

**Associated Shower Door Co., Inc. and Century Shower Door Company, Inc. and Los Angeles Shower Door Company and Glaziers & Glassworkers Union Local 636 International Brotherhood of Painters and Allied Trades, AFL-CIO and Association of Shower Door Industries, Inc.** Cases 31-CA-2790, 31-CA-2745, 31-CA-2824, 31-CA-2791, and 31-CA-2829

August 24, 1973

## DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND JENKINS

On February 27, 1973, Administrative Law Judge George Christensen issued the attached Decision in the proceeding. Thereafter, Respondents Associated Shower Door Co., Inc., and Century Shower Company, Inc., filed exceptions and a supporting brief, and the General Counsel filed a brief answering Respondents' exceptions.

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

The Board has considered the record, and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> of the Administrative Law Judge and to adopt his recommended Order.<sup>3</sup>

We cannot agree with the view of our concurring colleague that a multiemployer unit may no longer be a valid bargaining unit merely because, after impasse, the Union has secured individual agreements from several of its members. Obviously, employers come and go in multiemployer units. Additions and withdrawals occur before, during, and after a strike, at the option of particular employers, and in timely fashion as required under long-established Board and court rules. To suggest that withdrawal from the established unit, as a consequence of a strike and the picketing of

several members of the unit, may result in the destruction of the multiemployer unit where the remaining members and the Union are willing to and do continue bargaining on that basis is an entirely novel theory without support in Board or court decisions.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondents Associated Shower Door Co., Inc., Los Angeles, California; Century Shower Door Company, Inc., Torrance, California; and Los Angeles Shower Door Company, Los Angeles, California; their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

CHAIRMAN MILLER, concurring:

I concur in the result herein but wish to disassociate myself from a portion of the rationale relied on by the Administrative Law Judge in his decision which has been adopted in its entirety by my colleagues.

It is true that, under *Retail Associates, Inc.*, 120 NLRB 388, and subsequent cases, we have held that neither an employer nor a union may withdraw from multiemployer bargaining once such bargaining has commenced, absent unusual circumstances. Those unusual circumstances include the reaching of an impasse and a subsequent course of action by the non-withdrawing party indicating its acquiescence either to specific withdrawals or to a general breakup of the multiemployer bargaining unit. The Administrative Law Judge, however, viewed the law as being that union acquiescence to employer withdrawal must be based on interaction between the union and the particular withdrawing employer. I would not adopt this view. In the instant case, after impasse was reached, the Union engaged in selective picketing which achieved its result; i.e., the making of individual agreements with employers who had formerly been part of the multiemployer unit. That course of conduct, I believe, so effectively decimated the multiemployer unit that the Union should not thereafter be heard to complain that the original multiemployer unit was no longer viable.

The facts here, however, show that subsequent to the above events which caused a breakup of the original multiemployer unit, Respondents Associated, Century, and Los Angeles so conducted themselves as to reestablish, through either actual or apparent authority, an agency relationship with the representatives who had formerly represented the old

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

<sup>2</sup> In the absence of exceptions thereto, we adopt, *pro forma*, the Administrative Law Judge's findings that Respondent Los Angeles Shower Door Company violated Sec. 8(a)(5) and (1) of the Act.

<sup>3</sup> Although we order the Respondents to comply with the contract negotiated on their behalf by the Association of Shower Door Industries, Inc., with the Union, we shall leave to the compliance stage of this proceeding the resolution of any conflict which may exist between the contract and the Wage and Price Freeze Regulations then in effect.

multiemployer unit; i.e., President Propker and Attorney Robin. Thus these Respondents must, as a matter of law, be found to be bound by the agreement thereafter negotiated between their agents, acting on their behalf, and the Union.

The record evidence demonstrates that on October 19, a date subsequent to the October 3 and October 5 withdrawals of the three Respondents here, and subsequent to the divide-and-conquer strategy employed by the Union, Respondent Associated and Respondent Century participated in a bargaining meeting in which it surely appeared that Propker and Robin continued to be the negotiating representatives for the employers there assembled. Neither of these Respondents thereafter gave any further notice to the Union to revoke or dispel the apparent authority thus invested in Propker and Robin.

Therefore, when in November these same agents—Propker and Robin—negotiated to the point of agreement with the Union, Respondents Associated and Century were, in my view, bound by the agreement so made. The facts also show that a representative of the third Respondent here, Los Angeles, specifically authorized President Propker to sign the agreement arrived at in the course of the November meeting.

Under these circumstances it seems clear to me that none of the three Respondents here could subsequently renege on the November agreement without breaching the good-faith bargaining obligation imposed by our Act. And it is upon this legal and factual basis that I would premise the finding of the 8(a)(5) and (1) violation, and thus concur in the result reached by my colleagues.

## DECISION

### STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge: On October 3, 4, and 5, 1972, I presided over a hearing at Los Angeles, California, to try issues raised by a complaint issued on July 25, 1972, alleging that the Respondents violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (hereinafter the Act), by formally revoking the authority of the Association to represent or bind them after the Association engaged in collective bargaining on their behalf with the Union and by refusing to comply with the terms of an agreement subsequently executed by the Association and the Union.

Respondents concede they revoked the Association's authority to bargain for them after it had commenced bargaining on their behalf and refused to comply with the agreement subsequently executed by the Association and the Union, but assert they did not violate the Act because the revocation followed an impasse in Association-Union bargaining and execution of individual agreements by the Union several members of the Association.

The basic issue, therefore, is whether the Respondents' revocations of their previously granted authorizations for the Association to represent and bind them relieved them of any further obligation under the multiemployer bargaining system they had earlier established and participated in.

The parties appeared by counsel at the hearing and were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, argue and file briefs. Briefs have been received from the General Counsel and counsel representing Associated and Century.

Based upon my review of the entire record, observation of the witnesses, and perusal of the briefs and research, I enter the following:

## FINDINGS OF FACT

### I JURISDICTION AND LABOR ORGANIZATION

The parties stipulated and I find that, at the time negotiations commenced (August 5, 1971)<sup>1</sup> between representatives of the Association and representatives of the Union, there were 10 members of the Association, namely, American Shower Door (hereafter American), Associated, Century, Daniels Shower Door Company (hereafter Daniels), Delta Shower Door Company (hereafter Delta), Hecker Manufacturing Company, also known as C-E Building Products (hereafter called C-E), Hollywood Shower Door Company (hereafter called Hollywood), Imperial Shower Door Company (hereafter called Imperial), Los Angeles, and Modern Shower Door Company, also known as Shower Door and Glass, Inc. (hereafter called Modern).

The parties further stipulated and I find that Imperial, in the normal course of its business, sells goods valued in excess of \$50,000 to Larwin of Southern California and that Larwin of Southern California, in the normal course of its business, annually produces a gross volume of retail sales in excess of \$500,000 and annually purchases and receives directly from firms outside of California goods valued in excess of \$10,000.

The parties further stipulated and I find that Daniels annually ships goods valued in excess of \$10,000 to firms located outside the State of California.

Based upon the foregoing, I find and conclude that Associated, Century, and Los Angeles, as employer-members of a multiemployer association created for the purpose of engaging in collective-bargaining negotiations with the Union, were employers engaged in interstate commerce in a business affecting interstate commerce as those terms are defined in Section 2(2), (6), and (7) of the Act.<sup>2</sup>

The complaint alleges, the answer admits, and I find and conclude that the Union, at all times pertinent, was a labor organization within the meaning of Section 2(5) of the Act.

<sup>1</sup> Read 1971 after all further date references omitting the year

<sup>2</sup> The parties further stipulated, and I find that, but for their inclusion in the associationwide unit, the Respondents do not meet the Board's jurisdictional standards for asserting jurisdiction over retail or nonretail enterprises

## II THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit and the Union's Majority Status Therein*

The Board on August 3, in Case 31-RC-1731, certified that the Union was the exclusive collective-bargaining representative of all production, maintenance, and installation employees of the employer-members of the Association, excluding office clerical employees, professional employees, supervisors, and guards. As noted heretofore, American, Associated, C-E, Century, Daniels, Delta, Hollywood, Imperial, Los Angeles, and Modern constituted the Association's membership at that time. The certification issued following an election among the employees in the included categories specified above, wherein a majority of votes were cast for representation by the Union.

I therefore find and conclude that, at all times pertinent, a unit consisting of all production, maintenance, and installation employees of the 10 employers listed above, excluding office clerical employees, professional employees, supervisors, and guards, was an appropriate unit for collective-bargaining purposes within the meaning of Section 9 of the Act and that the Union has represented a majority of the employees within that unit since August 3.

B. *The Negotiations*

On August 5, representatives of the Association and the Union commenced negotiations. During the course of the negotiations, the Union was represented by Attorney Leo Geffner, Business Manager Robert Hubbard, and Business Representatives Peter Verkerke, Mario Estrada, and Maurice Batiste. During the earlier stages of the negotiations, the president of the Association, Herman Propker, was hospitalized and unable to participate therein. During this period, the Association was represented by Attorney Edward Robin, Secretary William Siegel (the top official of Century), Treasurer William Willard (the top official of Imperial), and William Benezra and Leo Siefert (the top officials of Associated).

Negotiations continued until September 15 without settlement. Robin and Siegel acted as the Association's spokesmen and Geffner and Hubbard acted as the Union's spokesmen during this period. Geffner testified that the parties reached an impasse over cost items at the September 15 meeting and the Union at that time informed the Association it was going on strike.

Siefert testified that, during an employer caucus on September 15, he informed the Association representatives present, which included its attorney, secretary, and treasurer (Robin, Siegel, and Willard), that he wanted no further part of the Association and representation by its attorney. He further stated, however, that he did not inform the Union of this purported resignation at the September 15 meeting, but testified he did so inform a union business representative, McClellan a few days later.

On September 16, the Union commenced picketing all the

members of the Association.<sup>3</sup>

On September 17, representatives of Modern called the Union and said Modern would sign the Union's last proposal of September 15, if the Union would pull off the pickets. The Union agreed, a contract was executed, pickets were removed, and Modern resumed operations.

On September 21, C-E sent a letter to the Association and the Union stating it was withdrawing from the Association.

On September 22, American sent a letter to the Association and the Union stating it was withdrawing from the Association.

On September 23, C-E contacted the Union and negotiated a settlement on the same terms as the Modern-Union contract. The agreement was reduced to writing and executed the following November. Picketing at C-E ceased after the September 23 oral agreement and normal operations were resumed.

On September 23, Hollywood executed the same agreement and resumed operations.

On October 3, Century sent a telegram to the Association and the Union stating it was revoking the authority of the Association to represent or bind Century in any further negotiations.

On October 4, representatives of the Association and the Union met under the auspices of the Federal Mediation and Conciliation Service (hereinafter called FMCS). For the first time Herman Propker, president of the Association (and the top official of Daniels), appeared and participated. In addition to Propker, the Association was represented by Attorney Robin, Treasurer Willard of Delta, Rosen of Imperial, and Harold Schwimer (the top official of Los Angeles). Siefert of Associated also attended and participated in the meeting. The parties' differences were discussed but not resolved.

On October 6, Associated and Los Angeles sent telegrams to the Association, its attorney, and the Union stating they were withdrawing from the Association and revoking the authority of the Association and its attorney to negotiate on their behalf or bind them. Shortly thereafter Propker met with Geffner and Hubbard. Geffner informed Propker the Union did not agree to the unilateral withdrawal of Associated, Century, and Los Angeles from the multiemployer unit and that, in his opinion, the three companies could not withdraw without the Union's consent. Propker stated that since he was well enough to take charge of negotiations, he thought they could be concluded successfully and requested that the Union call off the strike. Hubbard replied the Union would comply with Propker's request and did so. Picketing ceased on approximately October 8 or 10.

On October 8, Geffner sent letters to Associated, Century, and Los Angeles advising them the Union did not consent to their withdrawal from multiemployer bargaining and that each would be bound by any agreement reached between the Association and the Union.

On October 19, representatives of the Association and the Union met to negotiate. The Union modified its demands and the Association made a counterproposal, but no agreement was reached. The Association was represented by Propker, Robin, and Willard, its president, attorney, and

<sup>3</sup> Picketing continued until approximately October 8 or 10 with exceptions noted below

treasurer. Siegel of Century and Siefert of Associated were also present.

Siegel testified he met Propker for dinner that evening and accompanied him to Robin's office, that he did not see Siefert there, and that he left Robin's office as soon as union representatives appeared there. He later testified he told the Union he was there only as a spectator and that Century would be willing to negotiate with the Union but would not have any part of the meeting between the Association and the Union.

Siefert of Associated testified he came to Robin's office at Propker's invitation, on Propker's representation that he would "get a little education"; that he did not have dinner with Propker and Siegel but met with them and Robin after he arrived at Robin's office. Siefert testified that he left Robin's office as soon as he saw union representatives in the office.

Geffner testified that Siegel participated in the October 19 negotiations throughout and Siefert for a substantial period. He further testified neither Siegel nor Siefert stated at anytime they were there in a capacity other than as representatives of the Association.<sup>4</sup> Geffner further testified that Siefert left before the conclusion of the negotiations following a heated employer caucus. (Geffner stated he could hear raised voices from the room where the caucus took place.)

Robin testified that Siefert attended the first third of the negotiations, and that Siegel was there throughout. He testified that both Siegel and Siefert participated in the discussions of the Union's proposals and the Association's counterproposals during employer caucuses and in the preparation of the Association's counteroffer. Robin also corroborated Geffner's testimony that at no time during the negotiations did either Siegel, Siefert, Propker or he inform the Union that Siegel and Siefert were there other than as representatives of the Association.

Propker testified that he persuaded Siegel and Siefert to attend the negotiations on his representation that he needed their support, though they conveyed to him they didn't want anything to do with the Union. Propker corroborated Geffner's testimony that the union representatives were not informed at anytime that Siegel and Siefert were there other than as Association representatives.

I find on the basis of Geffner's testimony, corroborated by Propker and Robin, that Treasurer Siegel of Century and Siefert of Associated attended and participated in the negotiations between the Association and the Union, discussed the terms of the Union's proposals and the Association's counterproposals, assisted in the preparation of the latter, and at no time informed the union negotiators they were in a capacity other than as representatives of the Association. I further find and conclude, on the basis of the foregoing, that Siegel and Siefert attended and participated in the October 19 Association-Union negotiations as representatives of the Association.

On November 1, the Association met to draft its "final offer." President Propker, Attorney Robin, Treasurer Siegel, and Siegel's son, of Century, Rosen of Imperial, Secre-

tary Willard of Delta, and Bud Kushara, the top official of Modern, participated in the formulation of the offer.

On November 3, representatives of the Association and the Union met. Robin and Propker appeared on behalf of the Association; Geffner and Hubbard appeared on behalf of the Union. Robin proffered the Association's November 1 offer. The Union refused to consider it.

On November 4, Robin sent a letter to Hubbard setting out the Association's November 1 offer.

On November 11 or 13, the Union placed pickets at Daniels; Propker arranged a meeting with the Union. Propker, Robin, Geffner, Hubbard, and Verkerke attended the meeting. After discussions of the Union's October 19 proposal and the Association's November 1 proposal and intimations the Union would extend its picketing to the rest of the members of the Association who had not signed individual contracts, Propker stated the Association was willing to accept the Union's October 19 offer. Hubbard expressed reluctance to this on the ground the individual agreements executed by Modern, C-E, and Hollywood had better terms than the Union's October 19 offer, pointing out that the Union had indicated it was withdrawing the October 19 offer when it was not accepted at the meeting. Geffner called a caucus and persuaded Hubbard to accept an agreement incorporating the Union's October 19 proposal. This necessitated modification of the Modern, C-E, and Hollywood contracts with the Union, inasmuch as the three individual agreements and the Association agreement all contained "most favored nation" provisions providing that the contracting employers would have the better of any terms set by any agreement in the industry. While the parties awaited typing of the final agreement between the Association and the Union, Geffner and Verkerke left the office to pick up Geffner's car, which had been left for repairs. Propker and Robin went to another office where Propker telephoned Harold Schwimer of Los Angeles. Propker advised Schwimer of the terms agreed upon and Schwimer stated that, if that was the best he could do, to go ahead with it. On the return of Geffner and Verkerke to the office, Propker informed them there were no problems in the agreement, but suggested that Robin sign it. Hubbard objected and Propker then signed the agreement. The heading of the agreement clearly indicated that the agreement was between the Association and the Union. Verkerke signed on behalf of the Union. Robin stated he would advise the members of the Association of the terms of the contract and subsequently did so.

Daniels, Delta, and Imperial honored the Association-Union contract. The separate contracts between the Union and C-E, Hollywood, and Modern were modified to conform to the Association-Union contract with respect to more favorable terms of the Association-Union contract. American Associated, Century, and Los Angeles failed to comply with the Association-Union contract and, except for Los Angeles, have continued in effect lower wages, rates of pay, and other terms and conditions than those set out in the Association-Union contract. On March 16, 1972, Los Angeles executed a contract with the Union wherein it agreed to observe the terms and conditions of the Association-Union contract, except that the wage increases called for therein would be placed in trust pending an appropriate

<sup>4</sup> Siefert corroborated Geffner's testimony that he at no time informed any of the union representatives he was there in any capacity other than as a representative of the Association.

Board or court order.

The Union resumed picketing Associated in mid-November and continued picketing into 1972. It has not engaged in separate negotiations with or reached any agreement with Associated, and one of its representatives informed Siefert during such picketing that it would take an acceptance of the terms of the Associated-Union contract to secure removal of the pickets.

Picketing was not resumed at either American or Century. No separate or individual negotiations or agreements have been conducted or reached between the Union and Century or American.<sup>5</sup>

### C. Analysis and Conclusions

It has been general Board doctrine affirmed by the courts that neither an employer nor a union may withdraw from multiemployer bargaining once such bargaining has commenced absent unusual circumstances or acquiescence by the one party to the withdrawal of the other. *N.L.R.B. v. Tulsa Sheet Metal Works, Inc.*, 367 F.2d 55 (C.A. 10, 1966); *N.L.R.B. v. Jeffries Banknote Co.*, 281 F.2d 893 (C.A. 9, 1960); *N.L.R.B. v. Sheridan Creations, Inc.*, 357 F.2d 245 (C.A. 2, 1966); *N.L.R.B. v. Corbett Press*, 401 F.2d 673 (C.A. 2, 1968); *Universal Insulation Corp. v. N.L.R.B.*, 361 F.2d 406 (C.A. 1966); *N.L.R.B. v. Southwestern Colo. Contractors Association*, 379 F.2d 360 (C.A. 10, 1967); *Bill O'Grady Carpet Service, Inc.*, 185 NLRB 587; *Service Roofing Company*, 173 NLRB 321; *Retail Associates, Inc.*, 120 NLRB 388.

Since it is undisputed that the three Respondents' attempted withdrawals occurred after negotiations between the Association and the Union had commenced, it is necessary to ascertain if the Union acquiesced thereto. The conduct of the Union subsequent to the withdrawals must be examined to determine if acquiescence to the withdrawals may be implied therefrom. *Fairmont Foods Co. v. N.L.R.B.*, 471 F.2d 1170 (C.A. 8, 1972) denying enforcement of 196 NLRB 849; *Hartz-Kirkpatrick Construction Co., Inc.*, 195 NLRB 863; *Ice Cream Council, Inc.*, (*Ice Cream and Frozen Custard Employees Local 717*), 145 NLRB 865; *Joseph C. Collins & Co., Inc.*, 184 NLRB 940; *Publicity Engravers, Inc.*, 161 NLRB 221; *C & M Construction Company*, 147 NLRB 843; *Atlas Sheet Metal Works, Inc.*, 148 NLRB 27; *I. C. Refrigeration Service, et al.*, 200 NLRB No. 107; *Neville Foundry Co., Inc.*, 122 NLRB 1187; *Scougal Rubber Mfg. Co.*, 126 NLRB 470.

In all but the last two cases cited above, union acquiescence to employer withdrawal from multiemployer bargaining subsequent to commencement of multiemployer bargaining has been based upon interaction between the Union and the *withdrawing employer*, such as individual bargaining initiated by the Union with such employer, union offer of terms or conditions to the withdrawing employer more favorable than those proposed to the multiemployer unit, union participation in bargaining with the withdrawing employer over proposals by the latter, etc.

No such conduct by the Union *vis-a-vis* the three Respon-

*dents* occurred. Not only did the Union promptly upon receiving notice of the purported withdrawal from multiemployer bargaining from the three Respondents respond with a written objection thereto and insistence that they continue to bargain through the Association and comply with the results of such bargaining, it picketed Associated after the Association-Union contract was executed, advised Siefert its pickets would be removed only when Associated complied with the Association-Union contract, and filed the charges which led to this proceeding when the Respondents failed to comply with the Association-Union contract.

In the *I.C. Refrigeration Service* case *supra*, the Board stated that, "Acquiescence exists where a union engages in separate negotiations with a withdrawing employer, listens to counterproposals, and agrees to make certain concessions not offered the Association."

Based on the foregoing, I find and conclude that the Union by its conduct *vis-a-vis* the Respondents did not at any time acquiesce to their withdrawal from multiemployer bargaining through the Association.

As noted heretofore, findings of union acquiescence have also been predicated on union conduct addressed to other than the withdrawing employers. *Neville Foundry* and *Scougal Rubber*, *supra*. In the former case, after multiemployer bargaining had ensued, an impasse reached and strike action taken, the Union initiated individual negotiations with one of the employer-members and signed a contract with it, consented to a Board-conducted election in a unit limited to another employer-member's employees, sought individual negotiations with a third, and neither it nor the employer group sought or conducted any further multiemployer negotiations. The Union nevertheless contended in a subsequent representation proceeding involving a fourth employer-member that the multiemployer unit was the only appropriate unit for collective-bargaining purposes. The Board rejected its contention and ordered an election in the single-employer unit sought on the ground both parties had mutually acquiesced to the abandonment of multiemployer bargaining and therefore a multiemployer unit no longer existed. The *Scougal* case was to similar effect.

Since the Association resumed multiemployer bargaining with the Union after the impasse and strike and reached an agreement with the Union for terms common to and accepted by 7 of the 10 members of the Association, the abandonment doctrine of *Neville Foundry* and *Scougal* is inapplicable. The Union's rejection of the Respondents' attempted withdrawals from multiemployer bargaining, its insistence on the continuation thereof, the subsequent participation of the Respondents therein, and the resulting Association-Union warrant a completely opposite finding and conclusion.

The underlying purpose for the original establishment of multiemployer bargaining—uniform rates of pay, hours, and other working conditions for the employees of the employers within the multiemployer unit—was realized with the November 11 Association-Union agreement and conforming the Modern, C-E, and Hollywood contracts thereto, and only the failure or refusal of the Respondents prevented complete accomplishment of the commitment made by the Union and the employers who formed the Association when they commenced to bargain. The Union's

<sup>5</sup> Verkerke testified without contradiction that the Union has not pursued American because it was under the impression American had disposed of its shower door business. His testimony is credited.

acceptance of the proposals of Modern, C-E, and Hollywood did not destroy the pattern, since such acceptance neither released the Union from its obligation to continue to bargain with the Association nor released the other members of the Association from their obligation to continue to bargain with the Union through the Association, *N.L.R.B. v. Tulsa Sheet Metal Works, Inc.*, 367 F.2d 55 (C.A. 10, 1966), enfg. 149 NLRB 1487; *N.L.R.B. v. Southwestern Colo. Contractors Assn.*, 379 F.2d 360 (C.A. 10, 1967), enfg. 153 NLRB 141; *Ice Cream Council, Inc. (Ice Cream & Frozen Custard Employees Local 717)*, 145 NLRB 865; *Pacific Coast Association of Pulp and Paper Manufacturers*, 163 NLRB 892.

In addition, it is clear that the three Respondents by conduct subsequent to their purported withdrawals from multiemployer bargaining through the Association retracted those withdrawals and accepted the union rejection thereof.

Century notified the Union of its withdrawal from multiemployer bargaining on October 3. Associated notified the Union informally about September 17, and formally on October 5 of its withdrawal. Los Angeles notified the Union on October 5 of its withdrawal.

On October 3, a representative of Associated (Siefert) participated in negotiations between the Association and the Union, under auspices of the FMCS. On October 19, representatives of Associated and Century (Siefert and Siegel) attended and participated in negotiations between the Association and the Union. On November 1, representatives of Century (Siegel and his son) participated in formulation of the Association's "final offer" to the Union. On November 11 or 13, a representative of Los Angeles (Schwimer) authorized the president of the Association (Propker) to sign the Association-Union Agreement.

It is clear that Associated, Century, and Los Angeles tried to secure the best of two worlds; by continuing in the negotiations between the Association and the Union following their October withdrawal, they attempted to secure terms to their satisfaction; by filing a purported withdrawal from the Association, they attempted to preserve an opportunity to reject any Association-Union agreement if dissatisfied therewith and to bargain for better terms in individual negotiations.

I find, however, that by their appearance and participation in the Association-Union negotiations after service upon the Union of their October 3-5 withdrawal notices, Associated, Century, and Los Angeles retracted their withdrawals from multiemployer bargaining and accepted the Union's October 8 objection to their withdrawal and its insistence upon their remaining in and bound by the results of the multiemployer bargaining which occurred subsequent to their October withdrawal.

On the basis of the foregoing findings and conclusions, I further find and conclude that by failing and refusing to comply with the terms and conditions of the November 11 or 13 Association-Union Agreement from the date of its execution, Associated, Century, and Los Angeles violated and continue to violate Section 8(a)(5) and (1) of the Act.

#### CONCLUSIONS OF LAW

1. The Respondents, at all times pertinent, were employers engaged in commerce in a business affecting commerce and the Union, at all times pertinent, was a labor organization within the meaning of Section 2(2), (5), (6), and (7) of the Act.

2. Since August 3, the Union has been the exclusive collective-bargaining representative of a majority of the employees within an appropriate unit consisting of the production, maintenance and installation employees of the employer-members of the Association, excluding office clerical employees, professional employees, supervisors, and guards.

3. Since November 13, employees of Associated, Century, and Los Angeles classified as production, maintenance, and installation employees have been covered by a collective-bargaining agreement between the Association and the Union, and they and the Union are entitled to all benefits, terms, and conditions contained in that agreement.

4. Since November 13, Associated, Century, and Los Angeles have refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of their employees specified above by refusing to recognize the Union as the exclusive bargaining representative of such employees and by refusing to comply with the terms of the contract set out in paragraph 3, above, and have thereby violated Section 8(a)(5) and (1) of the Act.

5. The aforesaid unfair labor practices occurring in connection with Respondents' operations in interstate commerce will tend to foment labor disputes burdening and obstructing commerce or the free flow thereof unless remedied in accordance with the provisions of the Act.

#### REMEDY

Having found that the Respondents engaged in unfair labor practices, it shall be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

To restore to the employees and the Union the benefits lost by the Respondents' discriminatory refusals to observe and apply the terms of the Association-Union contract shall require an order directing the Respondent to recognize and bargain with the Union concerning the affected employees, upon its request, to comply with all the terms and conditions of the contract, and to make the Union and the employees whole by paying retroactively, to the effective dates set out in the contract, any moneys or benefits payable or due thereunder.

It shall also be necessary to require that the Respondents cease and desist from commission of the unfair labor practices found to have been committed.

On 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 issue the following recommended:

ORDER <sup>6</sup>

Respondents, Associated, Century, and Los Angeles, their officers, agents, successors, and assigns, shall:

1. Cease and desist from refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of their employees in the classifications covered by the Association-Union contract and refusing to comply with all the terms and conditions of that contract.

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

(a) Recognize the Union as the exclusive collective-bargaining representative of the Respondents' employees in classifications covered by the Association-Union contract, bargain with the Union at its request, and make the Union and their employees in the classifications covered by the contract whole for any losses they may have suffered by virtue of the Respondents' refusals to comply with that contract since its inception.

(b) Comply with all the terms and conditions of the Association-Union contract, both for the balance of its term and retroactively.

(c) Preserve and, upon request, make available to the National Labor Relations Board or its agents, for examination and copying, all records necessary for the determination of the amount of backpay and other payments and obligations due under this Order.

(d) Post at all places of business in the Los Angeles, California, area copies of the attached notices marked "Appendixes A, B, and C,"<sup>7</sup> Copies of such notice shall be furnished to the Respondents by the Regional Director for Region 31, and shall be signed by authorized representatives of the Respondents and posted immediately upon receipt thereof and maintained for at least 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by other material.

(e) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps Respondents have taken to comply herewith.

<sup>6</sup> In the event no exceptions are filed as provided by Sec 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>7</sup> In the event the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX A

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

After a trial in which both sides had the opportunity to present their evidence, the National Labor Relations Board

has found that we violated the law and has ordered us to post this notice:

WE WILL NOT refuse to bargain in good faith with Glaziers & Glassworkers Union Local 636, International Brotherhood of Painters and Allied Trades, AFL-CIO, as the exclusive collective-bargaining agent of our employees classified as production, maintenance, and installation employees.

WE WILL NOT refuse to comply with all the terms and conditions of the contract negotiated on our behalf by the Association of Shower Door Industries, Inc., with Glaziers Local 636 for the term of the contract.

WE WILL make Glaziers Local 636 and our production, maintenance, and installation employees whole for any losses in wages or other benefits they may have suffered by virtue of our failure to comply with the contract set out above since its effective date in November 1971.

ASSOCIATED SHOWER DOOR  
COMPANY, INC  
(Employer)

Dated: By (Representative) (Title)

This is an official notice and must not be defaced by anyone.

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. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 12100, 11000 Wilshire Boulevard, Los Angeles, California 90024, Telephone 213-824-7357.

## APPENDIX B

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

After a trial in which both sides had the opportunity to present their evidence, the National Labor Relations Board has found that we violated the law and has ordered us to post this notice:

WE WILL NOT refuse to bargain in good faith with Glaziers & Glassworkers Union Local 636, International Brotherhood of Painters and Allied Trades, AFL-CIO, as the exclusive collective-bargaining agent of our employees classified as production, maintenance, and installation employees.

WE WILL NOT refuse to comply with all the terms and conditions of the contract negotiated on our behalf by the Association of Shower Door Industries, Inc., with Glaziers Local 636 for the term of that contract.

WE WILL make Glaziers Local 636 and our production, maintenance, and installation employees whole

for any losses in wages or other benefits they may have suffered by virtue of our failure to comply with the contract set out above since its effective date in November 1971.

CENTURY SHOWER DOOR COMPANY, INC  
(Employer)

Dated: By (Representative) (Title)

This is an official notice and must not be defaced by anyone.

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. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 12100, 11000 Wilshire Boulevard, Los Angeles, California 90024, Telephone 213-824-7357.

APPENDIX C

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

After a trial in which both sides had the opportunity to present their evidence, the National Labor Relations Board has found that we violated the law and has ordered us to post this notice:

WE WILL NOT refuse to bargain in good faith with Glaziers & Glassworkers Union Local 636, International Brotherhood of Painters and Allied Trades, AFL-CIO, as the exclusive collective-bargaining agent of our employees classified as production, maintenance, and installation employees.

WE WILL NOT refuse to comply with all the terms and conditions of the contract negotiated on our behalf by the Association of Shower Door Industries, Inc., with Glaziers Local 636 for the term of that contract.

WE WILL make Glaziers Local 636 and our production, maintenance, and installation employees whole for any losses in wages or other benefits they may have suffered by virtue of our failure to comply with the contract set out above since its effective date in November 1971.

LOS ANGELES SHOWER DOOR COMPANY  
(Company)

Dated: By (Representative) (Title)

This is an official notice and must not be defaced by anyone.

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. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 12100, 11000 Wilshire Boulevard, Los Angeles, California 90024, Telephone 213-824-7357.