Kindred Healthcare, Inc. d/b/a/ Mountain Valley Care and Rehabilitation Center *and* United Steelworkers of America, AFL–CIO, CLC. Case 19–CA–29390

January 23, 2006

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

DECISION AND ORDER

On March 23, 2005, Administrative Law Judge Clifford H. Anderson issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified and set forth in full below.[1]

The judge found that the Respondent violated Section 8(a)(5) of the Act by withdrawing recognition from the certified union, by repudiating the collective-bargaining agreement and refusing to bargain for a successor agreement, and by unlawfully failing to remit union dues pursuant to valid dues-checkoff authorizations. For the reasons discussed below, we agree with the judge.

Facts

The essentially uncontested facts in this case are more fully detailed in the judge's decision. The longstanding history of collective bargaining for this unit of employees began in 1979, when the Charging Party, the United Steelworkers of America, AFL–CIO, CLC, was certified as the collective-bargaining representative. Ownership of the healthcare facility where the unit employees are employed has changed a few times since the original certification.

The Respondent took over the facility sometime between February 2001 and 2002 and assumed the existing collective-bargaining agreement covering unit employees.[2] In 2002, the parties entered into a successor agreement, effective through February 2005. The predecessor contract identified the union as "United Steelworkers of America on behalf of its Local 9052." The successor contract identified the union as "United Steelworkers of America on behalf of its Local 5089-04."

Under the International Union's constitution, the International is the contracting party on all contracts. The constitution requires that all dues be remitted to the International Union. The constitution further states that no individual or entity has the authority "to represent, act for, commit, or bind the International Union in any matters" unless it has obtained written express authority from the International Union.

The constitution empowers the International Union to create local unions and to transfer jurisdiction for bargaining units among these local unions. When the International Union is certified as a bargaining representative it assigns the bargaining unit members to one of two types of local unions: either a newly chartered local established for the specific bargaining unit or an amalgamated local in which the bargaining unit is given a designated unit number. Bargaining units commonly are referenced by their local and, where applicable, individual unit number.

The International Union commonly delegates certain representative functions for the bargaining units it represents to the assigned local union.[3] In this case, the local union does not have staff, so International Union staff representatives primarily handled contract negotiations and higher step contract grievances. International officers and staff also signed all bargaining unit contracts. Correspondence exchanged with the Respondent regarding the bargaining unit occurred through International Union representatives.

The events giving rise to the unfair labor practices here began in April 2004.[4] For reasons explained in the judge's decision, the International Union on April 1 sent a letter to the Respondent advising simply that "the members of USWA Local Union 5089 Unit 04 have become members of USWA Local Union 5114 Unit 06." The letter directed the Respondent to continue forwarding monthly dues checks, payable to the International, to the International Union offices, and requested the Respondent to send a duplicate copy of the "Summary of Union Dues" form to the financial secretary of Local Union 5114.

The Respondent replied by letter dated July 8, addressed to the International Union. Asserting that the International Union's April 1 letter constituted notice that "Local 5089 Unit 04, which represented various employees at our Mountain Valley Care and Rehabilitation Center in Kellogg, Idaho, was transferring its representa-

[1] We shall substitute the Board's standard language for certain portions of the judge's recommended Order. We also shall substitute a new notice in accordance with our decision in *Ishikawa Gasket America, Inc.,* 337 NLRB 175 (2001), enfd. 354 F.3d 534 (6th Cir. 2004).

[2] The exact date that the Respondent took over the facility is not identified.

[3] The International Union sends a portion of the dues it receives to the applicable local for this purpose.

[4] All dates hereafter refer to 2004, unless otherwise noted.

tional authority to USWA Local 5114 Unit 06," the Respondent stated that it was "prohibited by federal law from recognizing Local 5114 and therefore decline to do so." The Respondent additionally advised that "we accept Local 5089's disclaimer of interest in continuing to represent our Mountain Valley employees."

The very next day, the Respondent sent an internal memo to all unit employees reiterating the above and further announcing that the unit employees "are no longer represented by any union"; that the union contract "no longer applies to your employment"; and that the Respondent intended to stop deducting union dues and "will refund any dues that we withheld and did not send to the union."

Since then, the Respondent has continued to refuse all requests to recognize the International Union, to bargain with it regarding a successor agreement, and to withhold or remit union dues.

Discussion

As the judge found, the only issue here is whether the certified International Union gave up its right to represent the bargaining unit. The judge concluded that the International remained the bargaining representative.

The record amply supports this conclusion. The International Union's governing constitution mandates that it serve as the bargaining representative for all units, and that was the case here. Throughout the history of the bargaining unit, the International Union remained involved in the representation process; it was an active participant in contract negotiations; and its officers and representatives signed all contracts.

The Respondent concedes these facts, but argues that at some time before it took over the facility, the International Union ceded its authority as bargaining representative to its local union.[5] Thereafter, the Respondent argues, the International Union was simply a servicing agent for the locals.[6] The Respondent bases this contention on certain language in the various collective-bargaining agreements and other documents, conduct of the unions' agents, and correspondence exchanged during the course of the 25-year bargaining history. We find no merit to this contention.

The Board consistently has held, with court approval, that the "party seeking to avoid an otherwise binding bargaining obligation by asserting the change in the bargaining representative . . . bears the burden of demonstrating that change." *Minn-Dak Farmers Cooperative,* 311 NLRB 942, 945 (1993), enfd. 32 F.3d 390 (8th Cir. 1994), quoting *H. B. Design & Mfg.,* 299 NLRB 73, 73–74 (1990). Accord: *Sullivan Bros. Printers,* 317 NLRB 561, 562 (1995), affd. 99 F.3d 1217 (1st Cir. 1996); *CPS Chemical Co.,* 324 NLRB 1018, 1018 fn. 7 (1997), enfd. 160 F.3d 150 (3d Cir. 1998). This effectuates "industrial stability sought by the Act [that] would unnecessarily be disrupted if every union organizational adjustment were to result in displacement of the employer-bargaining representative relationship." *NLRB v. Financial Institution Employees Local 1182 (Seattle-First National Bank),* 475 U.S. 192, 202–203 (1986), quoting *Canton Sign Co.,* 174 NLRB 906, 909 (1969), enf. denied on other grounds 457 F.2d 832 (6th Cir. 1972). Further, where, as here, the asserted change in the bargaining representative has resulted from an asserted disclaimer of interest in representing employees, the party asserting the disclaimer has the burden of showing that it was "clear and unequivocal". *Nevada Security Innovations, Ltd.*, 341 NLRB 953 (2004); *VFL Technology Corp*., 332 NLRB 1443 (2000).

The Respondent failed to carry its evidentiary burden. It relies on circumstantial evidence that is, at best, ambiguous and open to contrary interpretation. For example, the Respondent argues that by signing contracts with the designation "on behalf of" the local union and by referring to the union in various correspondences as "United Steelworkers of America, Local ___" the International Union acknowledged that it was no longer the bargaining representative. As the judge observed, however, local union numbers (or subunit numbers in the case of amalgamated locals) are specific to designated bargaining units and it was common practice to refer to the bargaining unit by shorthand reference to the applicable local union number. We recognize that the language "United Steelworkers of America on behalf of its Local 5089-04" suggests that the local is the representative and that the International acts on its behalf. However, we think that this inadvertent use of technical language does not rebut the clear historical fact that the International was and is the certified representative. Cf. *Vermont Marble Co.,* 301 NLRB 103, 103 fn. 1 (1991) (although language of International's constitution "would be consistent with [a] finding that the International and the local unions were joint representatives of the Re-

[5] The Respondent concedes that if the International Union remains the bargaining agent, the change in the local union designation was permissible. Given that we find that the International Union remains the bargaining agent, it is unnecessary for the Board to pass on whether changes in the identity of the local raised issues under Board precedent concerning union mergers and transfers of affiliation. See, e.g., *Tawas Industries*, 336 NLRB 318 (2001).

[6] International Union representatives, the only two witnesses in the case, testified without contradiction that the International Union never transferred representation or disclaimed interest in the unit. The Respondent dismisses this testimony as irrelevant because, in its view, any transfer likely occurred before these representatives took on any responsibilities for the unit. Since we find that the Respondent failed to meet its burden to establish a transfer it is not necessary to address this issue.

spondents' employees, it is equally consistent with the judge's finding that the locals here function, in effect, as the International's agents and not as representatives in their own right").

The Respondent also cannot justify its conduct by claiming that it was uncertain or unaware that the International Union was the real bargaining representative. In the 3 years since it took over the facility, the Respondent communicated regularly with the International Union regarding the unit. The collective-bargaining agreement that the Respondent entered into was negotiated with and signed by International Union representatives. Any uncertainty the Respondent may have had either before or after it received the International Union's April 1 letter stating that unit employees had become "members of USWA Local Union 5114 Unit 06" could have been resolved simply by asking the International Union about its intentions or by filing an RM petition. That the Respondent not only failed to make any such inquiries but also immediately followed up on its July 8 withdrawal of recognition by sending a memorandum to unit employees unilaterally proclaiming that they were no longer represented "by any union," suggests that it was not interested in the facts but only looking to avail itself of a perceived opportunity to be rid of the union.[7]

Accordingly, we affirm the judge's conclusion that the International Union remained the bargaining representative and that the Respondent unlawfully withdrew recognition, repudiated the contract, failed to withhold or to remit union dues, and refused to negotiate and bargain with the International Union for a successor contract.[8]

ORDER

The National Labor Relations Board orders that the Respondent, Kindred Healthcare, Inc. d/b/a/ Mountain Valley Care and Rehabilitation Center, Kellogg, Idaho, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition and thereafter failing and refusing to recognize the United Steelworkers of America, AFL–CIO, CLC (the International) as the exclusive bargaining representative of employees in the bargaining unit.

(b) Repudiating the 2002–2005 collective-bargaining agreement and thereafter refusing to meet and bargain with the International regarding a successor agreement.

(c) Unlawfully failing to withhold and to remit to the International dues withheld from employees' pay pursuant to valid dues-checkoff authorizations.

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

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

(a) On request, bargain with the International as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All employees of the Mountain Valley Care and Rehabilitation Center, excluding all guards and supervisors as defined in the National Labor Relations Act, as amended, and all Registered Nurses, Licensed Registered Nurses, the Activity Director, Business Office Clericals, the Administrator, the Director of Nursing and Dietary Supervisor, as defined by the National Labor Relations Act.

(b) Make the International whole for any loss of dues suffered as a result of the failure to comply with the dues provision of the collective-bargaining agreement, plus interest,[9] as provided in the remedy section of the judge's decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Kellogg, Idaho facility copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained

[7] In withdrawing recognition, the Respondent has never claimed that the International Union has lost majority support or that it had any uncertainty in this regard. Rather, as indicated earlier, the only question was whether the International voluntarily ceded its representative status. The issue raised in *Levitz Furniture Co*., 333 NLRB 717 (2001), accordingly is not present here.

[8] Given our conclusion, we find it unnecessary to rely on the judge's statements concerning what may have been the ordinary practice in other bargaining units or the ability of the union representatives to understand the legal implications of their conduct.

[9] Interest shall be computed in the manner prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

[10] If 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."

for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 7, 2004.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to recognize or bargain with the United Steelworkers of America, AFL–CIO, CLC as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT repudiate the 2002–2005 collective-bargaining agreement and will not refuse to meet and bargain with the International regarding a successor agreement.

WE WILL NOT unlawfully fail to remit to the United Steelworkers of America, AFL–CIO, CLC dues that we withheld or should have withheld from employees' pay pursuant to dues-checkoff authorizations.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

> All employees of the Mountain Valley Care and Rehabilitation Center, excluding all guards and supervisors as defined in the National Labor Relations Act, as amended, and all Registered Nurses, Licensed Registered Nurses, the Activity Director, Business Office Clericals, the Administrator, the Director of Nursing and Dietary Supervisor, as defined by the National Labor Relations Act.

WE WILL make whole the United Steelworkers of America, AFL–CIO, CLC for any loss of dues suffered as a result of our failure to comply with the dues provisions of the collective-bargaining agreement, plus interest.

KINDRED HEALTHCARE, INC. D/B/A/ MOUNTAIN VALLEY CARE AND REHABILITATION CENTER

Jo Anne P. Howlett, Esq., for the General Counsel.
Henry F. Telfeian, Esq., Labor Relations Counsel, Kindred Healthcare, Inc., of San Francisco, California, for the Respondent.
Steven Powers, Staff Representative, District 11, United Steelworkers of America, AFL-CIO, CLC, of Spokane, Washington, for the Charging Party.

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard the above-captioned case in trial in Spokane, Washington, on March 15, 2005, pursuant to a complaint and notice of hearing issued by the Regional Director for Region 19 of the National Labor Relations Board (the Board) on January 20, 2005, and amended on March 1, 2005, based on a charge filed by the United Steelworkers of America (the Charging Party or the Union or the International) against Kindred Healthcare, Inc. d/b/a Mountain Valley Care and Rehabilitation Center (the Respondent) on August 30, 2004, and docketed as Case 19–CA–29390. The Respondent filed a timely answer and amended answer to the complaint.

The amended complaint alleges that the Respondent had at all times material recognized the Union as the representative of certain of its employees at its Kellogg, Idaho facility, and entered into and honored a collective-bargaining agreement with the Union covering those employees which was effective by its terms from March 1, 2002, through February 1, 2005. The complaint further alleges that on or about July 8, 2004, the Respondent withdrew its recognition of the Union as the exclusive representative of its employees and, on or about July 8, 2004, repudiated the contract by abolishing the grievance procedure, ceasing to collect dues from the unit employees and ceasing to remit dues collecting from unit employees retroactive to April 1, 2004, thereby violating Section 8(a)(5) and (1) of the National Labor Relations Act (the Act).

The amended answer, as further amended at the hearing, denies that the Union was the representative of its employees or that the Respondent and the Union entered into a collective-bargaining agreement covering unit employees. Rather, the Respondent affirmatively asserts, its employees were represented by and it has a collective-bargaining agreement with an entity that disclaimed interest in employees in early July 2004, which disclaimer of interest was accepted by the Respondent on or about July 8, 2004. The amended answer denies that this conduct or its refusal to recognize any other entity as the representative of its employees violated the Act.

FINDINGS OF FACT[1]

Upon the entire record herein, including helpful trial briefs and oral argument from the Respondent and the General Counsel, I make the following

I. JURISDICTION

The Respondent is a State of Delaware corporation, with an office and place of business in Kellogg, Idaho, where it is engaged in the business of operating an assisted living facility and rehabilitation center (the facility). The Respondent during the 12 months preceding the issuance of the complaint, a representative period, in the course and conduct of its business operations, had gross sales of goods and services valued in excess of $250,000 and purchased and caused to be transferred and delivered to its facilities within the State of Idaho, goods and materials valued in excess of $5000 directly from sources outside the State.

Based on the above, there is no dispute and I find the Respondent is and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The record establishes, there is no dispute, and I find the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background[2]

1. The Respondent

The Respondent is a national healthcare services company operating healthcare facilities across the United States including an assisted living center in Kellogg, Idaho, the only facility at issue herein (the facility). The identity of and actions by specific agents of the Respondent at the facility are not at issue. The Respondent's labor counsel was at relevant times, Henry F. Telfeian, an experienced labor lawyer.

2. The Union

The Union is an International labor organization that represents employees in various occupations across the country and in Canada. Consistent with its international constitution at all relevant times, it is organized into a national office, and subordinate district offices and local unions. Currently there are 12 district offices. District 11, the district office involved herein, includes the States of Alaska, Washington, Oregon, Idaho, Montana, Wyoming, North Dakota, and South Dakota. The facility involved herein, located in Kellogg, Idaho, is within District 11.[3] The current International staff representative in District 11 assigned to the unit herein is Steven Powers. His predecessor in the same position was Lavern Melton.

By the express terms of its International constitution, representational rights reside exclusively with the International and not with districts or locals. The constitution expressly states that the International is the contracting party in all collective-bargaining agreements and limits the authority of its agents at the district and local levels to deviate from International control and approval of representational matters.

The International under its constitution establishes local unions and reserves the right at the International level to create, dissolve and transfer locals or parts of particular locals' jurisdiction to other locals. Thus, the represented members of particular bargaining units may have their local and district affiliations transferred by the International as it deems appropriate. Organizational control over districts and locals reside exclusively with the International. locals are explicitly prohibited from acting contrary to the International's determinations or without its approval. Thus, for example, no Local may be dissolved except with the approval of the International.

Apparently, based on the unchallenged testimony of Powers and Melton, two types of locals exist. Stand alone locals are comprised exclusively of union members who are employed in a single, represented bargaining unit. Such locals at least currently bear a simple four-digit number, for example, Local 9052. The other type of local is a multiunit or amalgamated local comprised of union members employed in more than one bargaining unit. The amalgamated locals undertake certain administrative tasks as a multiunit body, but the separate unit-member compliments preserve separate organizational structure with the local. Thus, for example, as will be discussed infra, at one time the unit members of the facility herein were members of Local 5089, but more specifically were members of Local 5089(4) also referred to as Local 5089-4, the "04" designation identifying the bargaining unit involved. The individual sub-designated units, such as Local 5089-04, are themselves referred to as locals in their own right.

The membership of a local, either the standing alone locals covering one unit or the one unit suborganizational unit "0X" designated organization, within amalgamated Locals, is limited

[1] The parties waived the filing of posthearing briefs and argued the case orally. As a result of the pleadings and the stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

The parties at trial requested a bench decision. I ruled that the substantial amount of documentary evidence rendered such a decision inappropriate.

[2] Much of the background recited herein is based on archival documents from the business records of the Union. The sole testimony at the hearing was from the present and former staff representatives of District 11 of the Charging Party, Messrs. Powers and Melton.

[3] Early on, in the 1970s, 1980s, and into the early 1990s, the facility was located within District 36, which through reorganization became in relevant part, District 11.

to union members employed in a particular represented bargaining unit associated with that local. Conversely, a union member working in a represented bargaining unit may only be a member of the local assigned by International to that bargaining unit.

Under the International's constitution, the International creates bargaining agencies at and delegates certain representative functions to the assigned district and local, to assist the International in representing each bargaining unit. The districts, at least District 11 in the instant case, provide assistance and expertise as well as resources. The International constitution asserts at article XVII, section 3:

> The International Union and the Local Union to which the member belongs shall have the right to exclusivity in presenting, maintaining, negotiating, adjusting and settling any grievance or other matter relating to a member's wages, hours and conditions of employment.

The constitution expressly limits such devolved authority however. Thus, for example, section 5 or article XVII states:

> No Local Union or other subordinate body, and no officer, agent, representative, or other member thereof shall have the power or authority to represent, act for, commit, or bind the International Union in any matter except upon express authority having been granted thereof by the Constitution of in writing by the International President of the Internal Executive Board.

As will be discussed in part infra, since World War II, membership in the Union's represented units has declined and the number of represented units has also declined forcing various reorganizations consolidating districts and requiring dissolution and consolidation of local unions. The community of Kellogg, Idaho, had, for many years, area mines which employed substantial numbers of employees in units represented by the union. Those mines fell on hard times and closures occurred, forcing changes in the locals in the area. Thus, in February 2001 the Sunshine Mine closed and subsequently shut down. The great bulk of Local 5089 members who were in a Sunshine Mine bargaining unit lost employment and, with the passage of time, lost the right to remain members of the local or hold leadership positions.

Relevant to the matters in controversy herein, the International created Local 9052, a stand alone local, soon after the initial 1979 certification of representative. Consistent with the International constitution, the Local was created for and limited to the member employees employed in that bargaining unit.

In February 2000, the International dissolved or canceled stand alone Local 9052 and transferred or merged the unit employed union members into amalgamated Local 5089 with their own unit specific designation, Local 5089-04. The then employer was notified of this fact by letter of March 6, 2000, from Leo. W. Gerard, the International secretary-treasurer, which stated, in part: "This is to inform you that the members of USWA Local Union 9052 have become members of USWA Local Union 5089-04." There is no evidence that that employer's agents took any action in response other than note the new designation and new addresses involved.

With the subsequent diminution in Local 5089 membership, Steve Powers, District 11 staff representative, by letter of March 11, 2004, recommended to the International that Local Union 5089 and its three represented units be merged into Local 5114 and asserted that the "memberships from 5089-04 and 5114 have agreed to the merger." Accepting the recommendation, the International transferred Local 5089-04 members into Local 5114 as unit 06, thus, Local 5114-06. The International secretary-treasurer notified the Respondent by letter, dated April 1, 2004, which stated in part: "This is to inform you that the members of USWA Local Union 5089 Unit 04 have become members of USWA Local Union 5114 Unit 06." There is no evidence, beyond the written correspondence between the parties in evidence and discussed below, that any exchanges of any kind occurred between agents of any of the parties, including the various locals involved, until after the Respondent withdrew recognition of the unit in July.

As noted elsewhere in this decision, the record of events is essentially a paper record. The District 11 agents provided background evidence rather than detailed testimony respecting the earlier events. There is no evidence or contention that there was unit member dissent or rump, surviving or dissident local unit members associated with canceled locals resisting the reorganizations involved herein. There is no evidence or contention that there were dissident members making representational demands on the bargaining units' employers, including the Respondent regarding the events. The finally the local transfers described were consistent with the essentially plenary power of the International regarding such matters.

The record also does not contain, and the Government and the Charging Party do not contend, that the local reorganizations were conducted in a manner which, under Board law, would establish representational continuity sufficient to hold that if on local were the exclusive representative of unit employees, the representational rights were properly transferred to other locals in the transfers described above.

3. The bargaining unit involved

From the time of the original 1979 certification to the present, the unit description of the bargaining unit involved herein, with the exception over time of changes in the facility's name, has remained the same. Thus, the collective-bargaining unit of represented employees the Respondent has recognized as appropriate is the same unit recognized by its predecessor employers (the unit and unit employees):

> All employees of the Mountain Valley Care and Rehabilitation Center, excluding all guards and supervisors as defined in the National Labor Relations Act, as amended, Registered Nurses, Confidential Employees, Business Office Clericals, Administrator, the Director of Nursing, and the Dietary Supervisor.

No dispute of any kind was evidenced respecting the unit description, the sentiments of unit members or of actions taken by unit members at any time.

B. Events

Even though a presentation of events respecting the unit involves some duplication from the discussion above, a chrono-

logical recitation is helpful to understanding the issue in dispute.

1. Initial bargaining with Hillhaven Corporation d/b/a The Shoshone Living Center

Resolution of the disputes in the instant case requires consideration of a bargaining history at the facility and bargaining unit in question going back to a Board certification of representative on February 28, 1979. On that date, the Regional Director for Region 19 of the National Labor Relations Board, following an election conducted in Case 19–RC–9520, certified the Union as the exclusive representative of employees in the following unit (the unit):

> All employees of the Shoshone Living Center, excluding all guards and supervisors as defined in the National Labor Relations Act, as amended, Registered Nurses, Confidential Employees, Business Office Clericals, Administrator, the Director of Nursing, and the Dietary Supervisor.

The facility involved, located at 601 West Cameron, Kellogg, Idaho, was at this time known as the Shoshone Living Center, but experienced name and ownership changes over time. The facility and the bargaining unit described above, are the sole facility and the sole bargaining unit involved herein.

Archival documentation of the early contracts covering the unit is not necessarily complete. The first contract, placed into evidence is General Counsel's Exhibit 2, a collective-bargaining agreement and attached "Letter of Understanding" which by their terms were entered into on March 1, 1983, and expired on March 1, 1986. The agreement recites that it is between the "United Steelworkers of America on behalf of its Local No. 9052" and the then employer, Shoshone Living Center. The two columns of lines for signatures on the contract signature page are labeled the Hillhaven Corporation d/b/a Shoshone Living Center and United Steelworkers of America Local 9052. The signatures in the column labeled United Steelworkers of America Local 9052 include International officers as well as subordinate organization agents among its nine signatures. The attached letter of understanding dealing with certain employees has a signature line for "USWA Staff Representative."

A second collective-bargaining agreement, identical in form and relevant content and involving the same parties, is in evidence as General Counsel Exhibit 3. It is effective by its terms from March 1, 1986, through March 1, 1989. The copy in evidence does not bear signatures. Similarly a third and a fourth agreement, General Counsel's Exhibits 4 and 5, extend from March 1989 through February 29, 1992, and March 1, 1992, through February 28, 1995. The third is signed by, among others, Powers. The fourth bears a different identification of the labor organization signatories as: "United Steel Workers of America On Behalf of its Local 9052." Again the labor organization signatories include International officers.

2. Bargaining with Hillhaven Corporation d/b/a Mountain Valley Care & Rehabilitation Center

The fifth collective-bargaining agreement, in evidence as General Counsel's Exhibit 6, while identical in language to the earlier described contracts regarding the name of the Union and the unit description, refers to the 601 West Cameron, Kellogg facility for the first time as the Mountain Valley Care and Rehabilitation Center and the signature page identifies the employer as the Hillhaven Corporation d/b/a Mountain Valley Care and Rehabilitation Center. The labor organization signature line was identical to the contract immediately preceding. International officers are among the signatories including the president and vice presidents as well as District 11 agents including the District 11 director. The contract was in effect by its terms from April 11, 1995, through February 28, 1998.

3. Bargaining with Vencor[4] d/b/a Mountain Valley Care and Rehabilitation Center

Vencor apparently took over the facility in or about late spring 1997. It assumed the existing contract and in due course entered into negotiations for a replacement to the April 11, 1995, through February 28, 1998 contract. Lavern Melton of District 11 was involved in those negotiations. The contract reached was extended by its terms from March 1, 1998, through February 28, 2001. That agreement identified the contracting union as the "United Steelworkers of America on behalf of its Local 9052" and the recognition clause recognized that entity as the exclusive representative of unit employees. The copy in evidence is unsigned, however, the union signature lines are labeled identically as the United Steelworkers of America on behalf of its Local 9052.

In early 2000, Vencor was notified of the cancellation of Local 9052 and the creation of Local 5089-04 as described in greater detail supra. There is no evidence respecting this process save the documents involved. The contract by its terms was extended for an additional year, to February 28, 2002, when no party sought bargaining.

4. Bargaining with the Respondent

The Respondent apparently took over the facility during the extended year of the Vencor March 1, 1998 contract, i.e., during the period February 2001 through February 2002. There is no evidence respecting the specifics of the initial recognition by the Respondent of the labor organization that represented its unit employees, but there is no dispute that recognition was afforded and, following an interim extension of the Vencor contract, a replacement contract was negotiated.

That contract, in evidence as General Counsel's Exhibit 9, extends by its terms from March 1, 2002, through February 28, 2005. The contract identifies the contracting and representing labor organization as the "United Steel Workers of America On behalf of its Local 5089-04." The signatory page identification of the labor organization and the recognition clause of the contract have the same reference. The eight individuals signing on behalf of the labor organization under the date of October 2, 2002, include the following signatories identified under their signatures on the document as holding the offices indicated: the International president, the International secretary-treasurer,

[4] The employer is identified in the initial records as First Healthcare Corporation d/b/a Mountain Valley Care & Rehabilitation, but was also part of the Vencor healthcare network. The 1998 contract designates the employer's title as Vencor Nursing Centers West d/b/a Mountain Valley Care and Rehabilitation Center.

the International vice presidents of administration and human affairs, the District 11 director, the District 11 staff representative, Steve Powers, and two negotiating committee members.

5. Events subsequent to the entrance into the March 1, 2002 contract

The record does not contain any evidence of dealings between the Respondent and the Union after the entrance into the March 1, 2002 contract until the Union's letter of April 1, 2004, in which the International Secretary-Treasurer James English informed the Respondent "that the members of USWA Local Union 5089 Unit 04 have become USWA Union 5414 Unit 06." The Respondent, through Counsel Telfeian, responded to the International's Secretary-Treasurer English by letter of July 8, 2004, with the following text:

> We are in receipt of your letter of April 1, 2004 in which you advise that USWA Local 5089 Unit 04, which represented various employees at our Mountain Valley Care and Rehabilitation Center in Kellogg, Idaho, was transferring its representational authority to USWA Local 5114 Unit 06. Because we lack objective evidence that a majority of our Mountain Valley employees wish representation by Local 5114, we are prohibited by federal law from recognizing Local 5114 and therefore decline to do so. Consequently we accept Local 5089's disclaimer of interest in continuing to represent our Mountain Valley employees. Should you have any questions, please feel to contact me.

The following day, July 9, 2004, the Respondent's executive director sent a memo to all unit employees. The memo stated:

> To: All USWA Local 5089 Represented Employees
>
> From: Maryruth Butler, Executive Director
>
> In April I received notification from the United Steelworkers of America (USWA) stating that USWA Local 5089 Unit 04, which was your collective bargaining representative, was transferring its representational authority to USWA Local 5114 Unit 06.
>
> Federal law prohibits us from recognizing or dealing with a union that has not been chosen by a majority of our employees. We have not been provided with any evidence that a majority of you wish to re represented by USWA Local 5114.
>
> As a result we have told the USWA that we will not recognize Local 5114 as your bargaining representative. We have also told the USWA that because Local 5089 no longer wants to represent you, we are accepting Local 5089's decision to give up its bargaining rights.
>
> What does this mean for you?
>
> - You are no longer represented by any union.
> - The contract that USWA Local 5089 negotiated no longer applies to your employment.
> - . . . .
> - We will stop deducting union dues from the paychecks of employees who authorized us to do so. We will refund any dues that we withheld and did not send to the union.
> - Kindred is committed to providing all of its employees with a quality work environment,. The union's decision to give up its bargaining rights will have no major impact on your working environment.
>
> Should you have any specific questions regarding how this change [sic], please let me know.

The Union by District 11 Staff Representative Powers responded to Counsel Telfeian's letter by letter of August 2, 2004, which contains the following text:

> I am in receipt of your letter to International Secretary Treasurer James English in which you claim you are federally prohibited from recognizing Local 5114 as the bargaining representative for the employees of Mountain Valley Care and Rehabilitation Center.
>
> By this letter I am reminding the employer we have a Collective Bargaining Agreement in full force and effect until February 28, 2005. There was no similar objection from the employer when USWA Local 9052 was merged with USWA Local 5089 and had the employer objected the union would have viewed this as a repudiation of the Collective Bargaining Agreement just as we do in this case.
>
> If I do not receive a letter from you by August 15, 2004 stating that the employer will continue to abide by the Current Collective Bargaining Agreement and recognize Local 5114 along with the International Union as the administrator of that agreement, I'll be filing various charges with the NLRB on the employer's illegal action.

The Union filed the instant charge on August 30, 2004.

On November 22, 2004, the Union, through Powers on District 11 letterhead, sent a letter to Counsel Telfeian requesting to meet with the Respondent to negotiate a successor agreement to the expiring contract. The Respondent through Telfeian, answered by letter of December 13, 2004. The letter denied that a valid contract existed, denied that the Union represented its employees, and refused to meet and bargain with the Union as the representative of unit employees.

C. Analysis and Conclusion

1. Narrowing the issue—The parties' argued alternate scenarios

The parties assume for purposes of their arguments herein, and I agree, that if a USWA Local was the exclusive representative utilizing the services of the International as a bargaining or representational agent, neither that local nor the International could simply transfer that exclusive representative status to another local without a variety of actions and procedures which did not take place on this record. Conversely, the parties assume, and I agree, that if the International was at all times the exclusive representative of employees, it could use districts and locals as its bargaining or representational agents in any manner it chose, changing them at will without consequence to its own status as the exclusive representative of unit employees. In effect, the identification of the unit's exclusive representative at the time of the Respondent's actions in July 2004 and thereafter

determines the outcome of the case. If the local was the exclusive representative, the complaint is without merit. If the International was the exclusive representative at material times, the complaint has merit.

The instant case, thus, presents a much focused issue: What labor organization was the exclusive bargaining representative of Respondent's unit employees in the period immediately preceding the Respondent's July 2004 repudiation of the contract and its further December 2004 refusal to recognize and bargain with the Union? Relevant to that question is the history of the bargaining concerning the unit. The parties derive different conclusions from the limited evidence presented.

The parties agree and the law is clear that a labor organization which is the exclusive representative of employees for purposes of collective bargaining under the Act may utilize other labor organizations as its agents in fulfilling its role as the employees' representative. This being so, there is no legal impediment to an assignment of different roles of local, district, and International in representing employees on behalf of the exclusive representative. The Government and the Charging Party argue the International is the representative and the district and locals are its agents. The Respondent argues that the local is the representative and the district and International are its agents. Either situation in the facts of the instant case would not violate the exclusive representative's obligation under the Act.

Both the General Counsel's and the Respondent's arguments start with the 1979 certification of the International as the exclusive representative of the unit. The General Counsel and the Charging Party argue that the International, once certified by the Board, remained the unit employees' exclusive representative at all times to the present and that the International neither intentionally nor in any other manner at any time relinquished that status. Thus, the Government argues, when the Respondent in July 2004, in midcontract, withdrew recognition of the Union and repudiated the contract, continuing to refuse to recognize and bargaining with the Union after the contract's expiration, it violated Section 8(a)(5) and (1) of the Act.

The Respondent starting with the 1979 certification of the Union concedes that initially the Union was the exclusive representative of the unit. Thereafter, at a time and under circumstances which the Respondent argues are simply unknown to the parties, the Union transferred its exclusive representative status initially to Local 9052; the International and the district thereafter functioning as an agent of that local in representing unit employees. The Respondent argues further that subsequently, Local 5089-04 obtained the bargaining rights through a questionable transfer of representative status made unchallengeable with the passage of time with the International and district still functioning as the bargaining agents of the Local rather than the other way round. The Respondent asserts this was the status of matters until its receipt of the Union's April 1, 2004 letter, quoted supra, when the Respondent learned of the purported and procedurally invalid attempt to transfer Local 5089-04's representative status to Local 5114-06.

The Respondent correctly asserts that Board law does not allow the transfer of a labor organizations exclusive bargaining representative status to be undertaken simply by fiat and announcement. Further, the Respondent argues that it not only could not properly recognize Local 5114-06 for that reason, since Local 5089-04—the exclusive bargaining representative—clearly was abandoning its representative status, the Respondent was privileged to accept its actions as a disclaimer of interest, repudiate the collective-bargaining agreement and thereafter refuse to recognize or meet and bargain with Local 5114-06.

2. What entity was the unit employees exclusive representative at what periods?

a. Arguments of the parties

The 1979 Board certification establishes the International as the unit's exclusive representative. The testimony that the Union thereafter created freestanding Local 9052 whose members were all from the unit establishes that the International began as the exclusive representative and utilized its local and then District 36, now District 11 as bargaining agents.

The General Counsel and the Charging Party assert that this arrangement was consistent with the exclusive pattern and practice of the International which, by constitutional limitation, held all Board certifications in the name of the International as exclusive bargaining representative of units of employees and did the same with other non-Board recognitions holding all exclusive representative roles in the name of the International. District and local level organizations never held and were constitutionally prohibited from holding such exclusive representation status with respect to any bargaining unit. Thus, the General Counsel argues that not only was this true respecting this unit, it was true for all the units covered by the International currently and historically. The International's status as the unit's exclusive representative was explicit under the Board's certification. And, the General Counsel argues, the evidence indicates and it should be strongly inferred from the constitutional structure and relationship between the International and its subordinate districts and local, the International's exclusive representative status continued at all times to the present.

The General Counsel argues further that there is no evidence that any of the prior employers challenged the International's status or objected to the substitution of locals as the International's bargaining agents which occurred and were announced to the employers as described above. Finally the General Counsel argues that the Board does not easily find that statutory rights are easily waived, and therefore, any and all arguments that such a waiver or abandonment of representational rights has taken place here must be viewed with the greatest of skepticism.

The Respondent argues that the entire record of contracts, communications, grievances and related documents, internal union correspondence between and among the International, the district and the locals including communications by the parties with the Board, all show in their totality that "by 1983, if not earlier, the USW transferred its bargaining rights to United Steelworkers of America Local 9052." (R. Br. at 2.)

The Respondent notes that because employers are not allowed under Board decisional law to challenge the actions of its employees' representative as being unauthorized by their con-

stitutional documents,[5] the fact that it was not constitutionally permissible under the International constitution for the local to become the employees' exclusive bargaining representative is of no consequence. From the employer's perspective, argues the Respondent, the employers had to accept the Union's actions without considering internal union constitutional restrictions. Further, notes the Respondent, citing *Sewell-Allen Big Star,* 294 NLRB 312 (1989), the fact that the earlier substitutions of locals as the exclusive representative of unit employees was also improper under Board law, is immaterial. This is so, counsel contends, because those substitutions became unchallengeable with the passage of 6 months under Section 10(b) of the Act and the representational status of the local claiming representational rights was legally binding on the parties thereafter.

The Respondent also argues that the International, through its representatives during the entire period at issue and even to date, not only never clearly declared or referred to the International as the exclusive representative of employees, but "both implicitly and explicitly, acknowledged that it did not believe that it was the employee's bargaining representative" (R. Br. at 2–3) and only explicitly took that position well after the events when the original Board certification of the International was discovered. Counsel for the Respondent makes the assertion on brief at 3:

> If the USW itself did not believe it was the bargaining representative, it is difficult to understand how it could have been the bargaining representative or how it could have fulfilled the bargaining representative's functions.

The General Counsel responds that the Union's agents conduct and their use of particular terms of art and titling was perhaps inartful, but could never be fairly interpreted on the record as a whole to rise to the level of an abandonment of representative status by the International. Further, the agents conduct was somewhat confused by the Board's Regional Office's agents mistaken theories of representation advanced during the course of the investigation. Finally, the General Counsel argues, assuming arguendo, that the Respondent was ever in fact confused or mislead as to whether or not the International was and identified itself as the unit employees' exclusive representative, there was no possible doubt after the original certification of the International was produced and the complaint issued alleging the International was the certified representative. Yet, the Respondent, to the day of the trial, still contends the International is not the unit representative and that the Respondent is in some fashion privileged to withhold recognition of the International as that representative and to fail and refuse to bargain with the Union.

b. Conclusions respecting the identity of the bargaining representative

I have carefully considered the arguments of the parties based on the record as a whole. For the reasons set forth below, I find that the International was at all times the exclusive representative of the unit and that at no time was any organizational unit of the Union, District or local, anything more than a bargaining agent of the International. Further, I find that the Respondent should reasonably have known of this fact.

In reaching this conclusion I have essentially rejected the arguments of the Respondent to the contrary. I do so for various reasons. First, I find it important to note that the International and its agents, in its dealings with the unit and the employers who employed the employees over the years from the original certification to the time of the hearing, was handling the business of the unit in a typically, ordinary way. Since all units were represented by the International, the International's agents at the district and local levels simply had no other experience. There is simply no evidence, until the repudiation at issue herein, that the business of representing the unit from the International, district, and local levels was anything other than typical and ordinary and that its representation was handled in an ordinary manner.

This is important for the International, in a way unusual for labor organizations, has a longstanding, constitutionally required, apparently consistently followed, practice of holding the status of exclusive representative of employees at the International level and using locals and districts as bargaining agents assisting the International in conducting its representational activities. When the Respondent argues that the agents of the International and its district and locals at some point went against the International's explicit constitutional mandate to shift the status of the units' exclusive representative to various locals, it urges a highly unlikely, apparently historically aberrant, course of conduct against the Internationals explicit strictures and practices. While the Respondent is correct that an employer may not question a union's actions based on the employer's reading of the union's constitution, that is not to say that in evaluating conduct, it is likely that a normal course of conduct will continue to be followed absent evidence to the contrary or some explanation or excuse for the quite extraordinary, ultra vires actions the Respondent argues must have occurred.

There was a certain deer in the headlights aspect to the conduct of the various union agents in their wording of the documents generated over the years, when viewed in hindsight from the perspective of legal analysis of representational status. Even viewing the documents in that light, I find them insufficient to sustain the Respondent's position. And, further, I do not accept the Respondent's argument that because the Union's agents were not clear and decisive in explaining and asserting their position, it must have been because the Union had in fact switched bargaining representatives against the strict limits of the International's constitution. Rather, I think that the International's agents at all levels, whose experience is limited to service with the International, a labor organization that holds all representative status at the International level and simply does not deal with issues relevant to situations where locals hold exclusive bargaining representative status, simply did not understand the legal complications of situations their Union does not confront. The suggestions of the Board agents respecting issues of representational continuity of locals simply added to their confusion. Metaphorically, the Respondent urges we look

[5] Citing *Electra-Food Machinery, Inc*., 241 NLRB 1232, 1233 (1979), enfd. 621 F.2d 956 (9th Cir. 1980), and *Newtown Corp.*, 280 NLRB 350, 351 (1986), enfd. 819 F.2d 677 (6th Cir. 1987).

closely at the historic wanderings of these agents to determine how they took another road. Rather, I find the choreography of those agents to the extent it is shown on this record is irrelevant because the agents simply did not know there were roads open to them save for the straight and narrow one of International representation. That locals could be the exclusive representative of the units was simply not a concept familiar to them.

Having considered the language on the various contracts and the entire record on the issue as the Respondent advances it, I do not find the record supports a finding that the International ever relinquished its certified status. Further, the final contract the Respondent entered into more than 6 months before it withdrew recognition and repudiated the contract, quite clearly establishes that the International was the exclusive representative, was acting like such a representative and that the Respondent had recognized the international as its employees exclusive representative. The Respondent cannot more than 6 months thereafter rescind its contract based on a new interpretation of the bargaining history.

I considered but found of marginal relevance and did not rely on various noncontract documents showing how the parties dealt with labor relations over time, how they identified themselves in correspondence and how in various forms the agents characterized the parties. Thus, for example, it is true that the International's checkoff authorization form has a blank space for the employees to fill in the local union number. The preprinted form, presumably used by the International for all its bargaining units, in my view provides no evidence that the Locals at any time were the exclusive representatives of the unit. Given that the International is the exclusive representative in all its units as required by its constitution as discussed supra, the International's form cannot support the proposition that the instant events involved the shifting of representative status to Locals even though prohibited by the International. Put more simply, the fact that unit employees used an International form is not persuasive evidence that the Internationals rules and requirements were broken and a Local was the exclusive representative of employees.

I note further that because the stand alone locals such as Local 9052, and the unit-specific subnumbered elements of associated locals, such as Local 5089-04, were specific to a single bargaining unit—i.e., the unit, the Union tended to refer to the unit by referring to the unit-specific local. Little support for the Respondent's position is established by such usage. Similarly, such usage in grievances, correspondence to Federal Mediation and Conciliation, letters between and among the parties and the communication with the Board in unfair labor practice cases, in their totality simply do not amount to much in the context of all the events herein. And as explained above, even mistaken or ambiguities usage by the agents of the International who had never known a situation where any entity other than the International was the exclusive representative or employees is of relative insignificance when compare to the entire record in this case.

3. The consequences of the International being the unit representative at all material times

Having found the International was at all relevant times the exclusive representative of unit employees, it follows that there was never any shift or change in that status. Given that finding, the International's announcement of shifts in the identity of bargaining agent locals is irrelevant to the representational rights of the International or the obligations of the Respondent to recognize those rights. Since the International at all times represented the Respondent's unit employees, the Respondent's withdrawal of recognition of the International, its repudiation of the contract, its communication of those positions to employees and its subsequent failure and refusal to meet and bargain with the Union—all violate Section 8(5) and (1) of the Act. I so find. I shall therefore sustain the complaint in its entirety.

In the event reviewing authority differs with the analysis and conclusions set forth above, alternate findings may preclude a remand of this matter. First, in the event that it is determined that the Respondent was put in doubt as to who represented its employees by the International's communications to it regarding the change in locals, I find that it was not thereby privileged to withdraw recognition and repudiate the contract. Rather, I find it had the duty to investigate the history of the relationship and inquire of the International respecting the identity of the exclusive representative. Having failed to undertake this course of conduct before withdrawing recognition, I would find the Respondent has violated Section 8(a)(5) and (1) of the Act.

In the event that it is determined that the Respondent was put in sufficient doubt by the International's communications to it regarding the change in locals, so that it could withhold recognition of the International until it had learned just who the exclusive bargaining agent was, that confusion was satisfied without doubt by the provision of the original certification of the International as the exclusive representative of unit employees to the Respondent, by the International's reaffirmation of its exclusive representative status and by the Government's issuance of a complaint alleging that the International at all times had been and remained the exclusive representative of unit employees. From that time forward, which time encompasses the Respondent's continued failure and refusal to recognize and bargain with the International, there can be no justification or excuse for the Respondent not to realize the status of the International as described above. In such a circumstance, the Respondent has no defensible basis for refusing to bargain with the International and in so refusing it violated Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent violated the Act as set forth above, I shall order that it cease and desist therefrom and post remedial Board notices. Further the language on the Board notices will conform to the Board's recent decision in *Ishikawa Gasket America, Inc*., 337 NLRB 175 (2001), that notices should be drafted in plain, straightforward, layperson language that clearly informs employees of their rights and the violations of the Act found. Such notice will also take account of the fact that the Respondent specifically notified unit employees in July 2004 that they were no longer represented by any labor organi-

zation and that the collective-bargaining agreement was null and void.

Consistent with the request of the General Counsel and the Charging Party, I shall direct that the Respondent recognize and bargain with the Union as the exclusive representative of its employees in the bargaining unit set forth below.

I shall also require the Respondent to rescind its repudiation of the contract notifying the Union, in writing, that it will honor its terms. The collective-bargaining agreement in place at the time of the Respondent's repudiation of the bargaining relationship has now expired. The General Counsel, with the agreement of the Charging Party, specifically noted that the Respondent had honored the contracts terms save as discussed herein and that no order was necessary or requested to make unit employees whole for harm suffered as a result of the contract repudiation.

The General Counsel and Charging Party seek an order directing the Respondent be ordered to make whole the Union for any loss of dues suffered as a result of its failure to comply with the dues deduction and remission provisions of the collective-bargaining agreement, plus interest. Such an order is appropriate where, as here, the employer ceased to comply with the contractual provisions respecting dues. *Parkview Furniture Mfg., Co*., 284 NLRB 947, 974 (1987), *J. F. Swick Insulation Co.*, 247 NLRB 626 (1980); *Ogle Protection Service*, 183 NLRB 682 (1970); *Isis Plumbing Co*., 138 NLRB 716 (1962). I shall therefore include such an order.

CONCLUSIONS OF LAW

On the basis of the above findings of fact and the record as a whole and Section 10(c) of the Act, I make the following conclusions of law.

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

2. The Charging Party is, and has been at all relevant times, a labor organization within the meaning of Section 2(5) of the Act.

3. The International now and at all times material has represented the Respondent's employees in the following unit, which is appropriate for bargaining within the meaning of Section 9 of the Act:

> All employees of the Mountain Valley Care and Rehabilitation Center, excluding all guards and supervisors as defined in the National Labor Relations Act, as amended, Registered Nurses, Confidential Employees, Business Office Clericals, Administrator, the Director of Nursing, and the Dietary Supervisor.

4. The Respondent violated Section 8(a)(5) and (1) of the Act in July 2004 and at all times thereafter by withdrawing recognition of the Union as the exclusive representative of employees in the bargaining unit set forth above, repudiating the parties March 1, 2002–February 28, 2004 collective-bargaining agreement and failing and refusing to meet and bargain with the International as the exclusive representative of its unit employees respecting the terms and conditions of a new collective-bargaining agreement.

5. The unfair labor practices described above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]