**Apex Electric Services, Inc., and Apex Industrial Services, Inc. *and* International Brotherhood of Electrical Workers, Local Union No. 177, AFL–CIO.** Cases 12–CA–24200 and 12–CA–24237

June 21, 2007

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon a charge and an amended charge filed by the Union in Case 12–CA–24200 on December 6, 2004, and February 18, 2005, respectively, and a charge and amended charges filed by the Union in Case 12–CA–24237 on December 30, 2004, and January 6 and February 22, 2005, respectively, the General Counsel issued the consolidated complaint (complaint) on February 28, 2005, against Apex Electric Services, Inc. (Apex Electric) and Apex Industrial Services, Inc. (Apex Industrial) (collectively, the Respondent), alleging that it has violated Section 8(a)(1), (3), and (5) of the Act.[1] The Respondent failed to file an answer.

On April 7, 2005, the General Counsel filed a Motion for Default Judgment with the Board. On April 11, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response. The allegations in the motion are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by March 14, 2005, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated March 16, 2005, notified the Respondent that unless an answer was received by March 30, 2005, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment insofar as the complaint alleges that the Respondent (1) committed various violations of Section 8(a)(1) of the Act; (2) violated Section 8(a)(3) of the Act by discharging an employee and laying off three other employees; and (3) violated Section 8(a)(5) of the Act by failing to bargain with the Union regarding the decision to lay off two of those three employees and the effects of that decision, and by failing to furnish the Union with relevant and necessary information requested by it.

However, contrary to the complaint allegations, we decline to find that the Respondent unlawfully refused to bargain about the effects of a closure of a business, and therefore we do not grant the *Transmarine*[2] backpay remedy sought by the General Counsel. Specifically, the complaint alleges that since on or about December 7, 2004, the Respondent has "asserted" to the Union that Apex Electric is out of business; that the effects of the "asserted" closure of the business is a mandatory subject of bargaining, "if the asserted closure is in fact true"; and the Respondent violated Section 8(a)(5) of the Act by failing to bargain with the Union about the effects of the "purported" closure of Apex Electric "or any other subject."

The complaint, however, also alleges, and we find in the absence of an answer, that since on or about December 7, 2004, Apex Industrial has been a disguised continuation of Apex Electric, and that the two entities constitute alter egos and a single employer. Thus, according to the complaint (and admitted by the Respondent's failure to file an answer), Apex Electric did not go out of business, but rather remains in business under the guise of Apex Industrial. In light of the pleadings, we cannot find that Apex Electric closed its business, and we cannot find that the Respondent refused to bargain about the effects of the "asserted closure" of Apex Electric. Similarly, we cannot order a remedy in this respect.[3]

[1] The consolidated complaint was served on the Respondent by certified mail and by Federal Express on February 28, 2005. The Respondent refused to accept delivery of both the certified mailing and the Federal Express package containing the complaint and notice of hearing. On March 16, 2005, the Region sent the Respondent a copy of the consolidated complaint by regular mail. The copy sent by regular mail has not been returned. On April 1, 2005, the Region sent another copy of the consolidated complaint to the Respondent by Federal Express. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), and cases cited there. In any event, the failure of the Postal Service to return documents sent by regular mail indicates actual receipt. Id. Further, the package containing the consolidated complaint was delivered by Federal Express to the Respondent on April 5, 2005.

[2] *Transmarine Navigation Corp*., 170 NLRB 389 (1968).

[3] A necessary factual predicate for a finding that an employer refused to engage in bargaining about the effects of a closure is a finding that the employer has in fact closed its operations. Contrary to our dissenting colleague, we find that the instant complaint does not plead that necessary fact. To the contrary, the allegation is that the Respon-

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

At all material times, Apex Electric Services, Inc. (Apex Electric), a Florida corporation with an office and place of business located in Jacksonville, Florida, has been engaged in the nonretail business of electrical contracting.

At all material times, Apex Industrial Services, Inc. (Apex Industrial), a Georgia corporation with an office and place of business located in Jacksonville, Florida, has been engaged in the nonretail business of electrical contracting.

At all material times, Apex Electric and Apex Industrial have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for each other; have interchanged personnel with each other; and have held themselves out as a single-integrated business enterprise.

Since on or about December 7, 2004, the Respondent has asserted to the Union that Apex Electric is out of business, although it remains an active corporation.

Since on or about December 7, 2004, Apex Industrial has been a disguised continuation of Apex Electric.

Based on the operations described above, Apex Electric and Apex Industrial are, and have been at all material times, a single-integrated business enterprise and a single employer within the meaning of the Act.

Based on the operations and conduct described above, Apex Electric and Apex Industrial have been, since on or about December 7, 2004, alter egos and a single employer within the meaning of the Act.

During the 12-month period ending July 31, 2004, the Respondent, in conducting its business operations described above, purchased and received at its Jacksonville, Florida sites, goods and supplies valued in excess of $50,000 directly from other enterprises, including from Consolidated Electric Distributors, Inc., located inside the State of Florida, each of which other enterprises had received those goods and supplies directly from outside the State of Florida.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that International Brotherhood of Electrical Workers, Local Union No. 177, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Kenneth B. Holmes Sr. has held the position of president and chief executive officer of both Apex Electric and Apex Industrial, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All electricians, electrician's helpers, apprentices, laborers, truckdrivers, warehousemen, delivery personnel, equipment operators, leadmen, and working foremen employed by the Respondent in the greater Jacksonville, Florida area, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

On September 23, 2004, the Union was certified as the exclusive collective-bargaining representative of employees of Apex Electric in the unit described above. At all times since September 23, 2004, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On or about August 2, 2004, the Respondent, by Kenneth B. Holmes Sr. at its Bethel Baptist Church jobsite, threatened to discharge employees involved in union activities, and threatened to close its doors before becoming unionized.

In or about early August 2004, the Respondent, by Kenneth B. Holmes Sr. at its Bethel Baptist Church jobsite, impliedly threatened employees with discharge because of their union activities.

On or about August 6, 2004, the Respondent, by Kenneth B. Holmes Sr. at its Bethel Baptist Church jobsite:

(a) Coercively interrogated employees about their union activities.

(b) Threatened to close its doors before becoming unionized.

(c) Conveyed the impression that any attempt to unionize would be futile.

(d) Instructed employees not to talk about the Union or working conditions.

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dent continued in another guise. Thus, our colleague's assertions regarding "what happened here" are not supported by the complaint allegations before us. Because there is not a sufficient basis in the pleadings to find that Apex Electric closed, there is no basis for ordering Apex Electric to bargain with the Union about a closing or to provide the *Transmarine* backpay remedy that would accompany such a bargaining order.

On or about August 11, 2004, the Respondent, by Kenneth B. Holmes Sr. at its Bethel Baptist Church jobsite, subjected employees to closer scrutiny because of their union activities, and impliedly threatened employees with unspecified reprisals because of their union activities.

On or about August 26, 2004, the Respondent, by Kenneth B. Holmes Sr. at its Westbrook Branch Library jobsite:

(a) Accused employees of misconduct and disloyalty because of their union activities.

(b) Impliedly threatened employees with discharge because of their union activities.

(c) Conveyed the impression that any attempt to unionize would be futile.

On or about August 30, 2004, the Respondent, by Kenneth B. Holmes Sr. while traveling from the Bethel Baptist Church jobsite to the Cuba Hunter Park jobsite:

(a) Threatened to close its doors before becoming unionized.

(b) Disparaged the work of employees because of their union activities.

(c) Impliedly threatened employees with unspecified reprisals because of their union activities.

On various dates in or about August 2004, the Respondent, by Kenneth B. Holmes Sr. at the Bethel Baptist Church jobsite, impliedly threatened employees with unspecified reprisals because of their union activities.

On or about October 15, 2004, the Respondent, by Kenneth B. Holmes Sr. at the Bethel Baptist Church jobsite, accused employees of misconduct because of their union activities, and impliedly threatened to discipline employees because of their union activities.

On or about August 26, 2004, the Respondent discharged its employee Ervin A. Paden. The Respondent discharged Paden because he had supported and assisted the Union, and engaged in concerted activities, and to discourage employees from engaging in these activities.

On or about the dates set forth opposite their names, the Respondent laid off the following employees:

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|---|---|
| Steve Gibbs | September 10, 2004 |
| Edward J. Cromedy | October 15, 2004 |
| Arthur F. Tierney II | October 18, 2004 |

The Respondent laid off these employees because each had supported and assisted the Union, and engaged in concerted activities, and to discourage employees from engaging in these activities.

The layoffs of employees Cromedy and Tierney relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent laid off Cromedy and Tierney without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the conduct and the effects of this conduct.

Since on or about October 27, 2004, the Union, by letter, has requested that the Respondent furnish it with the following information:

> A list of all employees of Apex Electric Services and the date on which they were hired.
>
> A list of all addresses and telephone numbers of each employee.
>
> A list of wage rates and classifications of each employee.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.[4]

Since about October 27, 2004, the Respondent has failed and refused to furnish the Union with the information requested by it.

In light of the Respondent's assertion to the Union that Apex Electric is out of business, the Union, since on or about December 17, 2004, by letter, has requested that the Respondent furnish it with the following information:

> What steps have been taken to close Apex Electric Services?
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> Has there been any sale of company equipment, tools, material, or other company assets?
>
> Has there been any cancellation of any other contracts besides with Price Contracting?
>
> Has Apex Electric Services notified any customers, suppliers, general contractors, or anyone else of interest that Apex Electric Services is no longer in business?

The above information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about December 20, 2004, the Respondent, by Kenneth B. Holmes Sr., has failed and refused to furnish

[4] We construe the Union's request as pertaining to records of unit employees only, although the information request is not specifically limited to bargaining unit employees and therefore could be construed as requesting information pertaining to nonunit as well as unit employees. See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802 fn. 2 (2003); *Freyco Trucking, Inc.*, 338 NLRB 774 fn. 1 (2003).

the Union with the information requested by it on about December 17, 2004.

## CONCLUSIONS OF LAW

1. The Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act, by (1) threatening to discharge employees because of their union activities; (2) threatening to close its doors before becoming unionized; (3) coercively interrogating employees about their union activities; (4) conveying the impression that any attempt to unionize would be futile; (5) instructing employees not to talk about the Union or working conditions; (6) subjecting employees to closer scrutiny because of their union activities; (7) impliedly threatening employees with unspecified reprisals and discipline because of their union activities; (8) accusing employees of misconduct and disloyalty because of their union activities; and (9) disparaging the work of employees because of their union activities.

2. The Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act, by discharging employee Ervin A. Paden and laying off employees Steve Gibbs, Edward J. Cromedy, and Arthur F. Tierney II because they supported and assisted the Union and engaged in concerted activities.

3. The Respondent has failed and refused to bargain collectively with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act, by (i) laying off employees Cromedy and Tierney without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the layoff decision and the effects of that decision; and (ii) failing and refusing to furnish the Union with the information requested by it on about October 27 and December 17, 2004.

4. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Ervin A. Paden and laying off Steve Gibbs, Edward J. Cromedy, and Arthur F. Tierney II, we shall order the Respondent to offer the discriminatees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent also shall be required to remove from its files all references to the unlawful discharge of Paden and the unlawful layoffs of Gibbs, Cromedy, and Tierney, and to notify them in writing that this has been done and that the discharge and layoffs will not be used against them in any way.

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing to bargain with the Union about the decision to lay off employees Cromedy and Tierney and the effects of that decision, we shall order the Respondent to, on request, bargain with the Union concerning the layoff decision and the effects of that decision.[5]

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with necessary and relevant information it requested on about October 27 and December 17, 2004, we shall order the Respondent to provide the information to the Union.[6]

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[5] See *Ebenezer Rail Car Services*, 333 NLRB 167 fn. 5 (2001) (traditional Board remedy for unlawful unilateral layoffs "includes ordering the employer to bargain over the layoff decision and the effects of that decision, reinstating the laid-off employees, and requiring the payment to the laid-off employees of full backpay, plus interest, for the duration of the layoff"). The make-whole remedy to which employees Cromedy and Tierney are entitled for the Respondent's failure to bargain with the Union about their layoffs is identical to the backpay remedy that we have provided for their layoffs in violation of Sec. 8(a)(3) and (1) of the Act.

[6] In addition to alleging that the Respondent has refused to bargain over the layoff decision and effects, and the purported closure of Apex Electric, the consolidated complaint also alleges that the Respondent has refused to bargain with the Union concerning "any other subject." Thus, the consolidated complaint and the General Counsel's motion request a general bargaining order and an extension of the Union's initial period of certification pursuant to *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). We find that these requested remedies are unnecessary here. In *Apex Electric Services*, 344 NLRB No. 47 (2005) (not reported in board volumes), the Board found that Apex Electric unlawfully refused to bargain with the Union after its certification on September 23, 2004. The Board ordered Apex Electric to bargain with the Union, and provided that the initial period of the Union's certification would begin on the date that Apex Electric began to bargain in good faith, consistent with *Mar-Jac Poultry*. The bargaining order and the *Mar-Jac* remedy included in *Apex Electric Services* are binding on Respondent Apex Industrial as a single employer with, and alter ego of, Respondent Apex Electric. See *Shortway Suburban Shortway Lines*, 286 NLRB 323 fn. 4 (1987) (single employer), enfd. mem. 862 F.2d

ORDER

The National Labor Relations Board orders that the Respondent, Apex Electric Services, Inc. and Apex Industrial Services, Inc., Jacksonville, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to discharge employees because of their union activities.

(b) Threatening to close its doors before becoming unionized.

(c) Coercively interrogating employees about their union activities.

(d) Conveying the impression that any attempt to unionize would be futile.

(e) Instructing employees not to talk about the Union or working conditions.

(f) Subjecting employees to closer scrutiny because of their union activities.

(g) Impliedly threatening employees with unspecified reprisals and discipline because of their union activities.

(h) Accusing employees of misconduct and disloyalty because of their union activities.

(i) Disparaging the work of employees because of their union activities.

(j) Discharging or laying off employees because they support or assist the Union, or any other labor organization, and engage in concerted activities.

(k) Failing and refusing to bargain collectively with International Brotherhood of Electrical Workers, Local Union No. 177, AFL–CIO as the exclusive bargaining representative of the employees in the following appropriate unit by laying off employees without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the layoffs and their effects, or any other subject; and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees. The unit is:

> All electricians, electrician's helpers, apprentices, laborers, truckdrivers, warehousemen, delivery personnel, equipment operators, leadmen, and working foremen employed by the Employer in the greater Jacksonville, Florida area, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

(l) 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.

309 (3d Cir. 1988); *Howard Johnson Co. v. Hotel & Restaurant Employees*, 417 U.S. 249, 259 fn. 5 (1974) (alter ego).

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

(a) On request, bargain with the Union concerning the Respondent's decision to lay off employees Edward J. Cromedy and Arthur F. Tierney II, and the effects on the unit employees of the layoff decision, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Within 14 days from the date of this Order, offer Ervin A. Paden, Steve Gibbs, Edward J. Cromedy, and Arthur F. Tierney II full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(c) Make Ervin A. Paden, Steve Gibbs, Edward J. Cromedy, and Arthur F. Tierney II whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharge of Ervin A. Paden, and the unlawful layoffs of Steve Gibbs, Edward J. Cromedy, and Arthur F. Tierney II and, within 3 days thereafter, notify them in writing that this has been done, and that the unlawful discharge and layoffs will not be used against them in any way.

(e) Furnish the Union with the information it requested on about October 27 and December 17, 2004.

(f) 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.

(g) Within 14 days after service by the Region, post at its facility in Jacksonville, Florida, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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,

[7] 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."

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 August 2, 2004.

(h) 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.

MEMBER LIEBMAN, dissenting in part.

The majority claims that it "cannot" grant the General Counsel's motion for default judgment insofar as the complaint alleges an unlawful refusal to bargain about the effects of the asserted closure of Apex Electric Services, Inc. (Apex Electric). I disagree and would grant the unopposed motion in all respects, including the requested *Transmarine* remedy.[1]

I.

No answer was filed to the complaint and therefore all of its allegations stand admitted. Thus, it is undisputed that Apex Electric repeatedly "threatened to close its doors before becoming unionized"; that the Union nevertheless won a Board election and was certified as the collective-bargaining representative of an appropriate unit of Apex Electric's employees; that less than 3 months later, Apex Electric asserted that it was out of business; that Apex Electric failed to provide the Union with prior notice of the asserted closure or an opportunity to bargain about its effects; that the Union requested that Apex Electric furnish information concerning the purported closure and bargain over its effects;[2] that the requested information is necessary for, and relevant to, the Union's performance of its representational duties; that if the asserted closure is true, its effects constitute a mandatory subject of bargaining; that Apex Electric refused to supply the information and refused to engage in effects bargaining; and that notwithstanding its representation to the Union that Apex Electric had closed, it has continued operating under the guise of its alter ego, Apex Industrial Services, Inc. (Apex Industrial).

II.

Based on these admitted complaint allegations, the majority finds, and I agree, that Apex Electric violated Section 8(a)(1) by threatening employees with plant closure and violated Section 8(a)(5) by refusing to furnish the Union with the requested information about the asserted closure. However, the majority "declines to find" that Apex Electric unlawfully refused to bargain over the effects of the purported closing. At that point, the majority and I part company.

The majority emphasizes that although the complaint alleges a refusal to bargain over the purported closure of Apex Electric, the complaint also alleges that Apex Electric did not go out of business, but rather remains in operation under the guise of Apex Industrial. The majority concludes as follows: "In light of the pleadings, we cannot find that Apex Electric closed its business, and we cannot find that the Respondent refused to bargain about the effects of the 'asserted closure' of Apex Electric. Similarly, we cannot order a remedy in this respect."

The majority reads the admitted complaint allegations simplistically, mechanically, and in a light most favorable to the party that attempted to avoid its obligations under the Act. Fairly construing the undisputed complaint allegations as a whole, it is apparent what happened here: Consistent with its unlawful threats "to close its doors before becoming unionized," Apex Electric purported to cease operations in order to avoid its obligation to recognize and bargain with the newly-certified Union. As part of Apex Electric's scheme, it advised the Union that it had closed, conveniently neglecting to provide the Union with prior notice or to mention that operations were continuing under the guise of its alter ego, Apex Industrial.[3] Surely, a union is entitled to take an employer at its word and accept its own representation that its operations had ceased. Here, the Union went one step further: It not only requested bargaining over the effects of the closing that Apex Electric itself had announced, but also requested information necessary to verify that Apex Electric had, in fact, ceased operations. Apex Electric, however, never supplied the requested information and never bargained. The majority concludes that the Union was entitled to the information it sought, but paradoxically "declines to find" that Apex Electric unlawfully refused to bargain over the effects of

[1] *Transmarine Navigation Corp.,* 170 NLRB 389 (1968).

[2] The Union requested the following information:

> What steps have been taken to close Apex Electric Services?
>
> Has there been any sale of company equipment, tools, material or other company assets?
>
> Has there been any cancellation of any other contracts beside with Price Contracting?
>
> Has Apex Electric Services notified any customers, suppliers, general contractors or anyone else of interest that Apex Electric Services is no longer in business?

[3] An alter ego is often described as a "disguised continuance of the old employer." *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106 (1942). Here, the complaint specifically alleges, and the majority finds, that Apex Industrial is a disguised continuance of Apex Electric.

the asserted closure. By relieving Apex Electric from an effects-bargaining obligation, the majority penalizes the Union and the unit employees, the innocent victims of the alter ego scheme, and unwittingly helps Apex Electric accomplish what it set out to do when it created Apex Industrial in the first place: escape the requirements of nation's labor laws. I decline to join the majority in reaching such a perverse result.

III.

The traditional remedy for an effects-bargaining violation requires a respondent to pay employees backpay for the period specified in *Transmarine*, supra. Because neither Apex Electric nor Apex Industrial bothered to file an answer to the complaint, no hearing has been held, and we do not know what impact the purported closing of Apex Electric may have had on unit employees. In previous no-answer default judgment cases where the complaint and motion were unclear as to whether an announced decision to close a facility was implemented, or the complaint and motion did not specify the actual impact on unit employees of the cessation of operations, the Board provided for a *Transmarine* remedy, but permitted the respondent to contest the appropriateness of that remedy at the compliance stage. See, e.g., *Fabricating Engineers, Inc*., 341 NLRB 10, 11 fn. 1 (2004); *Chicago Truss Connection*, 340 NLRB 974, 975 fn. 1 (2003); *Corbin*, *Ltd*., 340 NLRB 1001, 1002 fn. 2 (2003); *Buffalo Weaving & Belting*, 340 NLRB 684, 685 fn. 3 (2003); *ACS Acquisition Corp*., 339 NLRB 736, 737 fn. 2 (2003). Consistent with this established precedent, I would follow that approach here.

## 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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a 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 threaten to discharge employees because of their union activities.

WE WILL NOT threaten to close our doors before becoming unionized.

WE WILL NOT coercively interrogate employees about their union activities.

WE WILL NOT convey the impression that any attempt to unionize would be futile.

WE WILL NOT instruct employees not to talk about International Brotherhood of Electrical Workers, Local Union No. 177, AFL–CIO (the Union) or working conditions.

WE WILL NOT subject employees to closer scrutiny because of their union activities.

WE WILL NOT impliedly threaten employees with unspecified reprisals and discipline because of their union activities.

WE WILL NOT accuse employees of misconduct and disloyalty because of their union activities.

WE WILL NOT disparage the work of employees because of their union activities.

WE WILL NOT discharge or lay off employees because they support or assist the Union or any other labor organization, and engage in concerted activities.

WE WILL NOT fail and refuse to bargain collectively with International Brotherhood of Electrical Workers, Local Union No. 177, AFL–CIO as the exclusive bargaining representative of the employees in the following appropriate unit by laying off employees without prior notice to the Union and without affording the Union an opportunity to bargain with us with respect to the layoffs and their effects; and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees. The unit is:

> All electricians, electrician's helpers, apprentices, laborers, truckdrivers, warehousemen, delivery personnel, equipment operators, leadmen, and working foremen employed by us in the greater Jacksonville, Florida area, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

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

WE WILL, on request, bargain with the Union concerning our decision to lay off employees Edward J. Cromedy and Arthur F. Tierney II, and the effects of the layoff decision, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL, within 14 days from the date of the Board's Order, offer Ervin A. Paden, Steve Gibbs, Edward J. Cromedy, and Arthur F. Tierney II full reinstatement to

their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make Ervin A. Paden, Steve Gibbs, Edward J. Cromedy, and Arthur F. Tierney II whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful discharge of Ervin A. Paden, and the unlawful layoffs of Steve Gibbs, Edward J. Cromedy, and Arthur F. Tierney II and, WE WILL, within 3 days thereafter, notify them in writing that this has been done, and that the unlawful discharge and layoffs will not be used against them in any way.

WE WILL furnish the Union with the information it requested on October 27 and December 17, 2004.

APEX ELECTRIC SERVICES, INC., AND APEX INDUSTRIAL SERVICES, INC.