cessna further stated that any agreement reached between the Respondent and the Building Trades Council was in no way binding upon the Lathers.

After a caucus, the Lathers representatives informed the Respondent's representatives that the Lathers was taking the position that the proposed "Me too" clause, as the Lathers understood it, and which the Lathers insisted had been proposed and agreed upon by the Respondent, would entitle the Lathers to receive an increase equal to the highest increase given to any union by the Respondent or its members at any time during the year 1976 rather than by a cutoff date of May 1, 1976, the date which the Respondent insisted was the last date upon which any raise to the Lathers of its hourly rate could be fixed in accordance with Respondent's August 4, 1975, proposal and that any raises to the Ironworkers, who was seeking a catchup increase after that date, would not be applicable to the Lathers under the proposed "Me too" clause. The meeting then broke up without any agreement being reached, but the parties agreed to a further meeting to be held sometime around May 1, 1976, to further discuss the contract.

The next meeting was held on May 4, 1976. Again, the same matters were discussed. The Respondent's representatives informed the Lathers representatives that the agreement reached with the Building Trades Council had been voted on and accepted by the Carpenters and all the other trades with the exception of the Structural Ironworkers. Again it was explained by the Respondent that the Ironworkers strike was not settled because it was over the amount of the catchup adjustment to which the Ironworkers insisted they were entitled and which the other trades recognized as legitimate. In addition, the Respondent's representative read a letter received from the Carpenters District Council notifying the Respondent that the Carpenters had accepted the Building Trades Council contract. Additionally, a letter received from the Building Trades Council was read and it was noted by Respondent's representatives that the Lathers was not specifically excluded in that letter from the Building Trades Council's negotiations with the Respondent. The Respondent's representatives asserted the position that the Lathers was included in the Building Trades Council's negotiations because the Lathers did not specifically notify anyone in either the Building Trades Council or the Respondent that the Council was not negotiating for the Lathers even

² All of the foregoing narrative is based upon credited portions of the testimony of Smith, Logue, Cessna, and union negotiating committee member Mark Thompson, conflicts of testimony having been resolved.

though Lathers was a member of the Council. The matter was evidently argued back and forth, with the Lathers insisting that the Building Trades Council was not authorized to negotiate on its behalf, nor was Lathers aware of the Building Trades Council's negotiating situation.

After a caucus, the Lathers representatives stated that they would take the entire matter back to the members and would like to meet with the Respondent *after* the Respondent settled with the Ironworkers, indicating thereby that they were maintaining their position that they should receive an hourly increase during 1976 equal to whatever increase in hourly rate the Ironworkers received pursuant to what the Lathers insisted was the negotiated and agreed-upon "Me too" clause.

During this period in 1976, the Lathers had advised its attorney with regard to the content of the wage rate increase proposal and the "Me too" clause, which had been voted on and accepted by the Lathers membership after the meeting of September 4, 1975. Accordingly, pursuant to instructions of the Lathers, its counsel on June 14, 1976, forwarded, with an enclosing letter, a copy of the agreement containing the Lathers version of the "Me too" clause. This agreement, which was, in reality, an addendum to the galley sheet copy of the agreement which had earlier been furnished by the Respondent, contained, among other things, a "Me too" clause as follows:

It is agreed that the economic increase to be implemented on May 1, 1976 and May 1, 1977 will be the highest economic settlement obtained by any building trades craft union negotiated in 1976 with the Builders Association of Eastern Ohio and Western Pennsylvania. It is further agreed that the increase implemented will be retroactive to May 1, 1976, should the settlement be reached within 90 days of such date. If an agreement is not reached within such period, the negotiated economic increase will be implemented retroactively for 90 days only.

On July 22, 1976, the Respondent, through its counsel, informed Lathers counsel that the addendum prepared by Lathers counsel did not reflect precisely the terms which the parties had agreed upon. Respondent's counsel attached to his letter to Lathers counsel the Respondent's interpretation of the "Me too" clause, the pertinent part which reads as follows:

It is agreed that the economic increase to be implemented on May 1, 1976 and May 1, 1977 will be the highest economic settlement to become effective on May 1, 1976 for the contract year starting May 1, 1976 and to become effective on May 1, 1977 for the contract year starting May 1, 1977 obtained by any building trades craft union with the Builders Association of Eastern Ohio and Western Pennsylvania. It is further agreed that the increase implemented will be retroactive to May 1, 1976, should a settlement be reached within 90 days of such date. If an agreement is not reached within such period, the negotiated economic increase will be implemented retroactively for 90 days only.

In connection with all of the foregoing, at the hearing herein, James Moore, executive secretary of the Carpenters District Council, testified as to that Council's negotiations with regard to the "Me too" clause which was originally negotiated between the Carpenters District Council and the Respondent, although with a different set of Respondent's negotiators. Moore identified what had been drafted by the Carpenters District Council as the negotiated "Me too" clause, which draft had been submitted to, and rejected by, the Respondent before the Respondent reached agreement with the Building Trades Council, which latter agreement the Carpenters District Council ultimately executed and dropped its originally negotiated "Me too" clause. The draft of the "Me too" clause of the Carpenters District Council, which was received in evidence, is strikingly similar to the "Me too" clause insisted upon by the Lathers as having been negotiated by the Respondent's representatives and agreed to by the parties at the Lathers and Respondent's negotiating meeting of September 4, 1975. The Carpenters "Me too" clause was identical in many respects to the "Me too" clause submitted by the Lathers counsel to the Respondent in June 1976. This "Me too" clause which was rejected by the Respondent but which Moore testified was originally agreed to between the Carpenters negotiators and the Respondent's negotiators reads as follows:

May 1, 1976. It is understood by the parties (union and management) that the Builders Association of Eastern Ohio and Western Pennsylvania will direct its members and all employers who subsequent to July 9, 1975, becomes signatory to the collective-bargaining agreement, to pay to the Carpenters, Flooring Mechanics, Millwrights, and Piledrivers, as a wage increase in an amount equal to the highest hourly increase paid in 1976 to the Bricklayers, Cement Finishers, Plasterers, Glaziers, Laborers, Latherers, Marble, Tile and Terrazzo Workers, and Structural Ironworkers.

1977 to 1978 wage increase. May 1, 1977. The same provisions will apply in this period as applied in 1976 except that the Operating Engineers and Painters will be added to the list of crafts upon whom the increases will be calculated, to be effective on May 1, 1977.

It should be noted that in the foregoing "Me too" provision, as submitted by the Carpenters District Council, and signed by its representatives, there is no cutoff date for applicable wage rate increases. The similarity to the "Me too" provision, which the Lathers contend they agreed to with the Respondent, is thus established.

B. *Contentions, Discussion, and Conclusions*

Essentially, the issue is what was actually offered and accepted with regard to the wage rate increases for 1976 and 1977 as contained in the "Me too" clause or provision negotiated by the parties on August 24 and September 4, 1976. The General Counsel and the Lathers maintain that the economic increase to be implemented on May 1, 1976, and May 1, 1977, would be the highest economic settlement contained in any building trades craft union

contract arrived at any time during 1976 and 1977 with the Respondent. The Respondent, on the other hand, maintains that the economic increase to be implemented on May 1, 1976, and May 1, 1977, would be the highest economic settlement to become effective on May 1, 1976, for the contract year starting May 1, 1976, and to become effective May 1, 1977, for the contract year starting May 1, 1977, obtained by any building trades craft union with the Respondent. Although a quick reading of the foregoing would seem to indicate that there is, in fact, little difference between the two contentions of what was negotiated and agreed upon by the parties on September 4, 1975, the impact of the slight differences in wording are very significant, the General Counsel and Lathers version fixing the Lathers wage rate increase by tying it to the Ironworkers increase which came or would come subsequent to May 1, 1976. This, on top of the other increases to the Lathers, would give its members a significantly greater hourly wage rate increase than any of the other building trades unions with which the Respondent negotiates.

On the other hand, the version of the "Me too" clause the Respondent maintains to be the true version of what actually was negotiated by the Respondent and Lathers would provide, as a cutoff date in 1976, the date of May 1, and the same day for cutoff in 1977. This would equalize the wage rate increases for the Lathers with the other building trades unions and, therefore, would give the other building trades unions no reason to feel that the very small 20-member Lathers Union had been given and was being given preferential treatment which exceeded that given to the other unions. The thrust of the Respondent's argument, in this respect, would be that it could easily destroy the credibility of the Respondent as an organization for dealing with all of the building and construction trades unions on a fair and equitable basis.

Of course, as is the usual case, each party contends that the witnesses of the opposing party should not be credited and that what was offered by the Respondent on August 24 and agreed to on September 4 was each party's particular version, that its witnesses gave an exact account of what occurred and, accordingly, what was the actual "Me too" clause agreed upon. Thus, at the outset, there is presented a credibility issue which must be resolved.

At first blush, considering my observation of both Cessna, chief witness for the General Counsel, and Smith, chief witness for the Respondent, there would be little to choose from because their direct testimony, for the most part, is straightforward and lacking in contradiction. Additionally, both of these individuals comported themselves on the witness stand in a manner which did not readily lend an impression that either of them was telling less than what they thought to be the truth of the matter. Both counsel for the General Counsel and counsel for the Respondent, in their respective briefs, point out that on cross-examination, with regard to certain aspects of the negotiations and most especially the areas connected with the "Me too" clause, the answers of each seemed somewhat vague, hesitant, and, perhaps, unknowledgeable. However, a careful reading of the cross-examination of both of these individuals, although revealing some slight lack of definitiveness in answers to certain questions, does not provide a

means for disposing of the general question of which was testifying the more accurately with regard to the matters in question. Therefore, it becomes necessary to balance their testimony on the basis of the supportive testimony of other witnesses and on the basis of what would seem to be the more logical reasons for crediting one version over the other.

Regarding the Respondent's contention that the Respondent had legitimate cause to believe that the Building Trades Council was negotiating on behalf of the Lathers, heretofore not mentioned is the testimony of Calvin Malone, chairman of the Building Trades Council Committee, who participated in the negotiations on behalf of the Building Trades Council in the joint negotiations with the Respondent. Malone credibly testified on direct examination that all of the member unions of the Building Trades Council received notices of the negotiating sessions and that the Ironworkers did affirmatively declare itself not to be a party to those negotiations. Although Malone admitted he did not attend all of the negotiating meetings which resulted in the contract reached between the Respondent and the Building Trades Council through the coalition bargaining, he testified that he never saw a representative of the Lathers at any of those bargaining sessions, nor did he remember ever receiving any notification, one way or the other, from the Lathers as to whether the Lathers did or did not intend to be bound by the Building Trades Council's negotiations with the Respondent. However, Malone further admitted, on cross-examination, that he never made contact with the Lathers to inquire if that union was going to be bound by the Building Trades Council's negotiation with the Respondent. Nor could he testify whether anyone else from the Building Trades Council inquired of the Lathers whether that Union intended to be bound by such negotiations. Accordingly, I cannot find that the Lathers expressed to anyone during the 1975-76 negotiations that it would be bound by, or that the Lathers had any direct knowledge of, the details of that series of negotiations.

Therefore, I credit the testimony of Cessna to the effect that the Lathers neither had knowledge of the negotiations between the Building Trades Council and the Respondent nor that the Lathers had given the Building Trades Council authority to negotiate on its behalf. Accordingly, I find and conclude, on the basis of the foregoing, that Respondent's contention that Lathers is bound by the terms of the Building Trades Council contract is without merit.

The Respondent further maintains, as heretofore mentioned, that each of the parties to the negotiations between the Lathers and the Respondent came away from the August 24 and September 4, 1975, meetings with a different idea as to what the import of the proposed "Me too" clause offered by the Respondent actually was. Therefore, according to the Respondent, there could not have been a meeting of the minds. This being so, continues the Respondent, there was no contract verbally agreed upon and, accordingly, the Respondent cannot be held to have bargained in bad faith when it refused to execute Lathers version of the "Me too" clause submitted by Lathers counsel. This contention would seem to hold water if, indeed, the testimony of both Smith and Cessna were to be

completely credited, because the direct result of such crediting would be that, in fact, there had been no meeting of the minds inasmuch as both parties came away from the negotiations believing, sincerely, that the particular version of the "Me too" clause which each now advances was the version that was negotiated. Supporting this theory, also, is the argument of the Respondent which would seem to be that, of all the unions with which it dealt, the Lathers was the smallest and its economic impact would be very slight compared to that of the larger unions. Therefore, the Respondent would not logically have offered to the Lathers, by way of a "Me too" clause, greater economic benefits than the Respondent offered to any of the large, more powerful unions. Otherwise put, this contention would seem to have weight in that to give a small union consisting of only 20 members a better economic package than any of the other 26 unions with which the Respondent negotiates and contracts would, in effect, destroy the credibility of the Respondent as an association for dealing with these other unions.

However, despite the appeal to logic of the foregoing argument, there is one factor upon which the entire legitimacy of the Lathers claim turns and which, I conclude, effectively negates the Respondent's foregoing contention. Aside from all the other extensive testimony and written documents introduced in evidence, there remains the uncontroverted testimony of James Moore, executive secretary of the Carpenters District Council, to the effect that the "Me too" provision offered by the Respondent to the Carpenters in July 1975 was, with no material variation, the same as the version which Cessna and Thompson testified was offered by the Respondent to the Lathers on August 24 and September 4, 1975. The written memorandum of agreement submitted by the Carpenters to the Respondent, pursuant to the verbal agreement arrived at between the Carpenters and the Respondent, and signed by the Carpenters officials, contains, almost word for word, the "Me too" provision advanced by the Lathers through its counsel. The purport of both these documents, the one identified by Moore, and the one drafted and submitted by Lathers counsel, was that each of these unions was offered by the Respondent for the year beginning May 1, 1976, the best wage rate increase offered any union during that year. Neither of these documents indicates that there was a May 1 cutoff date, as contended by the Respondent which would, in effect, prevent either of these unions from receiving a wage rate increase equal to any wage rate increase given to any union, and most especially the Ironworkers, after May 1, 1976, or May 1, 1977, depending upon which contract year was involved.

While the record does not show in any detail the number of members of the various locals comprising the Carpenters District Council, the membership of that group must certainly have been far in excess of the membership of the Lathers Local, the Charging Party herein. Accordingly, it must be concluded that the Carpenters exercised a much greater economic force than did the Lathers. This being so, the Respondent's implied argument, that it would never

have offered a comparatively weak, small union a better economic package than it did the other unions, would seem to be without merit because, upon the basis of the written documents submitted in evidence, the Respondent did, indeed, agree to give a strong union the same economic package it offered the Lathers.

I find and conclude, therefore, that there was, indeed, an offer made by the Respondent on August 24, 1975, a "Me too" provision exactly in the form submitted by Lathers counsel to the Respondent. I, therefore, credit Cessna in all respects with regard to his testimony as to what occurred at the August 24, 1975, negotiating session and further find and conclude that, for whatever reason the Respondent may have had, it refused to sign the written version of what it had already advanced, offered, and agreed to with regard to the "Me too" provision. It can only be conjectured as to the Respondent's reasons for later renegeing on what it had already agreed upon. This, however, is what I find did occur.

Also, in support of the foregoing finding is the fact that the minutes kept by the Respondent's own representative, Logue, with regard to the August 14 meeting, although not as definite in language with regard to the "Me too" offer as was contained in the Carpenters written submission or the Lathers written submission, significantly, did not contain any language supporting the Respondent's contention that there was to be a May 1 cutoff date for the years 1976 and 1977. It is very possible, therefore, that, having offered both the Carpenters and the Lathers a "Me too" clause containing similar language, and later realizing that the opening of the Ironworkers contract might increase the amount to be realized by the Carpenters and the Lathers would be greater than anything being offered to any of the other unions with which it dealt, the Respondent then felt that its negotiators had gone too far and decided, therefore, to attempt to withdraw that upon which it had already agreed. The economic necessity for such attempted withdrawal is understandable.

Accordingly, I find and conclude that the Respondent, by refusing to execute the collective-bargaining agreement upon the terms to which it had orally agreed on September 4, 1975, has failed and refused to bargain in good faith with the Lathers and has thereby violated Section 8(a)(5) and (1) of the Act.

Moreover, this conclusion would remain unchanged even assuming that the Respondent here, through its negotiators, both with the Carpenters and the Lathers, may not have used words in their respective offers to those two labor organizations which expressed their intended offer. What may have been the Respondent's real or unexpressed intention is immaterial.³

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III above, occurring in connection with the operation of the Respondent herein, described in section I, above, have a close, intimate, and substantial relationship to trade,

³ See *Local Unions Nos. 938, 978, 1082, 1119, 1182, etc. of the International Brotherhood of Electrical Workers, AFL-CIO (Appalachian Power Company)*, 200 NLRB 850, 850-852 (1972).

traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

It having been found that the Respondent herein has violated the Act, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent and Local Union No. 28 of the Lathers reached agreement on all provisions of a contract, including the so-called "Me too" clause on September 4, 1975, and that the said contract was ratified by the members of the aforesaid Lathers Local on September 5, 1975, it shall be recommended that the Respondent be ordered to execute, sign, and give effect to all the terms and conditions of said contract.

It shall further be recommended that the Respondent make whole the employees of the Respondent's members, in the unit found appropriate herein, for any loss of benefits they may have suffered from September 5, 1975, by reason of Respondent's failure to give effect to the said contract, to the date of compliance with the Order as recommended herein. All moneys to be paid to such member-employees shall be computed on a quarterly basis in the manner described by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and bear interest at the rate of 6 percent per annum in accordance with the decision of the Board in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the basis of the foregoing findings of fact and the entire record in this case, I make the following:

CONCLUSIONS OF LAW

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

2. Lathers Local No. 28 is a labor organization within the meaning of Section 2(5) of the Act.

3. The unit appropriate for the purposes of collective bargaining is:

All journeymen lathers and apprentice lathers, employed by employers who comprise The Walls and Ceiling Contractors Association affiliated with the Builders Association of Eastern Ohio and Western Pennsylvania, Inc., excluding all professional employees, guards and supervisors as defined in the Act.

4. By refusing to execute, sign, and give effect to the contract agreed by the parties on September 4, 1975, and ratified by the members of the aforesaid Local on September 5, 1975, Respondent violated Section 8(a)(5) and (1) of the Act.

⁴ 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.

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

On the basis of the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby issue the following recommended:

ORDER⁴

The Respondent, The Walls and Ceiling Contractors Association affiliated with the Builders Association of Eastern Ohio and Western Pennsylvania, Inc., Vienna, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to execute, sign, and give effect to the contract agreed upon by the parties on September 4, 1975.

(b) Refusing to bargain in good faith with Wood, Wire and Metal Lathers International Union, AFL-CIO, Local No. 28, as the exclusive collective-bargaining agent of its employees in the unit found appropriate herein.

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

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

(a) Upon request, bargain collectively in good faith with the aforesaid labor organization as the exclusive collective-bargaining representative of its employees in the unit found appropriate herein.

(b) Execute, sign, and maintain in effect all the terms and conditions of the contract agreed upon between the parties on September 4, 1975.

(c) Make whole the employees in the unit found appropriate herein for any loss of benefits they may have suffered by reason of the Respondent's failure to give effect to the terms and conditions of the said agreed-upon collective-bargaining agreement, such restitution to be paid to the aforesaid employees in the manner set forth in the section of this Decision entitled "The Remedy."

(d) Post at its place of business at Vienna, Ohio, copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material. In connection therewith, copies of the said notice are to be posted by the member-employers of the Respondent who hire unit members in their respective places of business for a like period of time and in the same manner.

⁵ In the event that the Board's 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."

(e) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

and Western Pennsylvania, Inc., excluding all professional employees, guards and supervisors as defined in the Act.

APPENDIX

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

WE WILL sign and maintain in effect all the terms and conditions of a contract agreed upon between the said Local No. 28 and us on September 4, 1975.

WE WILL reimburse our employee-members for any loss of benefits they may have suffered because we failed to sign and execute and give effect to such contract on or after September 4, 1975.

WE WILL NOT refuse to bargain upon request with Wood, Wire and Metal Lathers International Union, AFL-CIO, Local No. 28, as the exclusive bargaining representative of our employees in the unit described as follows:

THE WALLS AND CEILING
CONTRACTORS ASSOCIATION
AFFILIATED WITH THE
BUILDERS ASSOCIATION OF
EASTERN OHIO AND
WESTERN PENNSYLVANIA,
INC.

All journeymen lathers and apprentice lathers, employed by employers who comprise The Walls and Ceiling Contractors Association affiliated with the Builders Association of Eastern Ohio