**A.T. Electric Construction Corp. *and* Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO.** Case 2–CA–32967

September 30, 2002

## DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

On May 16, 2001, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed cross-exceptions and an answering brief in opposition to the Respondent's exceptions.

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

The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to pay contractually-required wage rates to unit employees and by failing to remit contractually-required payments to several pension, health and welfare, and other benefit funds on behalf of unit employees. The Respondent claims that the Union consented to these actions because of the Respondent's poor financial condition. The judge specifically discredited this claim. Accordingly, the judge found that the Respondent violated Section 8(a)(5) and (1). We affirm the judge's finding.[3]

Our dissenting colleague would find no violation of Section 8(a)(5). Advancing an argument not made by the Respondent, he contends that the Respondent's failure to pay specified wages and benefit contributions constituted mere breaches of the agreement, and the Union was obligated to remedy these breaches in another forum. We find no need to address this argument here, since the Respondent did not make it in its exceptions.[4]

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, A.T. Electric Construction Corp., New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(e).

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

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

MEMBER COWEN, dissenting.

Unlike my colleagues, I would reverse the judge's finding that the Respondent violated Section 8(a)(5) of the Act by abrogating certain terms of its contract with the Union.

The issue in this case is whether the Respondent refused to honor the wage and benefits provisions of the parties' contract. The judge rejected the Respondent's defense that the Union had orally agreed to modify these provisions of the parties' contract, and thus found that these provisions were enforceable. I do not dispute that the Respondent failed to follow the wage and benefits provisions of its contract with the Union. However, in my view, the Board should not be involved in disputes involving alleged breaches of a collective-bargaining agreement, and the parties should be left to resolve such disputes through traditional contract enforcement mechanisms. See *United Telephone Co. of the West,* 112 NLRB 779, 782 (1955) ("The Board is not the proper forum for parties seeking to remedy an alleged breach of contract or to obtain specific enforcement of its terms.").

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall modify the judge's recommended Order in accordance with our recent decision in *Ferguson Electric Co.*, 335 NLRB 142 (2001). We shall also substitute a new notice in accordance with our recent decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).

[3] The General Counsel contends in his cross-exceptions that the judge erred in failing to find that the Respondent's conduct violated Sec. 8(d) as well. We find merit in this exception. See, e.g., *St. Vincent Hospital*, 320 NLRB 42 (1995), affd. 765 F.2d 175 (D.C. Cir. 1985).

[4] Member Bartlett agrees that the issue addressed by the dissent was not raised by the Respondent in exceptions. But see his concurring opinion in *Baptist Hospital of East Tennessee*, 338 NLRB 249 (2002).

Member Liebman notes, in addition, that the Board recently rejected our dissenting colleague's dissenting position in a similar case. See *Scapino Steel Erectors*, 337 NLRB 992, 993 fn. 3 (2002). See also *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063, 1064 (1973), enfd. mem. 505 F.2d 1302 (5th Cir. 1974), cert. denied 423 U.S. 826 (1975) (rejecting employer's argument that decision not to adhere to contractual wage rate was breach of contract, but not unfair labor practice).

I do not suggest that the Board never has a role in reviewing the validity, scope, or enforceability of a collective-bargaining agreement. If a contract dispute presents an issue of statutory interpretation or an issue within the Board's primary jurisdiction, the Board has a duty to express itself on those views. However, where no such issue is present, and the question is merely one of contract enforcement, the Board should not insert itself into such disputes.

Congress did not intend for the Board to become embroiled in contractual disputes of the sort before us today. As the framers of the Taft-Hartley Act stated, and the Board has long recognized,[1] "[o]nce parties have made a collective-bargaining contract, the enforcement of that contract should be left to the usual process of the law and not to the National Labor Relations Board."[2] Simply put, breaches of contract are not necessarily unfair labor practices.

Nothing about the instant case justifies any deviation from this longstanding principle. The only dispute here was whether the Respondent was privileged to abrogate contractually established wage and benefit provisions by virtue of the Union's acquiescence. The record simply does not reflect that the Respondent in any way intended to totally repudiate its contract with the Union and, thereby, the parties' collective-bargaining relationship.[3]

In sum, absent other issues not present in this case, I would simply find these failures to abide by the contract to amount to mere breaches, enforceable through traditional contract enforcement mechanisms. Thus, I would reverse the judge, dismiss the complaint, and leave the matter to the parties to resolve through their own bargained-for procedure or in court.

## APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to continue in full force and effect all of the terms and conditions of employment of our collective-bargaining agreement with the Local Union No. 3 International Brotherhood of Electrical Workers, AFL–CIO (the Union) as the exclusive representative of our employees in the following unit:

> All journeymen and apprentice electricians, helpers, foremen, general foremen and sub foremen, but excluding all other employees, guards, professional employees and supervisors as defined in the Act.

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

WE WILL continue in full force and effect all the terms and conditions of employment contained in the provisions of our collective-bargaining agreement with the Union.

WE WILL reimburse all of our present and former employees for the deficiencies in the wages and benefits that we paid them as compared to what they should have received, since November 10, 1999, pursuant to our contract with the Union and WE WILL reimburse them for any

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[1] See, e.g., *Packinghouse Workers*, 89 NLRB 310, 317 fn. 10 (1950); *United Telephone Co. of the West*, 112 NLRB 779, 782 (1955).

[2] H.R. Cong. Rep. No. 510, 80th Congress, 1st Sess. 42; I Leg. Hist. 546 (LMRA 1947). See also *NLRB v. Strong*, 393 U.S. 357, 360 (1969): "[T]he Board has no plenary authority to administer and enforce collective bargaining contracts. Those agreements are normally enforced as agreed upon by the parties, usually through grievance and arbitration procedures, and ultimately by the courts."

I recognize that the Board "may proscribe conduct which is also a breach of contract remediable as such by arbitration and in the courts." Id. at 359. See also *NLRB v. C&C Plywood Corp.*, 385 U.S. 421, 428 (1967). The instant case does not involve the type of breaches that require the Board to exercise its jurisdiction over unfair labor practices instead of requiring the parties to grieve/arbitrate the matter or litigate it in court. See, e.g., Sec. 301 of the LMRA.

[3] I note in this regard, that the contract contains 12 articles. It was only alleged, however, that the Respondent was failing to follow the *two* articles relating to wages and benefits. I further note that the record does not even reflect that the Respondent violated art. III in its entirety. That is, this article contains numerous other sections relating to matters other than wages.

Further, the contract contains a provision, at art. I, sec. 1(d), describing the procedure a party must follow if it wishes to modify or amend any article in the contract. Art. I, sec.1(c) provides for arbitration of "any question or controversy or dispute between parties" to the contract. In adopting the judge's decision, my colleagues have effectively read this bargained-for procedure out of the contract.

In light of my finding here that the record does not reflect that the Respondent intended to repudiate its contract, and thus its obligations to the Union, I find it unnecessary to address the question of whether a respondent violates the Act by repudiating an 8(f) agreement during its term. Compare *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988), with *Industrial TurnAround Corp. v. NLRB*, 115 F.3d 248 (4th Cir. 1997).

loss that they suffered due to our failure to pay them and the Union the proper amount for wages and other benefits.

WE WILL remit all reports and payments to the Joint Industry Board of the Electrical Industry listing all unit employees whom we employed from November 10, 1999, together with all of the contractually required benefit payments.

## A.T. ELECTRIC CONSTRUCTION CORP.

*Jessica Drangel, Esq.*, for the General Counsel.
*John K. Diviney, Esq. (Portnoy, Messinger, Pearl & Associates, Inc.)*, for the Respondent.
*Norman Rothfeld, Esq.*, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was tried before me in New York, New York, on April 10, 2001. The complaint herein, as amended at the hearing, issued on December 29, 2000, and was based upon an unfair labor practice charge that was filed on May 4, 2000, by Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO (the Union). As amended, the complaint alleges that A.T. Electric Construction Corp. (Respondent), which was a party to collective-bargaining agreements with the Union, failed to pay its employees the wage rates specified in the contract, failed to remit to the Union the contractually-required payments for pension and benefit plans, and failed to continue in effect all the terms and conditions of employment set forth in the contract, all without the Union's consent, in violation of Section 8(a)(1)(5) of the Act. The Respondent's defense herein is that the Union did consent to these deviations from the contract's terms.

### FINDINGS OF FACT

#### I. JURISDICTION

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### II. LABOR ORGANIZATION STATUS

Respondent admits, and I find that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE FACTS

On September 9, 1998, Arie Bronstein, Respondent's president, entered into an agreement wherein he agreed to be bound by all of the provisions of the Union's contract with the New York Electrical Contractors' Association, Inc. and the Association of Electrical Contractors, Inc. for the period June 8, 1995, to June 11, 1998, as well as the negotiated changes in that contract covering the period June 11, 1998, to May 11, 2001. When the contract effective June 11, 1998, was finalized, and it shall be referred to herein as the Agreement, Bronstein signed it. The balance of the case involved the Respondent's alleged failure to comply with the terms of the Agreement commencing November 10, 1999, when the 10(b) period began.

Counsel for the General Counsel produced a substantial amount of testimony and documentary evidence to establish that during the period in question, November 10, 1999, to the present time, the Respondent was performing work in the geographical area covered by the Agreement-New York City, but was not paying its unit employees the wages and other benefits specified in the Agreement, and was not paying to the Union funds the fringe benefits and other payments required by the Agreement.

Received in evidence were 28 permits obtained by the Respondent to perform electrical work in the city of New York. These permits are dated between November 1999 and November 2000. Bronstein testified that these permits were issued to the Respondent by the city of New York authorizing the Respondent to perform work at the specified locations, and that the Respondent employed, at least, several electricians on each of these jobs. Also received into evidence was a report provided by the Department of Buildings, Bureau of Electrical Control of the city of New York (the Bureau) listing active jobs by the Respondent, including 28 jobs during the 10(b) period, as well as the applications that the Respondent filed with the Bureau regarding these jobs.

Jose Ostojic testified that he was employed by the Respondent as an electrician from about March 1999 to January 2001. During that period, he was not a member of the Union, although he became a member in February 2001. While employed by the Respondent he worked on approximately 20 different jobs; about 3 or 4 lasted longer than a month and were located in New York City. During his employment with the Respondent he earned $15 to $17 an hour, time and a quarter for overtime, he had 1 week's paid vacation, 5 paid holidays—New Years, Christmas, Thanksgiving, Chanukah, and July 4th—and did not receive health insurance coverage until January 2001. He earned no retirement or annuity benefits while employed by the Respondent. These wages and benefits earned by Ostojic were substantially less than was provided for in the Agreement.

Further, Mitchell Dakin, a member of, and steward for, the Union, testified that after the Union received complaints about the Respondent, he was asked by the Union to investigate the Respondent and follow their work as much as possible. In October he saw two men who were identified as Respondent's employees working on a job in the Federal Express building on 11th Avenue in New York City; they were not union members. In about November 1999 he went to 800 Park Avenue in New York City where he observed two men on ladders containing the Respondent's name, installing lighting fixtures. In April 2000 he went to a jobsite at 24 West 48th Street in New York City where he observed electricians working on ladders. He removed some tape which was covering the contractors name and it revealed the Respondent's name. He also removed tape from a gang box that held tools, and it also revealed the Respondent's name. In June 2000 he waited outside the Respondent's warehouse and followed two of Respondent's employees to the Parker Meridian Hotel on West 56th Street in New York City. They followed these individuals to the sixth floor of the

hotel where they observed about 10 of Respondent's employees performing electrical work. None of these employees were members of the Union. Later that month, they followed a van leaving the Respondent's warehouse to a hotel of 57th Street in New York City. When they followed these four men into the hotel, they observed these men and two other electricians performing work with ladders and gang boxes with the Respondent's name.

Mark Chanzis is the benefits manager for the Joint Industry Board of the Electrical Industry (the Joint Board), which is jointly trusteed by employer and union representatives in administering the benefit plans on behalf of the union members. He testified that the Joint Board sends out contribution reports weekly to employers under contract and these signatory employers are supposed to return these reports completed, listing all employees employed with the number of hours worked, together with the payments due to each of the funds listed in the contribution report, as well as the Agreement. For the payroll period ending November 10, 1999, through the payroll period ending February 23, 2000, the Respondent's weekly contribution report listed only one employee as being covered by the Agreement and for whom contributions had to be made. Beginning the payroll period ending March 1, 2000, the Respondent listed no employees as being covered and made no contributions to any of the funds administered by the Joint Board.

Mark Hansen, a union business representative, testified that the first time he believed that the Respondent was violating the Agreement was when he received a call from a member saying that the Respondent was starting jobs, but not completing them. When he called Bronstein and asked him about it, Bronstein told him that was the first time he brought in other people to complete a job. Hansen believed him until about the spring of 2000, when a steward told him of a "salt" who was going to apply for a job with the Respondent. He got the job, but his name did not appear on the weekly contribution reports. At that time, he checked the past weekly contribution reports and found that the Respondent was only listing one employee as being covered by the Agreement. That is when he filed the charge with the Board.

The Respondent's defense is that the Union, by Hansen, orally agreed to a modification of the Agreement. In this regard, Bronstein testified that the parties met on about October 30, 2000. At this meeting he was there with his counsel, Murray Portnoy, and his assistant. Hansen represented the Union. He testified that the purpose of the meeting was:

> We meet to try to temporary [sic] negotiate my contract with the Union. And the Union to help me to survive with my current jobs and with the people on this list, what I give them.

He then gave Hansen a memo dated October 30, 2000, on Respondent's letterhead addressed to Portnoy, that Bronstein had prepared earlier that day. It states:

> 1) All electricians should be apprentices and first year helpers up to "A-rated" jobs are bought.
>
> 2) Union payroll should start January 4, 2001.
>
> 3) Gary Blankoph is to remain in the company.
>
> 4) A.T. electricians should be promoted to "A-rate" mechanics when A-rate jobs are bought.
>
> 5) Arie Bronstein should have a direct phone to a business agent to guide us to prevent problems.
>
> 6) Former "A-rate" electricians should be able to return to the company if willing.
>
> 7) Any jobs that have union strikes should not effect [sic] us to finish on going jobs.
>
> 8) No stuarts [sic] on payroll until "A rated" jobs are bought.
>
> 9) All charges to the labor board should be dropped upon signing agreement.
>
> 10) A.T. will provide a list of all current jobs.
>
> 11) The ratio of men should not be a issue until "A rated" jobs are bought.

The purpose of the meeting was to come to an agreement with the Union so that they would withdraw the charges before the Board. Bronstein testified that he handed this memo to Hansen and "[a]nd we basically agreed to everything what is written here." All the issues in the memo were discussed, "[a]nd Mr. Hansen is supposed to get back within 24 hours with us and tell him what they agreed and what they not agreed." He subsequently testified that Hansen needed the approval of "Mr. Ray" before he could agree to item 1 of the memorandum. Then he testified as to item 2: "This was the second question we were supposed to ask Ray. He couldn't take it—he agreed to everything besides this '2.'"

Hansen testified about this meeting, as well as other meetings on this subject. There were about four meetings, all preceded by telephone calls from Portnoy after the filing of the charge with the Board (May 4, 2000), and they all took place at the Union's office. The first meeting took place shortly after the filing of the charge: Hansen, Portnoy, and Bronstein were present. The purpose of the meeting was to rectify the situation with the Board charge:

> My position was quite clear at that meeting that the 40-some-odd employees at AT were represented by Local 3 and that I would want them to come down, be interviewed, be brought into the Union, and all the wages and back benefits be paid on those men.

This is what he told Bronstein and Portnoy at this meeting, as well as at the other meetings. Bronstein's response was that the Union was putting him out of business; "My response was that I am bound by the collective bargaining agreement, and I would expect him to live up to his half of the terms of the agreement." At the first meeting Bronstein did not ask for any specific modifications of the Agreement. The next meeting was 2 or 3 weeks later with the same participants, except Bronstein was not present. The meeting was preceded by a telephone call from Portnoy, asking, "What do we need to make this problem go away?" Hansen's position did not change:

> Basically, my position was, once again, that those employees of AT Electric would have to come down to the Union, be interviewed for purposes of classification, that the wages and back benefits would have to be paid on all those employees.

Portnoy did not make any specific modification proposal at this meeting.

The next meeting was the October 30, 2000 meeting testified to by Bronstein; Bronstein and Portnoy were present at this meeting. Portnoy handed Hansen Bronstein's list of 11 items and said that this was what the Company needed to be successful and to be able to bring its employees into the unit. Hansen replied: "They're already in the collective bargaining unit. We represent those people." Bronstein read each of his 11 items, and Hansen responded to each of them. He read item 1 which Hansen testified meant that his entire work force would come into the Union as first-year apprentices or helpers; Hansen answered no, and testified that Bronstein repeated this item about ten times, and each time Hansen responded, "[N]o." "And finally, 'no' wasn't getting through. So I said, 'I'll discuss it with Ray Melville.' But I knew the answer was going to be 'no.'" Item 2 was that Bronstein did not want to pay any of the back wages and benefits that he had failed to pay for his employees. He could not agree to that and said no each time that Bronstein repeated the request. Finally, as he had done with item 1, he said that he would discuss it with Melville, his superior. Hansen said no to item 3 and he told Bronstein that he couldn't agree to item 4 because employees have to take a test at the Union before receiving the A rate. Item 5 was easy; Bronstein wanted to be able to get directly in contact with Hansen, so Hansen gave him his cell phone number. As to item 6, Hansen said that he had no objection to laid off electricians returning to Respondent's employ, but if they were working for a different company, that was not going to happen, and the Union could not force them to return. As to item 7, Hansen replied that was the employees' decision, not the Union's. As to item 8, he did not agree to any change, but said that he only puts stewards on about 10 percent of jobs, usually the larger jobs. As to item 9:

> He asked that, upon him signing an agreement, which wasn't going to happen because we already had an agreement, would I drop all charges on the Labor Board. And my response was that if he brought those individuals in that were in his employ non-union, paid them their back wages and benefits, then we would drop the charges.

As to item 10: "Arie Bronstein volunteered to provide a list of all current jobs. I don't believe we received that." He also said no to item 11 because Bronstein wanted everybody to be a first-year apprentice or helper on his jobs; if he got another job, then he would abide by the contractual terms regarding classifications.[1]

Hansen didn't speak to Bronstein after that, but about a month later he received a call from Portnoy, who asked to meet again. The same parties met again, except that Bronstein was not present. At this meeting, he told Portnoy that the Union could not agree to Bronstein's demands:

> Basically, what I said was "we don't have the right to modify the agreement without giving that same concession to the other 350 contractors." And that we couldn't agree to the terms, and that we were going to pursue this at the NLRB, which we're doing.

Portnoy had no response.

## IV. ANALYSIS

The crucial credibility determination herein involves the meeting of October 30, 2000. Bronstein initially testified that Hansen agreed to all his requests at this meeting: "And we basically agreed to everything." Hansen testified that there was no agreement, he said no to almost all of Bronstein's demands. This is an easy credibility determination. Even Bronstein backtracked on his original testimony by testifying that at the conclusion of the meeting, Hansen said that he would get back to him because he needed the approval of his superior, Melville. Hansen's testimony was completely credible and believable. He answered no to Bronstein's requests, and continued to answer no, and when Bronstein kept making the same requests, he felt that the only way to end it was to say that he would have to check with his superior, whom he knew would also say no. Further supporting Hansen's testimony is the fact that he did not have the authority to agree to the changes requested by Bronstein and the fact that the Union's contracts have most favored nations clauses, which would obligate the Union to grant the same benefits to all employers under contract. Finally, if there was an agreement at the October 30, 2000 meeting as testified to by Bronstein, why would Portnoy call and meet with Hansen subsequently to discuss the same issues. I therefore discredit the testimony of Bronstein that the Union agreed to his requests at the October 30, 2000 meeting, or at any other time.

Section 8(a)(5) of the Act prohibits an employer who is party to an existing collective-bargaining agreement from deviating from, or modifying the terms and conditions of employment established by that agreement without obtaining the consent of the union. *Nick Robilotto, Inc.*, 292 NLRB 1279 (1989); *DFV Electric Corp.*, 306 NLRB 24 (1992). In *Porta-King Building Systems v. NLRB*, 14 F.3d 1258, 1261 (8th Cir. 1994), the court stated: "An employer violates Section 8(a)(5) of the NLRA when it institutes a material change in the terms and conditions of employment in an area that is a compulsory subject of collective bargaining without giving the bargaining representative both reasonable notice and an opportunity to negotiate about the proposed change."

On September 9, 1998, Bronstein signed an agreement to be bound by the terms of the agreement, which was effective to May 11, 2001. From June through October 1998, the Respondent's weekly payroll report to the Union covered from 16 to 28 employees, including the contractual wage rate (about $33 an hour) and the many benefits specified in the contract. However, subsequent to November 1999, the Respondent covered either one or no employees while, the evidence clearly establishes that during this period the Respondent's unit employees were performing numerous jobs in the geographical area covered by the Agreement. As I have found above that the Union never consented to the Respondent's abrogation of the agreement's terms, I find that this violated Section 8(a)(1) and (5) of the Act.

[1] In his brief, counsel for the Respondent states: "Hansen discussed and accepted proposals two, five, six, seven, eight, nine, ten and eleven and after discussing the first and fourth proposal with his supervisor, Ray Melville, he told the employer an Agreement was reached." There is no support in the record for this argument.

## CONCLUSION OF LAW

By failing and refusing to bargain with the Union since on about November 10, 1999, the beginning of the 10(b) period, by failing to pay the contractual wage rates and benefits to its unit employees, and failing to provide the contractually required payments and reports to the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Respondent be ordered to reimburse all its unit employees employed since November 10, 1999, for the deficiencies in their wage rates and other benefits, including, but not limited to, overtime, vacations, holidays, and sick leave as compared to their pay and other benefits as specified in the agreement. I shall also recommend that the Respondent be ordered to file amended weekly contribution reports with the Joint Board for each week commencing November 10, 1999, listing all of its unit employees together with the payments that it was obligated to make, but did not make, to the different funds pursuant to the terms of the agreement, and to reimburse these funds for these delinquencies. If any employee suffered a loss due to the Respondent's failure to make the required contributions during this period, I recommend that the Respondent be ordered to reimburse those employees for the losses that they suffered, in the manner prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

## ORDER

The Respondent, A.T. Electric Construction Corp., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to continue in full force and effect all the terms and conditions of its collective-bargaining agreement with the Union as the exclusive representative of its employees in the following appropriate unit:

> All journeymen and apprentice electricians, helpers, foremen, general foremen and sub foremen, but excluding all other employees, guards, professional employees and supervisors as defined in the Act.

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

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

(a) Continue in full force and effect all the terms and conditions of employment contained in its collective-bargaining agreement with the Union.

(b) Reimburse all of its employees for the difference between the wages and other benefits received from the Respondent and what the Respondent should have paid or given them pursuant to the terms of the agreement, and reimburse them for any loss that they may have suffered due to the Respondent's failure to pay them the wages and other benefits provided in the agreement for the period November 10, 1999, to the present.

(c) Remit to the Joint Industry Board of the Electrical Industry the weekly contribution reports together with payments for all covered unit employees for all benefits specified in the agreement for the period beginning November 10, 1999.

(d) Make whole all present and former employees for any losses that they suffered due to the Respondent's failure to make the contractually required payments to them or to the Union, from November 10, 1999.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its office in New York City and at all of its jobsites, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 10, 1999.

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

[2] 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.

[3] 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."