Local 6, Amalgamated Industrial and Service Workers Union (X-L Plastics, Inc.) *and* Local 875, International Brotherhood of Teamsters, AFL–CIO. Case 22–CB–8184(1)

September 30, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On May 8, 1997, Administrative Law Judge Howard Edelman issued the attached decision. The Respondent Union filed exceptions and a supporting brief and former respondent, X-L Plastics, filed limited exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions,[2] and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Local 6, Amalgamated Industrial and Service Workers Union, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraphs 2(b)–(d):

''(b) Within 14 days after service by the Region, post at its business office copies of the attached notice marked 'Appendix.'[4] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

''(c) Within 14 days after service by the Region, forward a sufficient number of signed copies of the notice to the Regional Director for posting by X-L Plastics, if willing, in places were notices to employees are customarily posted.

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

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT act as the exclusive collective-bargaining representative of X-L Plastics' employees un-

[1] X-L Plastics (X-L) excepts to the inclusion of the words ''and Respondent X-L'' in the remedy section of the judge's decision. We find merit in this exception. In this regard, we note that since the judge granted the General Counsel's motion to approve the withdrawal of the charge and the dismissal of those portions of the complaint relating to X-L, X-L is no longer a respondent in this case. Accordingly, we modify the judge's recommended remedy by deleting from it the words ''and Respondent X-L.''

We correct certain errors in the judge's decision. In the 12th paragraph of the section of the judge's decision entitled, ''Statement of the Case,'' ''All Local 6 employees'' should read, ''All Local 6 officers,'' and in the 14th paragraph of the same section ''June 22'' should read ''November 22''; in the first paragraph of the section of the judge's decision entitled, ''Analysis and Conclusions,'' ''1964'' should read ''1994''; and at paragraph 1(b) of the judge's recommended Order, ''Local 131'' should read, ''Local 6.'' These inadvertent errors do not affect the results of our decision.

[2] The Respondent excepts, inter alia, to the judge's finding that its attack on the initial May 1994 affiliation is time-barred by Sec. 10(b) of the Act. The Respondent contends, in effect, that although the initial affiliation occurred in May 1994, the 10(b) period should not begin to run until November 1995, the date that it received ''unequivocal notice'' that the affiliation was improper. We find this exception without merit. As explained in *R.P.C., Inc.*, 311 NLRB 232, 234–235 (1993) (footnotes omitted):

> To be sure, the 10(b) period commences only when a party has clear and unequivocal notice of the action giving rise to an alleged violation of the Act . . . . But it is knowledge of the act or event to be challenged that triggers Section 10(b); there is no requirement that an affected party have knowledge of all the circumstances leading up to, or surrounding, the event in issue. Thus, for the purposes of Section 10(b), the Respondent—on learning of the affiliation and being asked to accept it—had 6 months to challenge that procedure and the resulting affiliation. Having failed to do so, it cannot now challenge the affiliation.

We find the principles set out above especially applicable here, where the Respondent not only knew of the affiliation in May 1994, but was a party to it. Finally, while we recognize ''that the 10(b) period does not begin if one party has fraudulently concealed the operative facts that could give rise to a violation,'' we find no such fraudulent concealment here. *R.P.C., Inc.*, 311 NLRB at 235 fn. 18.

[3] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

less and until we are certified by the National Labor Relations Board as the exclusive collective-bargaining representative of such employees.

WE WILL NOT give effect to or attempt to enforce any collective-bargaining agreement between X-L Plastics and Local 6 or to any extension, renewal, or modification thereof.

WE WILL NOT accept dues or fees which have been deducted from the salaries of employees of X-L Plastics, without the employees having executed written authorizations for such deductions.

WE WILL reimburse, with interest, all of X-L Plastics' unit employees for all dues and fees deducted by X-L Plastics and collected by Local 6.

LOCAL 6, AMALGAMATED INDUSTRIAL AND SERVICE WORKERS UNION (X-L PLASTICS, INC.)

Dorothy Foley, Esq., for the General Counsel.
Chuck Ellman, Esq. (BRH & B Associates, Inc.), for Employer X-L.
Lloyd Somer, Esq., for Respondent Union Local 6.
Peter D. DeChiara, Esq. (Cohen Weiss & Simon), for Charging Party Teamsters Local 875.

DECISION

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. This case was tried before me on June 29 and 30, 1996, in Newark, New Jersey. On May 31, 1996, the Regional Director for Region 22 issued an order consolidating cases and a consolidated complaint. Subsequent to the issuance of this complaint, a settlement of the Mescerville Nursing and Rehabilatation Center case was reached and at the trial, counsel for the General Counsel moved that the allegations concerning Mescerville and Local 6 relating to Mescerville be withdrawn, and those complaint allegations dismissed. Such motion was granted. The remaining allegations of the complaint allege that X-L Plastics, Inc. (X-L) violated Section 8(a)(1), (2), (3), and (5) and that Local 6, Amalgamated Industrial and Service Workers Union (Respondent Local 6) violated Section 8(b)(1)(A) and (2) as the result of X-L's withdrawal of recognition from Local 875, International Brotherhood of Teamsters (Local 875) and pursuant to a request by Respondent Local 6, recognizing and bargaining with Local 6, notwithstanding that Local 875 was lawful collective-bargaining representative of X-L employees.

On April 18, 1997, subsequent to the close of this trial, and after briefs were submitted, counsel for the General Counsel filed a motion to approve a withdrawal of the charge and a dismissal of the complaint as to those portions of the complaint related to X-L because of a non-Board settlement between X-L and Local 875 which includes recognition being withdrawn from Respondent Local 6, and accorded to Local 875 and current collective-bargaining negotiations between X-L and Local 875, for a new collective-bargaining agreement. Counsel for Respondent Local 6 has not opposed such motion. Accordingly, I grant counsel for the General Counsel's motion.

On the entire record in this case, including my observation of the demeanor of the witnesses, and a consideration of the briefs submitted by counsel for the General Counsel, counsel for X-L, and counsel for Respondent Local 6, I make the following

FINDING OF FACTS

X-L is a corporation with an office and place of business located in Clifton, New Jersey, where it is engaged in the manufacture and nonretail sale of plastic products. X-L annually, its normal business of the operation sells and ships from its Clifton, New Jersey facility goods valued in excess of $50,000 directly to points outside the State of New Jersey.

It is admitted and I find that Respondent X-L is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

It is also admitted and I find that Local 875 and Respondent Local 6 are labor organizations within the meaning of Section 2(5) of the Act.

The facts of this case are substantially undisputed:

In June 1990 Respondent Local 6, was certified by the Board as the collective-bargaining representative of the following unit of X-L's employees:

> All full-time and regular part-time production and maintenance employees, shipping and receiving employees, drivers, plant clerical employees and leadmen, employed by X-L at its Clifton, New Jersey facility.

Thereafter, X-L and Respondent Local 6 entered into a collective-bargaining agreement, expiring sometime in 1993. On expiration of this agreement, a second 3-year agreement between the same parties was entered into.

In the spring of 1994, Local 875 and Respondent Local 6 decided to merge and reached an agreement to affiliate or merge that same year with Local 875. Respondent Local 6, according to the testimony of Joseph Girlando, the president, of Respondent Local 6, testified that it met the due-process requirements by informing its members of the intended merger, discussing it with them and allowing them to vote on the issue. It is admitted that Local 875 did not similarly inform its members of the proposed affiliation/merger and did not offer them an opportunity to vote on it. The merger/affiliation took place in 1994.

The parties affiliation/merger resulted in Local 6 closing up its shop at its West New York, New Jersey location, and moving lock, stock, and barrel to Elmhurst, New York, where it promptly settled in with Local 875 at its Elmhurst facility. All Local 6 employees became Local 875 employees. Their salaries were paid by Local 875, as were their car leases. Their work-related expenses were reimbursed by Local 875, which also agreed to assume responsibility for debts incurred by Respondent Local 6 to its welfare fund and the Federal Government. Former Local 6 President Girlando and Secretary/Treasurer Armando Ponce became business agents for Local 875, even though they serviced the shops that had formerly been signatures to contracts with Local 6, which subsequently became Local 875, shops. Bank accounts totaling $609,000 underwent a name change from Local 6 to Local 875, but remained in New Jersey banks, as opposed

to New York banks, because the parties did not want to have to pay the penalty for early withdrawal of certificates of deposit. All of those former Local 6 shops, X-L included, paid dues directly to Local 875, made welfare fund contributions to the Local 875 Welfare Fund A, and signed a wage reopener agreement with Girlando and Ponce in their capacity as Local 875 representatives. Moreover, Girlando testified that he had X-L employees sign authorization cards for Local 875.[1] For all intents and purposes Local 6 had ceased to exist.

In addition, Local 875, with the merged Respondent Local 6 now were domiciled together, shared the same name, the same financial accounts, the same shops and held themselves out to the public as the same entity, local 875.[2] From the inception of this affiliation/merger, Girlando and Ponce used Local 875's name and stationery to conduct business. There is no record evidence that local 6 continued to exist in any form. In fact, Girlando testified that following the merger with Local 875, Respondent Local 6 ceased to exist.

Sometime during the fall of 1995, a trusteeship was imposed on Local 875 by International Teamsters President Ron Carey. The trusteeship was imposed in November 1995, appointing Chris McLoughlin as trustee, in part because ''the Local 875 officers appear to have operated the Local primarily for the benefit of the officers, employees, and agents of Local 875.'' In turn, Girlando and Ponce were relieved of their positions as business agents for Local 875 and shortly thereafter, within a matter of weeks, Local 6 suddenly came into existence again to claim what were previously, Local 6 shops. Girlando testified that the basis for his claim to the former Local 6 shops, was that the affiliation was improper because Local 875 did not afford its members an opportunity to vote on the proposed affiliation. Based on these factors, and despite his admission that Local 875 had never sought to dissolve the affiliation, or abandon the former Local 6 shops Girlando and Ponce determined to disaffiliate from Local 875, pursuant to the memorandum of agreement between Local 875 and Respondent Local 6 and had their attorney write a letter dated June 22, 1995, to Local 875 to that effect. Respondent Local 6 then arranged to conduct a combined disaffiliation representation election among X-L's employees only. On December 14, 1995, the election was held, and the results being tallied. There was never disaffiliation election held among all 600 of the former Local 6 members. The election conducted resulted in 28 votes for disaffiliation and for representation purposes, and only one tenth of the 600 former members of Local 6.[3] Girlando, thorough his attorney, then approached X-L and asked X-L to recognize Respondent Local 6, which it did. Thereafter, X-L withdrew recognition from Local 875 discontinued making dues and welfare payments to Local 875, and refused to meet and bargain with Local 875. Instead X-L, began making dues and welfare payments to Respondent Local 6, and bargained with, Respondent Local 6. Prior to the settlement described above, X-L had refused to recognize and bargain with Local 875 and withheld dues payments and welfare contributions. Not surprisingly the unit employees of X-L did not agree with the XL's decision and sent a petition to Rick McKenna at the Local 875 office, clearly indicating their choice of a collective-bargaining agent to be Local 875. That petition contains the names of 49 of the 66 unit employees.

Analysis and Conclusions

The evidence conclusively establishes that Respondent Local 6 ceased to exist as a labor organization in April l964, because at that time it merged with Local 875. In this respect the facts establish that following the due-process requirements, Respondent Local 6 informed all its members of the intended merger or affiliation, discussed it with them, and allowed them to vote, which vote was in favor of the merger. As a result of this vote, Local 6 moved its office in New Jersey to the office of Local 875. All Local 6 employees became employed by Local 875, their salaries were paid by Local 875, their work-related expenses were paid by Local 875, which also agreed to assume responsibility for debts incurred by Local 6 to its welfare fund and the Federal Government. Former Local 6 Officers Ponce and Girlardo became employed by Local 875 as business agents for Local 875. Bank accounts in the name of Local 6 were converted to Local 875 accounts.

The evidence also conclusively established that following the merger or affiliation, X-L voluntarily recognized Local 875 as the collective-bargaining representive of its employees and assumed the terms of the former Respondent Local 6 contract, which was for a term of February 1994 to February 1997. This recognition was further evidenced by X-L receiving signed Local 875 authorization cards from its employees, deducting dues from such employees and remitting such dues to Local 875, making payments to the Local 875 Welfare Fund A, and signing a wage reopener agreement. Thus X-L was bound by a collective-bargaining agreement with Local 875. Local 6 ceased to exist.

A collective-bargaining agreement, lawful on its face raises a presumption that the contracting union was the majority representative at the time the contract was executed or assumed, during the life of the contract, and thereafter. *United States Gypsum Co.*, 157 NLRB 652, 656 (1966). Moreover, the Board has held that events time-barred by Section 10(b) of the Act may not be used to overcome the presumption of majority status raised by a contract valid on its face. *Stanwood Thriftmart*, 216 NLRB 852, 853 (1975). No one has contested the validity of the Local 875 contract with X-L, that is that it was lawful on its face. Therefore, neither Local 6 or X-L can attack the legality of the initial recognition which took place about a year and a half before Respondent Local 6 demanded recognition and Respondent X-L granted such recognition to Local 6. The facts surrounding the recognition, the legality of the merger, or affiliation are simply time barred by Section 10(b) of the Act. *Stanwood Thriftmart*, supra.

[1] Girlando also testified that the cards used by Local 875 had two parts—attached to each other—the top part was an authorization card and the bottom part was a dues-checkoff card. Girlando claimed that he had the X-L employees fill out the cards and that he returned both parts to the Local 875 office staff. He testified that he did know what happened to the dues-checkoff portions of the cards, but claimed he never forwarded them to X-L.

[2] Despite the argument repeatedly made by Respondent Local 6 that the welfare funds were not commingled, there is no dispute that they were no longer paid into the Local 6 Amalgamated Fund, but rather into a new entity, the Local 875A Welfare Funds.

[3] Based on figures provided by X-L, there were approximately 66 dues-paying employees in the unit in December 1995.

Respondent Local 6 attacks the initial affiliation on the grounds that Local 875 did not accord its members due-process concerning the affiliation or merger. Such contention lacks merit because, as set forth above, it is time-barred by Section 10(b). *Stanwood Thriftmart*, supra. Moreover, the Board has held that it does not usually involve itself in internal union changes like a merger or affiliation. In such unusual cases where the Board would consider due-process safeguards, such consideration is only in context of the smaller union's decisional basis for such merger or affiliation, not the larger union, primarily because the smaller union is subsumed. In the instant case it is not disputed that Local 875 was twice to three times as large as the then former Local 6, and was subsumed by Local 875. *Sullivan Bros. Printing*, 317 NLRB 561, 562, 563 (1995), *Minn Dak Farmers*, 311 NLRB 942, 945 (1993).

Local 6 would appear to take the position that once an employer recognizes Local 6, such recognition continues forever, so that Local 6 may cease to exist, as in the instant case, then reappear, or rise, as described colorfully by counsel for the General Counsel in her brief, ''like a phoenix from the ashes and begin anew as a labor organization . . . and step back into a prior bargaining relationship.'' The Board has held otherwise. *Domsey Trading Corp*., 296 NLRB 897 (1989), *Jayar Metal Corp*., 297 NLRB 603 (1990). It is interesting to note that in both *Domsey* and *Jayar*, Respondent Local 6 Officer Ponce took the same position with another labor organization of which he was an officer, as he now takes with Local 6. Accordingly, I conclude that Local 6's demand for recognition in December 1995, at a time when there was a valid contract between Local 875 and Respondent X-L was barred by such collective-bargaining agreement.

CONCLUSIONS OF LAW

1. X-L is an employer, engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 875 and Local 6 are labor organizations within the meaning of Section 2(5) of the Act.

3. At all times material Local 875 represented X-L's employees in an appropriate unit within the meaning of Section 9(b) of the Act, as set forth below:

> All full time and regular part time production and maintenance employees employed by X-L including shipping and receiving employees, drivers and plant clerical employees, but excluding guards professional employees and supervisors as defined in the Act.

4. By demanding and obtaining recognition from X-L, and enforcing a collective-bargaining agreement at a time when Respondent Local 6 did not represent a majority of Respondent X-L's employees, Respondent agreement with X-L Local 6 has restrained and coerced employees in violation of Section 8(b)(1)(A) of the Act.

5. By demanding and receiving dues deducted from the wages of X-L's employees, and contributions to Local 6's X-L's welfare fund, Local 6 has restrained and coerced employees employed by Respondent X-L in violation of Section 8(b)(1)(A) and (2) of the Act.

THE REMEDY

Having found Respondent Local 6 and Respondent X-L violated Section 8(b)(1)(A) and (2) of the Act, I shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend in my Order that Respondent Local 6 reimburse all dues and fees collected for all unit employees, plus interest, for the period beginning after Respondent left Local 875 to date. *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Since these employees all signed Local 875 cards authorizing deduction of dues, and there is no evidence that they signed new Respondent Local 6 authorization cards, it cannot be argued that the employees voluntarily acquiesced in such dues deduction. *Alpha Beta Co*., 234 NLRB 1215 (1978).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Local 6 Amalgamated Industrial and Service Workers Union, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Acting as the exclusive collective-bargaining representative of X-L employees unless and until the labor organization is certified by the National Labor Relations Board as the exclusive collective-bargaining representative of such employees.

(b) Giving effect to or attempting to enforce any collective-bargaining agreement between X-L and Local 131 or to any extension renewal or modification thereof.

(c) Accepting dues or fees which have been deducted from the salaries of employees of X-L, without the employees having executed a written authorization for such deduction.

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

(a) Reimburse all of X-L's unit employees for all dues and fees deducted by X-L and collected by Respondent Local 6 with interest as set forth in the remedy provision of this decision.

(b) Post at conspicuous places in Respondent Local 6's business office, meeting halls, and places where notices to its members are customarily posted copies of the attached notice marked ''Appendix.'' Copies of such notice shall be posted on forms provided by the Regional Director for Region 2, after being signed by the Repondent's authorized representative, shall be posed by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Furnish to the Regional Director signed copies of the aforesaid notice for posting by X-L. Copies of the notice to be furnished by the Regional Director shall, after being signed by Respondent Local 6, be forthwith returned to the Regional Director.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.