O'Malley Glass & Millwork Co. *and* International Brotherhood of Painters and Allied Trades, AFL–CIO, Glaziers & Glassworkers Local No. 1610. Case 28–CA–2234

February 23, 1972

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND KENNEDY

On November 17, 1971, Trial Examiner Irving Rogosin issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the General Counsel filed cross-exceptions and a supporting brief, and the Respondent filed an answer to the General Counsel's cross-exceptions with a brief in support thereof.

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

The Board has considered the record and the Trial Examiner's Decision in light of the exceptions and briefs and has decided to affirm the Trial Examiner's rulings, findings, and conclusions only to the extent consistent herewith.

The Trial Examiner found that Respondent's failure to apply the terms and conditions of the contract, negotiated through the Arizona Multi-Employer Bargaining Aggregate and the Union, to its Yuma, Arizona, operations violated Section 8(a)(5) and (1) of the Act.

The facts show that Respondent operates four places of business in Arizona, at Phoenix, Tucson, Glendale, and Yuma, all of which are engaged in the distribution and sale of glass and related services. In 1965, the Union negotiated separate collective-bargaining agreements with individual employers, including Respondent. All four of Respondent's locations were covered by a single contract. In the fall of 1969 or early 1970, the employer association referred to above, known as AMEBA, was formed for the purpose of representing in collective bargaining the principal glass employers in Arizona. Respondent was a member. On January 14, 1970, AMEBA sent a letter to the Union which stated that the Association desired to modify the soon to expire single employer 1965 bargaining agreements. About June 8, 1970, agreement was reached, the contract was reduced to writing, and AMEBA sent copies to the parties. Although the working copies of the draft were silent on the coverage of the agreement, the last page of the proposed contract, immediately below the signature lines, read "Members of Arizona Multi-Employer Bargaining Aggregate and their locations covered by this Agreement," and was followed by a two-column list of locations, one for Phoenix businesses, the other for Tuscon. Respondent's Phoenix and Tuscon locations were included in the list, but no reference was made to its Glendale and Yuma facilities. Although disputed at the hearing, the credited evidence established that the final contract was executed on June 26, 1970, in this form.

The Trial Examiner found that as the Union signed a contract which on its face covered only two of Respondent's locations, it must be deemed bound by that agreement. However, since the undisputed facts show that coverage of the contract was not a subject of negotiations, the Trial Examiner further concluded that Respondent, by refusing to apply the contract to its Yuma location,[1] as it had in the past, unilaterally attempted to modify the appropriate unit in derogation of Section 8(a)(5) of the Act. We disagree with this latter finding.

In our opinion, as there is no fraud or misrepresentation alleged, the Union must be bound by the plain and unequivocal terms of the agreement. As noted, the facts show that the Union received the proposed contract (containing the list) about 2 weeks before it was executed. The Union claims that during this period it decided not to sign the contract unless, *inter alia,* the list of employers and locations was deleted, that it so advised the Respondent, and that the contract was executed as so modified. However, the Trial Examiner rejected the Union's contention and determined that the credited evidence[2] established that the list was indeed part of the executed agreement. Therefore, as the terms of the contract are controlling, we conclude that the Union, by signing the contract, agreed that it did not apply to Respondent's Yuma location. 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 in its entirety.

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[1] As Respondent has applied the contract to its Glendale facility, it was agreed at the hearing that the only issue was with regard to Yuma

[2] The General Counsel has excepted to certain credibility findings made by the Trial Examiner It is the Board's established policy not to overrule a Trial Examiner's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions were incorrect *Standard Dry Wall Products, Inc.,* 91 NLRB 544, enfd. 188 F.2d 362 (C A. 3) We have carefully examined the record and find no basis for reversing his findings

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

IRVING ROGOSIN, Trial Examiner: The complaint, issued February 26, 1971, alleges that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1), (5) and (d), and Section 2(6) and (7) of the Act.

Specifically, the complaint alleges that, at all times material since June 15, 1970, Respondent has refused, after demand, to recognize and bargain with the Union as the exclusive bargaining representative of Respondent's employees in appropriate unit, by specified acts and conduct, including: (a) an attempt to revoke unilaterally its designation of a multiemployer association as its bargaining representative with the Union, as the exclusive bargaining agent of Respondent's employees, at its Yuma and Glendale, Arizona, places of business; (b) repudiation of a collective-bargaining agreement entered into between the association and the Union; (c) refusal to honor and abide by the terms of said collective-bargaining agreement, as it applies to Respondent's employees at its Yuma and Glendale, Arizona, places of business; and (d) unilateral alteration of rates of pay, wages, hours of employment, and other terms and conditions of employment of its employees at its Yuma and Glendale, Arizona, places of business, thereby engaging in unfair labor practices within the meaning of Section 8(a)(5) and (d), and interfering with, restraining, and coercing its employees within the meaning of Section 8(a)(1) of the Act.[1]

Respondent's answer admits the procedural and jurisdictional allegations of the complaint and the execution of the collective-bargaining agreement between the association and the Union, but denies that Respondent's offices or plants in Glendale and Yuma, Arizona, were members of the association or that those offices or plant were included or intended to be included in the collective-bargaining agreement, and denies either for lack of sufficient information or generally, the remaining allegations of the complaint.[2]

Hearing was held before the duly designated Trial Examiner on July 13, 1971, at Phoenix, Arizona. All parties appeared and were represented by counsel or a union representative, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce oral and documentary evidence relevant and material to the issues, to argue orally and file briefs and proposed findings of fact and conclusions of law. The parties waived oral argument. Pursuant to an extension duly granted, the General Counsel filed a brief on August 16; Respondent on August 23, 1971, including proposed findings of fact. To the extent they are consistent with the findings of fact and conclusions of law hereinafter made, they are granted, but otherwise denied.

Upon the entire record in this case, the uncontradicted testimony or a reconciliation of conflicts in the testimony and, based upon the appearance and demeanor of the witnesses, and the briefs of the parties, which have been carefully considered, the Trial Examiner makes the following:

[1] Designations herein are as follows: the General Counsel, unless otherwise stated his representatives at the hearing; O'Malley Glass & Millwork Co: Respondent, the Company or the Employer; International Bortherhood of Painters and Allied Trades, AFL–CIO, Glaziers & Glassworkers Local No 1610: the Union, the Charging Party or Local 1610; the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat 519, 29 U.S C. Sec. 151, *et seq.):* the Act. The charge was filed and served on December 15, 1970

[2] At the outset of the hearing, Respondent filed an amended answer, in effect, admitting the substantive allegations of the complaint, except as they relate to Respondent's Glendale and Yuma places of business Although there was no objection to the filing of the amended answer, the record does not reflect that the same was allowed. The amended answer was allowed, and the record is hereby corrected accordingly.

FINDINGS OF FACT

I THE BUSINESS OF RESPONDENT

The complaint alleges, Respondent's answer admits, and it is hereby found, that, at all times material herein, O'Malley Glass & Millwork Co., Respondent herein, has been a corporation duly organized under the laws of the State of Arizona, with its principal office and place of business in Phoenix, Arizona, and additional places of business in Tucson, Yuma, and Glendale, Arizona, engaged in the business of distributing and selling glass, and performing glazing and related services.

During the 12-month period preceding issuance of the complaint, a representative period, Respondent has purchased and had delivered to its places of business, glass products, tools, parts, and other related products, valued in excess of $50,000, directly from states outside the State of Arizona. During the corresponding period, Respondent has made sales of products and services, valued in excess of $50,000, to firms within the State of Arizona, making purchases directly from states outside the State of Arizona, valued in excess of $50,000.

It is, therefore, found that Respondent is, and at all times material herein has been, an employer engaged in commerce and in operations affecting commerce, within the meaning of Section 2(2), (6), and (7) of the Act, and the jurisdictional standards of the Board.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Painters and Allied Trades, AFL–CIO, Glaziers & Glassworkers Local No. 1610, herein called the Union or the Charging Party, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III THE UNFAIR LABOR PRACTICES

A. *The Issues*

1. Whether, by the execution of the collective-bargaining agreement, dated June 1, 1970, between Arizona Multi-Employer Bargaining Aggregate, herein called AMEBA, an employer association of which Respondent was a member, the parties included or intended to include Respondent's operations at Glendale and Yuma, Arizona.

2. Whether Respondent's failure or refusal to apply the terms and conditions of the collective-bargaining agreement to its operations at Glendale and Yuma, Arizona, constituted a refusal to bargain within the meaning of Section 8(a)(5) and 8(d) of the Act.

B. *Background*

Respondent maintains and operates four places of business in the State of Arizona, namely, in Phoenix, Tucson, Glendale, and Yuma. Its principal place of business is located in Phoenix, where it maintains a warehouse and conducts a wholesale glass operation, with emphasis on building construction glazing, commonly referred to as "contract glazing," and employs 13 employees. Its operation in Tucson, about 124 miles away, is substantially the same as the one in Phoenix, except on a somewhat smaller scale. The Glendale operation, located about 10 miles from Phoenix, is essentially a retail glass division, performing virtually no contract work, and employing three employees. The Yuma branch, located about 185 miles from Phoenix, is Respondent's smallest, and is also basically a retail operation, engaged in supplying glass for automobile windshields, residential window panes. Like the Glendale operation, it employs three employees. Respondent has performed a relatively small amount of con-

struction work at its Yuma branch, estimating on such jobs being done at Phoenix, and actually performed by glaziers out of that operation. Thomas E. O'Malley is president of the Company. Raymond Wells is director of labor relations for Respondent's entire operation with headquarters at Phoenix. Each of the branches is under the supervision of a separate manager. The Yuma operation was first established in 1955 or 1956. There is a central accounting office at Phoenix covering all Respondent's operations.

In 1965, the Union negotiated collective-bargaining agreements with individual employers, including Respondent, engaged in the glass and glazing industry, in the State of Arizona. Raymond Wells negotiated on behalf of Respondent and Business Representative Milton F. "Pete" Baker, on behalf of the Union, and each signed the contract on behalf of his respective principal. During the negotiations, Baker asked Wells whether he desired to sign separate contracts for each of Respondent's branches, and Wells told him that that would not be necessary—that a single contract would cover all the branches.[3] Respondent complied with the wage scales and other terms and conditions of the contract, which was applicable to all four branches, and made no protest or objection to the application of the contract to the Glendale and Yuma branches. The contract expired on June 1, 1970.

C. *The Current Collective-Bargaining Agreement*

In the fall of 1969 or early in 1970, an employer association was organized under the name of Arizona Multi-Employer Bargaining Aggregate, commonly referred to as AMEBA, for the purpose of acting as collective-bargaining representative of the principal employers in the industry in Arizona. Frank Kadish, president of Standard Glass Company, was elected president of the association, and has continued to serve in that capacity. As a result of negotiations between the negotiating committee of AMEBA and the Union, agreement was reached, and a contract, dated June 1, 1970, was executed on June 26, effective from June 1, 1970, to December 31, 1975, automatically renewable on any anniversary date, in the absence of 60-days notice prior to the anniversary date. The contract was executed by Frank Kadish, president, and R. L. Roeser, secretary, on behalf of AMEBA, and M. L. Baker, business representative, on behalf of the Union. Subjoined to the contract, and below the signatures, appeared the legend, "Members of Arizona Multi-Employer Bargaining Aggregate and their locations covered by this Agreement," underneath which, arranged in two columns, headed PHOENIX and TUCSON, were lists of names of employers, consisting of six each. Included in the list of employers at Phoenix, was O'Malley Glass & Millwork Co., 1655 West Jackson, Phoenix, Arizona, and the same employer, at 210 Stevens Avenue, Tucson, Arizona.

Respondent contends that the omission of the name of the Company at its Glendale and Yuma branches establishes the intention of the parties that those two branches were not to be covered by the contract.

The General Counsel and the Union contest this, maintaining that before the contract was finally executed, the Union had insisted that the statement regarding coverage under the contract, as well as the list of employers appearing thereunder, was to be deleted.

In support of their contention, Business Representative Baker testified that, after conferring with International Representative John Hayes, he was instructed not to sign the contract unless the first page of the contract was corrected to omit the date and reference to AMEBA, since the same contract was also to be applicable to another employer association, which had subsequently been formed, known as AGEA (the actual name of this association is not revealed by the record); the number of representatives on joint conference committee, provided for in the contract, be increased from three to five, to permit AGEA two representatives on the committee; and the names of the employer-members listed at the end of the contract be deleted.

The copy of the contract introduced in evidence by the General Counsel, which bears the original signatures of the parties, contains certain blue-pencil notations indicating the nature of these corrections, as testified to by Baker, but Respondent's original copy, also received in evidence, is devoid of any such blue-pencil changes. According to Baker's testimony, all the blue-pencil notations appearing on the Union's copy of the contract were made by David Shelton, manager of Pittsburgh Glass Company, who subsequently replaced Kadish as chairman of the negotiating committee, and had concurred in the changes. Baker was unable to explain why AMEBA's copy of the contract had not been conformed to the Union's copy, except to say that he had "flat goofed."

The events preceding negotiations for the current contract may shed some light on the intention of the parties with regard to coverage. At the first meeting between the union representative and AMEBA's negotiating committee, Kadish, chairman of the committee, presented Baker with a letter, furnished in response to a request from International Representative Hayes. The letter, on stationery of AMEBA, dated the same day, and addressed to the Union, stated AMEBA's desire for modification of the agreement, dated August 23, 1965, and listed the names of the members of the association employing glaziers who were members of the Union. Among the 12 employees in Phoenix and Tucson, was listed O'Malley Glass & Millwork Co., followed by its places of business at Phoenix, Tucson, Yuma, and Glendale. A meeting was requested for Wednesday, January 21.

At the second meeting between the parties, held on February 19, Kadish handed Baker an amended list of members of AMEBA, containing the names of nine members, including O'Malley Glass & Millwork Co., again followed by its places of business at Phoenix, Tucson, Yuma, and Glendale.[4]

On April 21, at a meeting at O'Malley's headquarters, Shelton, who had replaced Kadish as chairman of AMEBA's negotiating committee, submitted to the Union a complete draft of an agreement as its proposals. Only AMEBA was named in the preamble of this draft and the contemplated signatories were indicated as follows: FOR THE EMPLOYER: FOR THE UNION: Unlike the contract which was ultimately executed, no list of employer members of AMEBA was appended below the place for signature.

[3] Wells did not testify and the findings are based on Baker's credible and uncontradicted testimony According to Baker, the contract may have been signed under the name of Southwestern Glass & Millwork Company, Respondent's predecessor

[4] Kadish testified that, during the course of the bargaining negotiations, AMEBA discovered that some of the employers, who had been members of that association, were engaged to a very small extent in the type of work performed by the others, namely "contract-type" work, and were requested to resign from AMEBA, and that group later organized as AGEA. The list of the remaining members of AMEBA is the same as those appearing at the end of Respondent's executed copy of the collective-bargaining agreement. In the agreement, Respondent is named twice, once under the list of employers at Phoenix, and once under the list of those at Tucson, which accounts for the discrepancy in the actual number of members

The copy of the proposed agreement, received in evidence, was used by International Representative Hayes as his working copy, and contains his notations indicating approval or disapproval of various clauses. There is nothing in any of these notations or, for that matter, in the record, to establish that the subject of the constituency of AMEBA's membership or the inclusion or omission of a list of members was discussed. The General Counsel contends, however, that the absence of the list of members from the proposed contract is an indication that, "as of April 21, there was no contemplation by any of the parties as (sic) listing any of the companies or locations." According to Business Representative Baker, at no time during negotiations after he received this contract proposal was there any discussion between the parties as to which employers were members of AMEBA.

In about mid-June, agreement was reached, and the contract reduced to writing. After receiving a copy from Shelton, Baker prepared a copy, which he transmitted to International Representative Hayes, with the consequences which have already been detailed.

In this posture of the case, the General Counsel contends that the emendations, as indicated by the blue-pencil notations on the Union's copy of the contract, were not only agreed to by Shelton but actually made by him on the copy introduced in evidence by the General Counsel. Respondent contends, however, that the notations were made to facilitate the use of that contract form in completing its contract negotiations with AGEA, the other association consisting of smaller companies engaged in less extensive glazing operations, such as replacement of automobile windshields and residential window panes. Baker stated that the reason the Union desired to have the specific portions of the proposed draft, including the listing of the employer-members, eliminated, was that International Representative Hayes advised him that they covered matters which had never been negotiated. Considering that, preliminary to negotiations, AMEBA had, at the Union's request, submitted a list of its members, and that the association later submitted an amended list, the Union's contention is difficult to accept.

Despite the fact that Shelton, who is said to have concurred in the changes in the contract proposals, did not testify, Respondent's position, that the blue-pencil notations were made as an accommodation to the Union, so that it could use the same contract form in its negotiations with AGEA, commends itself as more plausible. The fact that one of the modifications sought by the Union entailed increasing the number of representatives on the joint conference committee from three to five, to satisfy AGEA's request for two members on the committee, lends support to Respondent's position. Moreover, it is difficult to believe that Business Representative Baker would have signed the counterparts of the contract with AMEBA without first ascertaining that all copies of the contract had been conformed to the Union's purported copy. Robert L. Roeser, Respondent's Phoenix contract manager, and secretary of AMEBA, who signed the contract in his official capacity, testified positively and categorically that the list of employer-members of AMEBA and their locations was set forth below the place for signatures at the time he signed the contract and that there were no blue-pencil notations on the agreement at the time he signed it.

According to Kadish, president of AMEBA, the final copy of the contract was xeroxed, the copies distributed to the representatives of the parties to make certain that all copies were exactly alike, and then passed around the table for signature. There were, according to him, no blue-pencil markings on any of the copies submitted for signature. During the negotiations, changes were made and when agreement was reached, final copies were prepared and submitted to the officers of the association. It was never contemplated that the individual employer-members of AMEBA would sign the contract and, as Kadish testified, under the association's bylaws, members were bound by the contract signed by AMEBA. Employer-members undertaking to sign the contract as individuals were subject to a $10,000 penalty. Subsequent modifications of the contract, such as health and welfare and pension plans, were handled by written amendment to the contract, signed by the parties, and executed on July 22.

The preponderance of the credible evidence establishes that the collective-bargaining agreement entered into between the parties, dated June 1, 1970, was, in fact, the contract entered in evidence by Respondent, to which the names of the employer-members was appended below the signatures of the officers of AMEBA and the representative of the Union, and it is so found. The Union's insistence that the list of employer-members had been deleted from the contract prior to its execution appears to be rooted in a desire to be relieved of the consequences of possible constructive notice that Respondent did not intend to be bound by the contract, insofar as its Glendale and Yuma branches were concerned. To this extent, the Union may have been the subconscious victim of wishful thinking, when its representative testified regarding the blue-pencil corrections on the Union's copy of the contract. It is not at all unlikely that these notations were actually made on the Union's working draft. In any case, it has been found that the contract, as executed in final form, did not contain any of these notations but was, in fact, in the form represented by AMEBA's copy of the contract.

It is difficult to believe that Baker would have been so remiss as to sign the final draft of the contract without first having ascertained that it conformed in all material respects to what he claimed to be the agreement reached. Whether because of oversight or some other reason, the fact is that the contract which he actually signed did not contain the corrections to which Shelton, as chairman of AMEBA's negotiating committee, had allegedly agreed. Having signed the contract, the Union must be deemed bound by it.[5]

Proceeding from this premise, it is to be assumed that the Union should have been aware that Respondent was maintaining that the contract did not apply to its Glendale and Yuma branches. The issue then becomes whether, by executing the contract, which omitted from its coverage these two branches, the Union must be deemed to have acquiesced in Respondent's position or to have become estopped from asserting that the contract was applicable to all four branches. The record is devoid of any evidence that this subject was ever discussed between Respondent's bargaining representative and the Union at any stage of the negotiations. According to Kadish, Respondent's Glendale and Yuma locations were omitted from among the list of employers "because the basic work done down in those two areas is not the same as the

[5] "As a general principle, one who accepts a written contract is conclusively presumed to know its contents and to assent to them, in the absence of fraud, misrepresentation, or other wrongful act by another contracting party Thus, ignorance of the contents of a contract expressed in a written instrument does not ordinarily affect the liability of one who signs it or who accepts it otherwise than by signing it If a man acts negligently and in such a way as to justify others in supposing that the writing is assented to by him, he will be bound both at law and in equity, even though he supposes that the writing is an instrument of an entirely different character

". . . It is the duty of every contracting party to learn and know its contents before he signs and delivers it, and, if the contract is plain and unequivocal in its terms, he is ordinarily bound thereby . . . " 17 Am Jur 2d § 149. There is no contention that the other contracting party here engaged in fraud, misrepresentation, or other wrongful conduct to induce the Union to execute the contract

work basically done by the AMEBA members. Yuma is in a rural area and they have no contracts to any great degree and Glendale does auto glass work which is closer to the AGEA members . . . " This argument would have more relevance if the issue were whether a single unit of Respondent's employees at its four branches or separate units of each branch, were appropriate.

The complaint, however alleges that all employees of employer-members of AMEBA (in the classifications set forth in the current collective-bargaining agreement), with the customary exclusions, constitute an appropriate unit for the purposes of collective bargaining. In its answer, Respondent denies these allegations on the ground of lack of sufficient information as to the truth of the allegations. Respondent's amended answer, however, filed at the opening of the hearing, denies that Respondent's offices or plants in Glendale and Yuma were members of AMEBA or that said offices or plants were intended to be or were included in the collective-bargaining agreement, but admits the allegations regarding the appropriate unit, "as said allegations are applied to the employees employed by employer members of AMEBA, said employer members being set forth in the current Collective Bargaining Agreement."

Although the previous collective-bargaining agreement between Respondent and the Union, which antedated the organization of AMEBA, dated August 23, 1965, was not introduced in evidence, Union Representative Baker's uncontroverted testimony, indicates that that contract covered all four of Respondent's operations, specifically including Glendale and Yuma. In 1964, according to Baker, his understanding with Respondent's Personnel Manager Wells was that Glendale and Yuma were covered by the contract. There was, according to Baker, never any discussion during the 1970 negotiations as to whether Glendale and Yuma would or would not be covered under the AMEBA contract with the Union, and it was not until October, 1970, when some of the glaziers in the Yuma branch reported to him that they were not being paid union scale, that he learned that Respondent maintained that the contract did not apply to the Yuma branch. Baker, accompanied by his assistant, thereupon went to Yuma to investigate, and several weeks later returned with a member of the Union's executive board. In discussing the matter with Kenneth Breddemeyer, manager of Respondent's Yuma branch, a union member, they were informed that Wells had instructed Breddemeyer not to pay union scale or hire union members. Immediately upon his return from Yuma, Baker, accompanied by International Representative Hayes, called on Thomas E. O'Malley, president of the Company, and Wells, and told them that the Company was not living up to its agreement. O'Malley informed the union representatives that there were only three men involved at Yuma, that he was paying them above scale, and that he had no intention of applying the contract to the Yuma employees. According to Baker's uncontradicted testimony, O'Malley gave as his reason mere "stubbornness." With regard to the Glendale operation, the Union conceded at the hearing that Respondent has always adhered to the contract since 1962, has always paid union scale and fringe benefits, and has "lived up to the union agreement."

The record leaves little doubt that at some time during the negotiations, Respondent concluded, for whatever reasons, that it no longer wished to have the Yuma branch covered by the agreement. Instead of notifying the Union to that effect, and affording it an opportunity to bargain about the subject, Respondent unilaterally, and without consultation with the Union, decided to withdraw the Glendale and Yuma branches from the application of the contract. Nevertheless, despite the fact that the list of employers, appended to the contract, showed the elimination of both the Glendale and Yuma branches, according to Baker's uncontroverted testimony, Respondent continued to be bound by the contract for its Glendale operation.

Whatever merit there may have been to Respondent's contention that, because of the nature and size of the Yuma operation, and its distance from Respondent's principal headquarters at Phoenix, it should be excluded from the unit of Respondent's employees at its other operations, the fact remains that in the 1965 contract between Respondent and the Union, the parties had bargained for a single unit of employees covering Respondent's principal place of business at Phoenix and its three branches. Since the Union's majority status has never been in dispute, and, first, the Company, and, later, AMEBA, had recognized the Union as exclusive bargaining agent of the unit employees of all its members, the Union was entitled to have been notified, and afforded an opportunity to bargain on the issue of whether the Yuma branch should no longer be included in the contract coverage of Respondent's employees.

Moreover, there was no contention or showing that the nature of the operation at Yuma had changed materially from the time the Union was recognized as representative of Respondent's employees at all four operations. What is more, apart from the proximity of the Glendale branch to Respondent's headquarters in Phoenix, there was no appreciable difference between the operation at Yuma and that in Glendale, which Respondent regarded as covered by the contract.

The issue here does not involve a situation where an employer-member of a multiemployer association seeks to withdraw from the group but rather where the member is attempting unilaterally, and without prior consultation with the Union, to alter the composition of the appropriate unit, which, as has been found, for the reasons previously stated, it was not privileged to do.

On the basis of the foregoing, and upon the entire record, it is hereby found that Respondent attempted to modify the appropriate unit of employees, including Respondent's employees at the Yuma operation, of employer-members of AMEBA, by unilaterally, and without prior notification to the Union, and an opportunity to bargain on the matter, by eliminating the Yuma branch from the application of the contract. By so doing, and by failing and refusing, since June 15, 1970, to recognize and bargain with the Union as exclusive bargaining representative of Respondent's employees in the appropriate unit, including its employees at the Yuma branch, and by its unilateral attempt to revoke its designation of AMEBA as bargaining representative of Respondent, and the designation of the Union as exclusive bargaining representative of Respondent's employees at its Yuma, Arizona, place of business, and by repudiating, and refusing to apply the collective-bargaining agreement to Respondent's employees at said place of business, Respondent has failed and refused to bargain with the Union, within the meaning of Section 8(a)(5), and (d), thereby interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7, and engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

IV THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations, described in section I, above, have a close, intimate, and substantial relation 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

Having found that Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to adhere to and abide by the terms of a multiemployer collective-bargaining agreement with the Union, to which it was a party, insofar as it applied to Respondent's branch at Yuma, Arizona, it will be recommended that Respondent be ordered to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent has failed and refused to bargain in good faith with the Union as majority representative of the employees in an appropriate unit, on behalf of its employees at its Yuma, Arizona, branch. It will, therefore, be recommended that Respondent be required to bargain in good faith with the Union, and give retroactive effect to the June 1, 1970, collective-bargaining agreement between AMEBA and the Union, with regard to the Yuma operation, for the duration of said agreement.[6]

It will further be recommended that Respondent make whole its unit employees at the Yuma, Arizona, branch, for any loss of earnings they may have sustained by reason of Respondent's refusal to adhere to and abide by the terms of the multiemployer agreement, by payment to each of said employees of the difference between the amount of wages they were paid from June 1, 1970, and the amount they would have been entitled to be paid under the wage provisions of said collective-bargaining agreement, with interest at 6 percent per annum, in accordance with *Isis Plumbing & Heating Co.*, 138 NLRB 716. It will also be recommended that Respondent make such contributions on behalf of said employees for health and welfare, pension or other fringe benefits as may be required under the terms of said multiemployer agreement.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. O'Malley Glass & Millwork Co., Respondent herein, is, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Painters and Allied Trades, AFL–CIO, Glaziers & Glassworkers Local No. 1610, the Union herein, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

3. All employees employed by employer-members of Arizona Multi-Employer Bargaining Aggregate (AMEBA herein), in the classifications set forth in the collective-bargaining agreement between AMEBA and the Union, dated June 1, 1970, excluding all other employees, office clerical employees, guards, watchmen, and supervisors, as defined in the Act, constitute, and at all times material herein have constituted, a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b) of the Act.

4. At all times material herein, including June 1, 1970, and since, a majority of the employees of employer-members of AMEBA, including Respondent, and its branch at Yuma, Arizona, in the unit described above, has designated the Union as their exclusive representative of the employees in the appropriate unit found above, for the purposes of collective bargaining with AMEBA and its members, including Respondent, at its places of business, including Yuma, Arizona.

5. By unilaterally, and without prior notice to and consultation with the Union, effecting changes in the composition of the appropriate unit, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and 8(d) of the Act.

6. By refusing to adhere to and abide by the terms of the multiemployer agreement between AMEBA and the Union, to which it was a party, insofar as it applied to Respondent's branch at Yuma, Arizona, Respondent has failed and refused to bargain with the Union, as exclusive representative of the employees in the appropriate unit found above, including employees of Respondent at its Yuma, Arizona, place of business, thereby engaging in unfair labor practices within the meaning of Section 8(a)(5) and (d) of the Act.

7. By the foregoing conduct, Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7, thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The unfair labor practices found above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following.[7]

[Recommended Order omitted from publication.]

[6] In view of the Union's concession that Respondent has, in fact, applied coverage under the collective-bargaining agreement to the Glendale operation, no reference to this branch has been made in the remedial order It is to be expressly understood, however, that the Glendale branch is to be deemed covered by the multiemployer agreement

[7] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102 48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.