

**Associated General Contractors of America, Inc., Evansville Chapter, and Member Employers of Associated General Contractors of America, Inc., Evansville Chapter and Local Union No. 90, United Brotherhood of Carpenters and Joiners of America, AFL-CIO**

**Local Union No. 1080, United Brotherhood of Carpenters and Joiners of America, AFL-CIO and Local Union No. 90, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Cases 25-CA-2949 and 25-CB-754**

April 29, 1970

### DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND JENKINS

On January 10, 1969, Trial Examiner Paul E. Weil issued his Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that they cease and desist therefrom and take certain affirmative actions, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel and the Respondents filed exceptions and supporting briefs to the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in these cases, and hereby adopts the Trial Examiner's findings and conclusions only to the extent consistent herewith.

The essential dispute giving rise to these cases stems from conflicting territorial jurisdictional claims of the Charging Party, Local 90, and Respondent Local 1080, both of which are affiliates of the International Brotherhood of Carpenters and Joiners of America, to represent certain millwrights employed by member-employers of Respondent AGC in the vicinity of Evansville, Indiana, and the adjacent territory consisting of Posey and Vanderburgh Counties. The record reveals that over a period of years Local 90 has represented carpenters and millwrights in the above described territory, and has been signatory to a series of collective agreements with Respondent AGC, the next most recent of which expired on May 3, 1967. Respondent Local 1080, which appears to have been created by the International solely for the purpose of representing millwrights, has also represented millwrights of the Respondent Employers on all construction jobs in certain parts of the States of Kentucky and Indiana, excluding Posey and Vanderburgh Counties, and its contract with Respondent AGC expired on May 15, 1967.

Negotiations for a new contract between Respondent AGC and both locals began in March 1967 and were attended by a general strike in which both locals and other building trades unions in the Evansville area participated. At a negotiations meeting on March 20, 1967, and on several occasions thereafter, Jerry Lamb, the representative of Respondent AGC, complained that Local 90 had exhibited inability to furnish qualified millwrights, and suggested that jurisdiction of millwrights be transferred to Respondent Local 1080. Local 90 refused this proposal and notified Respondent AGC, in writing, that it would do everything in its power to prevent the transfer of jurisdiction. Thereafter, on April 3, 1967, Lamb met with J. C. Keown of Respondent Local 1080 and Edward Weyler of the International Brotherhood of Carpenters and Joiners. Lamb and Keown jointly composed a letter to Weyler alluding to the incompetency of millwrights supplied through Local 90, and requested the International to transfer jurisdiction over millwrights in Posey and Vanderburgh Counties to Respondent Local 1080. Weyler acted on the request, and on April 17, 1967, the International notified both Local 90 and Respondent Local 1080 that jurisdiction over millwrights in the two county area was removed from Local 90 and awarded to Respondent Local 1080. Local 90 has appealed the transfer of jurisdiction and its appeal is now pending before the general convention of the International.

Subsequent to April 17, 1967, Respondent AGC unsuccessfully attempted to withdraw its support of the transfer of jurisdiction, and on May 3, 1967, it entered into a contract with Local 90 in which the unit is described, as in the prior contracts, as including millwrights in Posey and Vanderburgh counties. Thereafter, on May 15, 1967, Respondent AGC signed a new bargaining agreement with Respondent Local 1080, in which the bargaining unit is similarly described as including, *inter alia*, millwrights employed in Posey and Vanderburgh Counties. Neither the contract with Local 90 nor the contract with Respondent Local 1080 requires membership as a condition of employment, and both contracts contain nonmandatory referral provisions.

Upon the foregoing, and the entire record in these cases, the Board is of the view that it would not effectuate the policies of the Act to adopt the Trial Examiner's findings of Sections 8(a)(1) and (5) and 8(b)(1)(A) violations. To the extent that a dispute has given rise to the complaint here, it is clearly the result of an intraunion contest between two locals of the same International union who are competing over territorial jurisdiction. Both Local 90 and Respondent Local 1080 are bound by the constitution of the International Brotherhood of Carpenters and Joiners and had ceded to the parent organization the right to "regulate and determine all matters pertaining to the various branches and subdivisions of the trade," and have agreed that the International's "mandates must be observed and obeyed at all times." Local 90, having been adversely affected by the International's award, was given opportunity to appeal and that appeal is presently pending before the general convention.

It is true that an employer, ordinarily, may not rely upon actions of an International union resulting in a jurisdictional realignment as between affiliated locals and may violate the Act by withdrawing recognition from one local and recognizing another in accordance with such a reorganization. Nonetheless, where, as here, the realignment is based upon sound industrial considerations, the rights of employees to participate in decisions affecting the identity of their bargaining agent must be accommodated with the policy encouraging stable and effective bargaining relationships.

In our opinion the shift in recognition in this case, prompted by the International's jurisdictional determination, was not sufficiently offensive to employee interests to warrant Board intervention. In the construction industry, where the instant dispute arises the onsite craftsmen are not members of a fixed and stable work force having an identity with a specific employer. They look to the hiring halls maintained by unions, rather than employers, for work opportunities. They are highly organized and rarely are involved in Board-conducted elections. Representation rights customarily accrue to the "referring" union. There are important practical business reasons for employers in the industry to accommodate their labor relations practices to the practices of the Unions operating in the industry.

These are among the considerations that bear on statutory bargaining conceptions as they apply to this industry. Congress has given light to these considerations by enacting 8(f) which makes prehire agreements lawful for this industry despite the fact they run counter to provisions of other sections of the Act.

In this case the contracts negotiated between the AGC and Locals 90 and 1080, though not of the type specifically privileged under Section 8(f), See *Bricklayers, Local No. 3*, 162 NLRB 476, and also *Dallas Building and Construction Trades Council*, 164 NLRB 938, are basically prehire in nature with respect to future projects. Thus, the effect, basically, of AGC's shift in recognition will result in little more than a shift in the source of labor for these projects. Requests for millwrights will be directed to the hiring hall administered by Local 1080 rather than Local 90. As there is no evidence that Local 1080 has operated, or will operate its hiring facilities on other than a nondiscriminatory basis, without preference for union membership, we must assume that qualified millwrights working out of Local 90 will receive the same job opportunities as those historically working within the jurisdiction of Local 1080.

In these circumstances, and as there is no evidence or suggestion that the International's action was motivated by considerations other than the fostering of efficient industrial conditions, we are not persuaded that the record establishes that AGC, by recognizing Local 1080, engaged in conduct having a sufficiently detrimental effect upon employee interests to warrant a refusal to bargain finding. For similar reasons, we disagree with the Trial Examiner's finding that Local 1080 violated Section 8(b)(1)(A) by accepting recognition and executing

a contract with AGC. Accordingly, we shall dismiss the complaint in its entirety.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed.

## TRIAL EXAMINER'S DECISION

### STATEMENT OF THE CASE

PAUL E. WEIL, Trial Examiner: Upon charges filed on October 17, 1967, by Local Union No. 90, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, hereinafter called Local 90, against Associated General Contractors of America, Inc., Evansville Chapter and member employers of Associated General Contractors of America, Inc., Evansville Chapter, including but not limited to member employers listed on two pages attached to the original charges, hereinafter jointly called AGC, and against Local Union No. 1080, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, hereinafter called Local 1080, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 25, on March 27, 1968, issued an order consolidating the cases and a complaint against both AGC and Local 1080. This complaint was thereafter amended on April 24, 1968. By the complaint the General Counsel alleges that AGC violated Section 8(a)(5) and (1) by withdrawing recognition of Local 90 as the representative of its millwrights in Posey and Vanderburgh Counties, Indiana, and by affording recognition to Local 1080 as the representative of its millwrights in those two counties. The General Counsel further alleges that Local 1080 violated Section 8(b)(1)(A) by accepting recognition as the representative of the millwrights in those two counties, under the circumstances that it knew that Local 90 was the representative of said millwrights. In their duly filed answers both Respondents denied the commission of any unfair labor practices and by their answers and stipulations entered into thereafter admitted many of the facts upon which the complaint is based.

Pursuant to notice I conducted a hearing at Evansville, Indiana, on June 3 and 4 and August 20 and 21, 1968, at which all parties were represented by counsel and participated in the hearing. Briefs filed by both Respondents and the General Counsel have been carefully considered. Upon the entire record in the case, from my observation of the witnesses and their demeanor, and after consideration of the briefs, I make the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENTS

It is alleged and admitted that AGC is a corporation existing for the purpose, among others, of representing employer members in collective bargaining with various

labor organizations, including both Local 90 and Local 1080, and that among its members are contractors who in the course and operation of their business annually cause goods and materials valued in excess of \$50,000 to be delivered from other States to Indiana. AGC and its members are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## II. THE LABOR ORGANIZATIONS INVOLVED

Local 90 and Local 1080 are each labor organizations within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

### A. Background and Sequence of Events

Over a period of years Local 90 had represented all carpenters and millwrights within a territorial jurisdiction consisting of Evansville, Indiana, and the surrounding counties of Posey and Vanderburgh. Local 1080, which is located in Owensboro, Kentucky, 35 or 40 miles from Evansville, is a millwright's local; i.e., it appears to have been set up by the International for the purpose of representing millwrights only. Local 1080, bargaining through the Lower Ohio Valley District Council of Carpenters, of which it is a member,<sup>1</sup> has represented the millwrights of the Employers herein<sup>2</sup> on all construction jobs in certain parts of the States of Indiana and Kentucky excluding Posey and Vanderburgh Counties.

The contracts between AGC and Local 90 and AGC and Local 1080 were both renegotiated in the spring of 1967. Negotiations between Local 90 and AGC commenced on March 13 with the presentation by each party of proposed changes in the prior contract. The proposals were briefly discussed and the meeting adjourned. At the next meeting held on March 20, 1967, Jerry Lamb, a member of the AGC negotiating committee and a representative of the firm of Burch & Lamb, Inc., one of the chief employers of millwrights in the Evansville area, complained that Local 90 had not been able to furnish qualified millwrights in the past and proposed that Local 90 transfer jurisdiction of millwrights to Local 1080. Local 90 refused to discuss the proposal on the ground that it had not been placed on the negotiating agenda at the first meeting. Lamb made this proposal at subsequent meetings but in each case Local 90 declined to consider the transfer of jurisdiction. On April 1 Local 90 sent a letter to AGC stating that it did not propose to agree to let Local 1080 take over the millwright work and would do everything in its power to prevent it. By May 3 the only issue remaining between the parties was wages.

While negotiations with Local 90 were being conducted AGC was negotiating with Local 1080. In these negotiations Jerry Lamb was chairman of the AGC negotiating committee.

It appears that AGC was engaged in negotiation of new agreements with all of the building trades unions in the Evansville vicinity and a general strike took place from April 1 to about May 15. The Local 90 contract expired on May 3, the Local 1080 contract, May 15. On May 3, Local 90 agreed to accept the AGC wage proposal, the only issue remaining in dispute between Local 90 and AGC, if they were assured that the completed contract covered millwrights in Posey and Vanderburgh Counties. Receiving such assurances<sup>3</sup> Local 90 agreed to sign the contract thus negotiated and its members commenced returning to work as they were called by the various Employers.<sup>4</sup>

The contract as it was ultimately signed continued the same provision as the preceding contract defining the unit as containing, *inter alia*, millwrights in Posey and Vanderburgh Counties.

On April 3 Jerry Lamb in his capacity as chairman of the AGC negotiating committee met with Edward Weyler, International representative of the United Brotherhood of Carpenters and Joiners of America, and J. C. Keown, financial secretary of Local 1080, and composed a letter, addressed to Weyler, suggesting that the millwrights supplied by Local 90 were incompetent and requesting the International to transfer millwright jurisdiction in Posey and Vanderburgh Counties to Local 1080. On April 17 Weyler, as International representative, sent letters to Local 90 and Local 1080 stating that jurisdiction over millwrights in Posey and Vanderburgh Counties had been removed from Local 90 and awarded to 1080. Local 90 learned of Lamb's letter and complained of misrepresentations in it and on April 24 the AGC, this time over the signature of its executive director, Walther, by telegram to the International, withdrew its support of the change of jurisdiction and requested that jurisdiction remain with Local 90. On the same day the International sent AGC a telegram stating in essence that the AGC letter signed by Lamb had no influence in the jurisdictional decision. Local 90 has subsequently carried on its appeal of the transfer or jurisdiction and it is now pending before the general convention of the International Union.

The situation now stands that AGC has contracts recognizing both Local 90 and Local 1080 as the collective-bargaining representative of the millwrights. As a practical matter it is clear that AGC is ignoring its contract with Local 90 in this regard and it is dealing with Local 1080 insofar as millwrights are concerned.

<sup>3</sup> To the extent that the testimony of AGC Executive Director Walther as a whole may be construed as a denial that such assurances were given, he is not credited His demeanor on the witness stand, his evasiveness under cross-examination, and his penchant for answering questions in terms of his client's position rather than factually all serve to impair his credibility.

<sup>4</sup> Not all employees resumed work immediately because the other building trades unions remained on strike until May 15 when their various contracts were signed.

<sup>1</sup> Local 90 is not a member of the Council

<sup>2</sup> Prior to 1967 the employers with which we are here concerned were members of another association, the Associated Building Contractors of Evansville Inc., familiarly known as ABC. AGC succeeded to the responsibilities and obligations of ABC in January 1967. There is no issue that this in any way affects the bargaining history for our purposes.

### The Contentions of the Parties

The General Counsel contends that by its withdrawal of recognition of Local 90 as representative of the millwrights in Posey and Vanderburgh Counties AGC violated Section 8(a)(5) of the Act. Further by their implementation of the millwrights' provisions of the Local 1080 contract and correspondingly ignoring the provisions of the Local 90 contract with regard to millwrights, AGC in effect terminated the provisions of the Local 90 contract with respect to millwrights without complying with the provisions of Section 8(d) of the Act and violated Section 8(a)(5) of the Act. With regard to the intervention of the International Union the General Counsel contends that the fact that the employees selected Local 90 as their bargaining representative does not mean that they selected the International as their representative merely because Local 90 is a subordinate body of the International Union and that for the purposes of this case they are separate entities.

The Employer contends that this is an internal union matter over which the Board has not been given any general supervision and that the AGC acted in good faith in accordance with the mandate of the International Union. AGC contends "There is nothing in the record in this case showing any attempt on the part of Respondent employers to impede or interfere with in any way their collective-bargaining relationship with any union." Finally, the Employer points out that both contracts are open-shop contracts and the Employer is under no obligation to hire members of either local nor require any employee to join either local.<sup>5</sup>

Respondent Local 1080 contends that Local 1080 did not in any way violate the Act but that under the International constitution giving the International the right to "regulate and determine all matters pertaining to the various branches and subdivisions of the trade" it was "effectively allowed to receive the grant of jurisdiction of millwright work in Posey and Vanderburgh Counties." In addition Respondent Local 1080 contends that Section 8(f) somehow protects Local 1080 in this case. Other than the fact that Section 8(f) recognizes a distinction between building and construction unions and industrial unions, I confess that Local 1080's argument escapes me. Finally, Local 1080 argues carefully and fully that it was not guilty of discrimination under Section 8(b)(2) or 8(b)(1)(A). However since there is no allegation that Local 1080 was guilty of discrimination and no such issue is before me I do not deem the argument to be particularly pertinent to the issues in this case.

### Discussion

Section 8(d) contains a proviso to the following effect "where there is in effect a collective-bargaining contract

<sup>5</sup> This argument appears irrelevant to any issue before me. There is no Section 8(a)(3) allegation. What in fact the General Counsel contends is that Local 90 pursuant to the terms of its contract with AGC had a right to be called for millwrights employees and had the right and duty to represent them as employees of AGC.

covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no parties to such contract shall terminate or modify such contract, unless the party desiring such termination or modification" serves various notices, offers to meet and bargain, and continues in full force the existing contract for a period of time. There can be no question that commencing on May 3 Respondent AGC had a contract with Local 90 requiring it to recognize Local 90 as the collective-bargaining representative of its employees doing millwright work. The record is clear, and no one seriously contends to the contrary, that from the time it entered into a contract with Local 1080, which covered by its terms employees doing millwright work in Posey and Vanderburgh Counties, AGC and its members have not only failed to give effect to the provisions of its contract with Local 90 having regard to millwrights in Posey and Vanderburgh Counties, but have contended that its contract in that regard is no longer effective. The real issue appears to be whether AGC is protected in this unilateral modification of its contract with Local 90 by the fact that the International intervened and awarded the disputed jurisdiction to Local 1080.

Section 8(d) does not speak in terms of good faith. It is a statutory requirement which must be followed by the parties. Failure to do so has long been held to be a violation of Section 8(a)(5) or 8(b)(3).<sup>6</sup> That AGC innocently may have followed the International's directive or may have been coerced by the exigencies of its business to do so is irrelevant.<sup>7</sup>

While it may be true that the members of Local 90 or Local 90 as a body may be bound under the terms of their relationship with the International and the International's constitution to accept the withdrawal of jurisdiction by the International there is no showing that AGC is in any way a party to this arrangement or is bound in any way by the provisions of the International constitution. The issue rather is one of representation over which the Board has duty of exercising its factfinding and administrative discretion. This is not, as both Respondents would seem to suggest, a jurisdictional dispute in terms of the Act. AGC in this case itself took the responsibility of terminating its historic recognition of Local 90 as representative of millwrights in Local 90's area by acquiescing in the "demand" of Local 1080 that it sign a contract covering the same classifications of employees although it appears from the record that most of the millwrights then employed by AGC's members were members of Local 90 and it had a contract recognizing Local 90 as their representative.

<sup>6</sup> See *Fort Smith Chair Co.*, 143 NLRB 514.

<sup>7</sup> As a matter of fact the "innocence" of AGC is not that clearly established. The impetus to the action of the International appears to have resulted from AGC's letter signed by Lamb as the chairman of the bargaining committee, asking that the jurisdictional change be affected. What gave rise to this letter, dictated in the presence of the International representative to whom it was addressed, as well as an officer of Local 1080, was not explored nor was evidence offered as to the attempted retraction of the AGC letter by the subsequent telegram signed by AGC's executive director.

Nor does it appear to me that Section 8(f) affords either Respondent any comfort. That provision of the Act simply relieves employers engaged primarily in the building and construction industry from the reach of subsections (a) and (b) of Section 8 under certain specified circumstances, none of which are present here. As Respondent Local 1080 points out quite correctly both contracts entered into by AGC were valid under Section 8(f). However it is clear that the contract with Local 90 would have been valid in the absence of Section 8(f). The record clearly reveals that the employees who had been doing the millwright work up to the commencement of the strike on April 1 were members of Local 90 or were represented by Local 90 and there is no evidence that there was any disaffection among them adequate to sanction the withdrawal of recognition by the Employer. The mere fact that these circumstances arose in the building and construction industry did not remove the employees concerned from the protection of the Act. I do not read 8(f) as giving employers the right to select the bargaining agent for their employees as the AGC appears to have done here. While Jerry Lamb may have been dissatisfied with the millwrights he was using, the law does not in my opinion give him the right to affect a change by the simple expedient of recognizing a different union. There is no reason to believe that Local 1080 was capable of supplying millwrights any more competent or agile or any better trained than Local 90 but whether or not it could do so AGC was not warranted in its recognition of 1080 by this factor.<sup>8</sup>

#### Conclusion

As I have indicated above, in my opinion AGC violated Section 8(a)(5) both by its withdrawal of recognition of Local 90 and the consequent unilateral modification by it of its contract with Local 90 and by its action in signing a contract with Local 1080 containing provisions for the representation of millwrights in Posey and Vanderburgh Counties by that labor organization. Both facets of the violation constitute violations of Section 8(a)(5) and (1) of the Act, and I so find.

#### The 8(b)(1)(A) Allegation

The General Counsel contends that Local 1080, by accepting recognition from AGC as the collective-bargaining representative of millwrights in the disputed jurisdiction, violated Section 8(b)(1)(A) of the Act. There is no real question that Local 1080's officers knew at the time they entered into the contract with AGC of the entire situation with regard to Local 90. The meeting at which Weyler, Lamb, and Keown were present on April 3 at which Lamb wrote a letter to Weyler recom-

mending the change of jurisdiction and the flurry of letters and telegrams that followed it apprised Local 1080 as well as the AGC of the fact that Local 90 persisted in its demand for continued recognition as the millwrights' collective-bargaining agent. It was apparently common knowledge in the community and Local 1080's counsel at the hearing admitted that it was aware of the fact that a contract had been signed with Local 90 covering that jurisdiction. The fact that Local 1080 may have felt itself bound (or perhaps rewarded) by the action of the International in transferring jurisdiction to it affords it no defense under the circumstances of this case. The Board has long held that a union violates Section 8(b)(1)(A) by entering into and maintaining an exclusive contract with an employer when it does not represent a free and uncoerced majority of the unit employees.<sup>9</sup> Respondent Union's defense, apparently on the ground that the contract contained no union-security clause, is not well taken. See *Bernhard-Altmann Texas Corporation*, 122 NLRB 1289.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents found to constitute unfair labor practices as set forth in section III, above, occurring in connection with AGC's operations described in section I, above, have a close, intimate, and substantial relationship to trade, 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

I have found that AGC violated Section 8(a)(5) by its withdrawal of recognition of Local 90 and by granting recognition to Local 1080 as collective-bargaining representative of the millwrights in Posey and Vanderburgh Counties and I have found that Local 1080 violated 8(b)(1)(A) by accepting recognition under the circumstances. The General Counsel contends that the remedy appropriate under these circumstances includes an order that Respondent Employers make whole the millwright employees who lost wages as a result of the Respondent Employers failure to honor the agreement with Local 90. It is perhaps with this demand in mind that both Respondents dealt at length in their briefs with issues of discrimination. I believe it is appropriate to order that the harm done by Respondents' unfair labor practices be undone to the extent possible. To this end it is appropriate in my opinion that AGC should be ordered to cease giving effect to its contract with Local 1080, to the extent that it has to do with millwrights in Posey and Vanderburgh Counties, and resume its contractual relationship with Local 90 to the same extent. I believe further that it is appropriate that Local 1080 should be ordered to cease purporting to represent millwright employees in Posey and Vanderburgh Counties

<sup>8</sup> I deem the relative competence of the employees represented by Local 90 and those represented by Local 1080 irrelevant to any issue before me. For this reason I excluded evidence with regard thereto whenever offered. The record reveals that many if not most of the millwrights who were employed by AGC in the Evansville area prior to April 1, 1967, are still employed in the same capacity.

<sup>9</sup> See, for example, *Clement Brothers Company*, 165 NLRB 698.

and cease enforcing or attempting to enforce its contract to the extent that it goes to such recognition

The General Counsel appended to his complaint a list of members of Local 90 who were purported to be millwrights and contends that some or all of them suffered as a result of the change Local 1080 contends that none need have suffered, they need only have registered with Local 1080 and if they were competent millwrights they would have been put to work <sup>10</sup>

The General Counsel acknowledged at the hearing that the list of "millwrights" whom he alleges to have suffered by reason of Respondent's unfair labor practices is the same as a list prepared by Local 90 pursuant to International Representative Weyler's order for a list of all qualified millwrights who are members of Local 90. The testimony of the Local 90 officers who prepared the list reveals that it contains the names of all Local 90 members who had claimed the capability to do any millwright work whether or not they were normally, usually, or even frequently employed in that capacity. The General Counsel made no attempt to adduce evidence as to which employees were allegedly available at any particular time or which jobs they might have been sent to by Local 90 if Local 90 had had the option. This fact, especially in view of the testimony of Lamb that not all so-called millwright members of Local 90 were acceptable to him as millwrights, together with evidence on the record that millwright members of Local 1080 worked in Local 90's jurisdiction at such time as Local 90 exercised the jurisdiction, and, finally, in the absence of evidence whether or not any millwrights who were members of neither Local 90 nor Local 1080 but presumably would have been dispatched by Local 90's hiring hall had they registered renders the entire backpay issue so conjectural as to make it impossible to decide. At the hearing I did not see these issues as appropriate for litigation under the allegations of the complaint before me and on more leisurely consideration I remain convinced that this is neither the occasion nor the forum in which such issues should be decided. The "party" affected by the unfair labor practices committed is the local as an organization. The extent to which it has been affected appears to be the extent to which the revenues of the Local and of the pension, health and welfare, and other trusts connected with employment through the Local as collective-bargaining representative have been affected by the withdrawal of recognition. In my mind this is the real nut of the issue with regard to remedy. The evidence on the record is insufficient to determine whether in fact any of the trusts have suffered by reason of the fact that payments by the Employers were made to the Trusts administered by Local 1080 and its district counsel rather than to Local 90's. However to the extent that Local 90 suffered a loss of valid revenues by reason of the fact that it did not operate as the hiring hall for millwrights, clearly in my opinion it should

be made whole. Accordingly, I shall recommend that Local 1080 shall make available to the Board's Regional Director for Region 25 its books and records so that a computation may be made and that Local 1080 jointly with AGC make whole Local 90 and the various trust funds affected by the change to the extent necessary. With regard to the alleged loss of employment of the Local 90 members, it appears to me that the appropriate forum for disposition of this problem is to be found in the grievance procedure in the contract between Local 90 and the Employer <sup>11</sup>

Upon the basis of the foregoing findings of fact and upon the entire record in the case I make the following

#### CONCLUSIONS OF LAW

1 Respondent AGC, and its members, are each employers within the meaning of Section 2(2) of the Act

2 Respondent Local 1080 and Charging Party Local 90 are each of them labor organizations within the meaning of Section 2(5) of the Act

3 All practical carpenters, millwrights, piledrivers, resilient floor layers, and all apprentices, employees of Associated General Contractors of America, Inc., Evansville Chapter, and its member employers, employed at all jobsites in Posey and Vanderburgh Counties in the State of Indiana, excluding guards, and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act

4 Local 90 has been at all times since May 15, 1967, the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act

5 By withdrawing recognition on May 15, 1967, and thereafter refusing to bargain collectively with Local 90 as the exclusive bargaining representative of its millwright employees in the aforesaid appropriate unit Respondent AGC violated Section 8(a)(5) of the Act

6 By recognizing Local 1080 as the exclusive bargaining representative of its millwright employees in the aforesaid appropriate unit Respondent AGC violated Section 8(a)(5) of the Act

7 By accepting recognition and thereafter bargaining for and representing the millwright employees in the aforesaid collective-bargaining unit Local 1080 has violated Section 8(b)(1)(A) of the Act

8 By interfering with, restraining, and coercing its employees, and particularly its millwright employees, in the exercise of the rights guaranteed in Section 7 of the Act by the actions set forth above Respondent AGC violated Section 8(a)(1) of the Act

<sup>10</sup> This of course ignores the fact that they would have to travel a round trip of around 80 miles to do so and pay permit and dispatch fees to Local 1080 for the privilege

<sup>11</sup> Art VIII I note that the grievance procedure as spelled out therein contains no provision limiting the time within which grievances must be submitted and provides for ultimate arbitration before a disinterested arbitrator

## RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record of the case it is recommended that:

A. Respondent Associated General Contractors of America, Inc., Evansville Chapter, and its member employers, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local Union No. 90, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, as the collective-bargaining representative of its millwright employees on jobs located in Posey and Vanderburgh Counties, Indiana.

(b) Recognizing and bargaining with Local Union No. 1080, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, as the collective-bargaining representative of its millwright employees working on jobs in Posey and Vanderburgh Counties, Indiana, and giving force and effect to its contract with said Local 1080 for such purposes.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Local Union No. 90, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection or to refrain from any or all such activities.

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

(a) Upon request meet and bargain with Local Union No. 90, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, as the collective-bargaining representative of its millwright employees employed on jobs in the Posey and Vanderburgh Counties, Indiana, area.

(b) Reinstate its contract with Local Union No. 90 to the extent that it covers said millwright employees.

(c) Withdraw and withhold recognition of Local Union No. 1080, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, as the collective-bargaining representative of millwright employees in the Posey and Vanderburgh Counties, Indiana, area.

(d) Preserve and, upon request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all records and reports relating to payments to the trustees of the Lower Ohio Valley Health and Welfare Trust Fund, the Tri-State Construction Advancement Program Fund, the Lower Ohio Valley Pension Trust Fund, the Lower Ohio Valley Construction Industry Fund, and any other funds to which payments were made by the Employers by reason of the employment of millwrights in the Posey and Vanderburgh Counties, Indiana, area.

(e) To the extent that compensation to Local 90 and to the various pension health and welfare and other trust funds affected by employment of millwrights in the Posey and Vanderburgh Counties, Indiana, area has not been affected by the transfer of funds from the pension, health and welfare, and other trust funds administered through Local 1080 and the Lower Ohio Valley District Council, jointly and severally with Local 1080, make whole Local 90 and such trust funds as are provided for in Local 90's contract with AGC.

(f) Post at the jobsites of its members as well as at its office or offices wherever they may be found copies of the attached notices marked "Appendix A" and "Appendix B."<sup>12</sup> Copies of said Appendix, on forms provided by the Regional Director for Region 25, after being duly signed by Respondent AGC shall be posted by it 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. Signed copies of Appendix B shall be supplied by the Regional Director. Reasonable steps shall be taken by Respondent AGC and its member employers to insure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 25, in writing, within 20 days from the receipt of this Decision, what steps Respondent AGC has taken to comply with the foregoing Recommended Order.<sup>13</sup>

B. Respondent Local Union No. 1080, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Accepting recognition as collective-bargaining representative of millwright employees in the Posey and Vanderburgh Counties, Indiana, area.

(b) Giving effect to its contract with AGC to the extent that it covers the employment of millwrights in the Posey and Vanderburgh Counties areas.

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

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

(a) To the extent that compensation to Local Union No. 90 and the various pension, health and welfare, and other trust funds affected by employment of millwrights in the Posey and Vanderburgh Counties, Indiana, area under its contract with AGC has not been affected by the transfer of funds from the pension, health and welfare, and other trust funds administered through

<sup>12</sup> In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

<sup>13</sup> In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

Local Union No. 1080 and the Lower Ohio Valley District Council, jointly and severally with Respondent AGC make whole Local 90 and such trust funds as are provided for in Local 90's contract with AGC.

(b) Preserve and, upon request, make available to the Board or its agents for examination and copying all records and reports relating to payments to the trustees of the Lower Ohio Valley Health and Welfare Trust Fund, the Tri-State Construction Advancement Program Fund, the Lower Ohio Valley Construction Industry Fund, and any other funds to which payments were made by the Employers by reason of the employment of millwrights in the Posey and Vanderburgh Counties, Indiana, area under authority of its contract with Respondent AGC.

(c) Post at its offices in Owensboro, Kentucky, and at all jobsites where millwrights are employed in Vanderburgh and Posey Counties, Indiana, copies of the attached notice marked "Appendix B."<sup>14</sup> Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by representatives of Respondent Local 1080, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Local 1080 to insure that said notices are not altered, defaced, or covered by any other material.

(d) Sign and return copies of the said notice to said Regional Director for posting by AGC and its member employers at all places where notices to their employees are customarily posted.

(e) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps it has taken to comply herewith.<sup>15</sup>

to our contract with said Local 1080 for such purposes

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Local Union No. 90, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other mutual aid or protection or to refrain from any or all such activities.

WE WILL, upon request, meet and bargain with Local Union No. 90, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, as the collective-bargaining representative of our millwright employees employed on jobs in the Posey and Vanderburgh Counties, Indiana, area.

WE WILL reinstate our contract with Local No. 90 to the extent that it covers said millwright employees.

ASSOCIATED GENERAL  
CONTRACTORS OF  
AMERICA, INC.,  
EVANSVILLE CHAPTER,  
AND MEMBER  
EMPLOYERS OF  
ASSOCIATED GENERAL  
CONTRACTORS OF  
AMERICA, INC.,  
EVANSVILLE CHAPTER

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana 46204, Telephone 317-633-8921.

APPENDIX B

NOTICE TO ALL MEMBERS

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our members that:

WE WILL NOT accept recognition as collective-bargaining representative of millwright employees in the Posey and Vanderburgh Counties, Indiana, area.

WE WILL NOT give effect to our contract with AGC to the extent that it covers the employment

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with Local Union No. 90, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, as the collective-bargaining representative of our millwright employees on jobs located in Posey and Vanderburgh Counties, Indiana.

WE WILL NOT recognize and bargain with Local Union No. 1080, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, as the collective-bargaining representative of its millwright employees working on jobs in Posey and Vanderburgh Counties, Indiana, and giving force and effect

<sup>14</sup> See fn. 12, *supra*

<sup>15</sup> See fn 13, *supra*

## DECISIONS OF NATIONAL LABOR RELATIONS BOARD

of millwrights in the Posey and Vanderburgh Counties area

WE WILL NOT in like or related manner restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act

WE WILL, jointly and severally with AGC make whole Local 90 and such trust funds as are provided for in Local 90's contract with AGC to the extent that compensation to Local Union No 90, and the various pension, health and welfare, and other trust funds affected by employment of millwrights in the Posey and Vanderburgh Counties, Indiana, area under Local 90's contract with AGC has not been remedied by the transfer of funds from the pension, health and welfare, and other trust funds administered through Local Union No 1080 and the Lower Ohio Valley District Council

LOCAL UNION No 1080,  
UBCJA, AFL-CIO

(Labor Organization)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana 46204, Telephone 317-633-8921