Naftalie Deutsch, Frank DeMascio, Kenneth Childs, a Partnership d/b/a Westbrook Bowl, Valley View Bowl, Verdugo Hills Bowl *and* Hospital and Service Employees Union, Local 399, SEIU, AFL-CIO Cases 31-CA-11524-1, 31-CA-11524-2, and 31-CA-11524-3

May 10, 1989

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS JOHANSEN AND CRACRAFT

On December 7, 1987, Administrative Law Judge Jay R Pollack issued the attached decision The General Counsel filed exceptions and a supporting brief, the Respondent filed cross-exceptions and a brief in support of its cross exceptions and in answer to the General Counsel's exceptions, and the General Counsel filed an answering brief to the Respondent's cross-exceptions [1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel

The 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,[2] and conclusions only to the extent consistent with this Decision and Order

The judge found that the Respondent did not violate Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union in the fall of 1981, when it withdrew recognition from the Union and refused to honor a multiemployer agreement He found that the Respondent was not bound by the terms of the 1981-1984 collective-bargaining agreement negotiated between the Union and the Bowling Properties Association of Southern California because the Union had acquiesced in Valley View's withdrawal from the multiemployer unit [3] The judge also found that the Respondent was not obligated to bargain separately with the Union because the Respondent had a good-faith doubt of the Union's continued majority, which justified the Respondent's withdrawal of recognition from the Union We agree with the judge that the Union acquiesced in Valley View's withdrawal from the multiemployer bargaining unit and that none of the alleys was bound to the 1981-1984 Association contract For the reasons set forth below, however, we do not agree with the judge that the evidence of objective considerations is sufficient to support the Respondent's refusal to recognize and bargain with the Union, following its request to bargain in August 1981 [4]

Like the judge, we shall treat the bowling alleys as a single business enterprise for purposes of this decision [5] Unlike the judge, however, we do not find that the employees at all three alleys constitute a single appropriate unit The Board has held that a plantwide unit or a single-location unit of a multifacility employer is presumptively appropriate See, respectively, *Marks Oxygen Co of Atlanta*, 147 NLRB 228, 230 (1964), and *Hegins Corp*, 255 NLRB 1236 (1981) The complaint alleges, inter alia, that a unit of mechanics, alley persons, janitors, pinchasers, desk employees, children's rooms attendants, and concourse attendants at each of the bowling alleys is appropriate We also note that this unit description is coextensive with the employee classifications covered by the 1978-1981 Association contract,[6] and that it appears to include all employees employed at the bowling alleys exclusive of office employees, supervisors, and those employees represented by the Culinary Workers Union

In its answer to the complaint, the Respondent denies the appropriateness of these separate units, but presents no evidence in support of its denial Given that the units as described are presumptively appropriate, and in the absence of evidence to rebut this presumption, we find that each alley constitutes a separate appropriate unit

The Respondent's asserted good faith doubt of the Union's continued majority is based on employee "elections" held at each alley in the summer of 1981 Regarding Valley View, the Respondent relies on the testimony of the general manager at Valley View, Mayolett, and an employee, Nalepa

[1] The Respondent has requested oral argument The request is denied as the record exceptions and briefs adequately present the issues and the positions of the parties

The General Counsel filed a motion to strike the Respondent s brief in its entirety on the basis that it fails in the main to conform to the format required by the Board s Rules The Respondent filed a response The General Counsel s motion to strike is denied Although the Respondent s brief does not fully comply with the Board s Rules the brief is not so deficient as to warrant striking

[2] 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

[3] For purposes of his decision the judge treated the three bowling alleys—Westbrook Bowl Valley View Bowl and Verdugo Hills Bowl—as a single business enterprise Thus he treated the Union s acquiescence in Valley View s withdrawal as effective for all three alleys

[4] The Union in August 1981 when it acquiesced in Valley View s withdrawal from the multiemployer bargaining unit requested separate bargaining The Respondent did not reply

[5] We note that our conclusions below regarding the sufficiency of the objective considerations would be the same regardless of whether the alleys are a single enterprise or separate entities

[6] The complaint also alleges that a unit of such employees employed by employer members of the Association was an appropriate unit

Mayolett testified that in August 1981, she and DeMascio, the general supervisor for all three alleys, were informed by two employees that the employees had conducted an election and that the majority of employees had voted against the Union Mayolett's testimony indicates that she was approached by two employees (whose names she could not recall) carrying a ballot box and that these employees told her "a majority was for not having the union," that "everybody had voted against the Union," and that "there was one that voted for the Union" These employees did not show Mayolett the ballots Mayolett also testified that since about 1979, approximately 7 to 10 employees had complained about the Union's poor handling of benefit claims Nalepa testified that she participated in an election in 1981 at Valley View in which approximately 20 employees voted, with all but 1 voting against the Union

The Respondent's evidence regarding the election at Verdugo Hills is the testimony of employee Longnecker that he participated in an election held during an employee meeting [7] According to Longnecker, all but one employee voted against the Union, and he and another employee, Sanderson, reported the election results to their supervisor, Parell [8]

Finally, the Respondent's evidence regarding the election at Westbrook is the testimony of Deutsch, an owner of Westbrook, who stated that he had been told by DeMascio, Mayolett, and Morse, the general manager of Verdugo Hills, that elections had been held at each of the bowling alleys and that the majority of the employees had voted and "refused to be organized and to belong to the Union", and an offer of proof that DeMascio was told that "all but one or two of the employees at Westbrook Bowl had voted against union representation"[9]

It is well established that an employer that seeks to end its collective bargaining relationship with an incumbent union by withdrawing recognition from the union must overcome the presumption of the union's continued majority status "with a 'clear, cogent, and convincing' showing of either actual loss of majority status or of objective factors sufficient to support a reasonable and good-faith doubt of the union's majority" *Hutchinson-Hayes International*, 264 NLRB 1300, 1304 (1982) (citations omitted)

Our review of the record convinces us that the evidence offered in support of the Respondent's good-faith doubt is insufficient to rebut the presumption that the Union continued to enjoy majority support at each of the alleys Overall, this evidence is vague and lacks specifics, particularly regarding the number of employees who were represented by the Union,[10] the number of employees who participated in the election, and the actual election results There is no evidence that any of the Respondent's supervisors received direct reports from individual employees regarding a desire not to be represented by the Union Rather, the supervisors appear to have relied solely on the statements of several employees reporting the views of other employees [11] Mayolett's testimony that she was told by two employees that all but one of the employees voted against the Union offers little of significance in assessing employee sentiment as it is an indirect report on the feelings or activities of fellow employees Further, we find that the complaints made by 7 to 10 employees to Mayolett about the Union do not necessarily express a desire not to be represented by the Union and, thus, either considered separately or in conjunction with the purported majority vote, fail to provide a basis for withdrawing recognition from the Union at Valley View

We reach a similar conclusion regarding Nalepa's testimony, insofar as it may serve to corroborate Mayolett's [12] Nalepa testified that approximately 20 employees voted in the election This figure, however, was based not on Nalepa's direct knowledge of the number of employees actually participating in the election, but rather on her own estimate of the number of employees at Valley View Thus, Nalepa's testimony likewise fails to provide specific evidence regarding the election vote Additionally, Nalepa's testimony regarding the election results is not based on her direct knowledge of or participation in tabulating votes, but rather on information provided to her by fellow employees As hearsay, we accord it little weight in assessing objective considerations

[7] Longnecker testified that approximately 10–12 employees attended the meeting at which the election was held He did not testify regarding the actual ballot tally

[8] Longnecker testified that Parell told Morse the general manager of Verdugo Hills about the election results The context of his testimony does not indicate however whether it was based on direct or indirect knowledge of the conversation

[9] The judge acknowledged that there was no direct testimony regarding the Westbrook election

[10] The judge found that there were approximately 30 employees at each alley and used this figure in assessing objective considerations The record shows however that this figure includes employees who were represented by another union as well as supervisory and office employees

[11] The Board has stated that testimony concerning conversations directly with the employees involved is much more reliable than testimony concerning merely a few employees ostensibly conveying the sentiments of their fellows *Sofco Inc* 268 NLRB 159 160 fn 10 (1983)

[12] There is no evidence that Nalepa informed any management representative about the election or its results

Longnecker's testimony regarding the election at Verdugo Hills also lacks specificity regarding the election vote Further, this testimony does not contain any details regarding what he or Sanderson told their supervisor about the election or what information regarding the election was, in turn, communicated to Verdugo Hills' general manager, Morse There is also no evidence indicating that Morse sought to confirm the reports of the election with other employees or that any other Verdugo Hills' supervisor received direct reports of employee sentiment regarding this matter Thus, we infer that at the time the Respondent asserted a basis for refusing to bargain with the Union at Verdugo Hills, it was relying solely on a manager's report that, in turn, was based on the reports of two employees We find this evidence insufficient to establish a reasonably grounded basis for withdrawing recognition from the Union See generally *Golden State Habilitation Convalescent Center*, 224 NLRB 1618 (1976)

Finally, we accord no weight to the proffered evidence regarding the asserted doubt of the Union's majority support at Westbrook This evidence, described above, provides no particulars regarding the election, and is otherwise incapable of being tested objectively

In light of all the above, we find that the evidence presented in support of the Respondent's good faith doubt of the Union's status does not serve to rebut the presumption of the Union's continued majority at each of the three bowling alleys Rather, the evidence falls markedly short of the required clear and cogent showing of objective factors Accordingly, we find that the Respondent violated Section 8(a)(5) and (1) by refusing to rec ognize or bargain with the Union We shall remedy this unlawful conduct by ordering the Respondent to bargain with the Union as the exclusive representative of the employees in the separate units found appropriate here

CONCLUSION OF LAW

By refusing since August 1981 to recognize and bargain with the Union as the exclusive bargaining representative of its employees in the appropriate units, the Respondent has violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act

REMEDY

Having found that the Respondent violated Section 8(a)(5) and (1) by refusing to bargain with the Union as the exclusive representative of its employees in the appropriate units, we shall order it to cease and desist and, on request, bargain with the Union as the exclusive representative of its employees in the appropriate units

ORDER

The National Labor Relations Board orders that the Respondent, Westbrook Bowl, Valley View Bowl, and Verdugo Hills Bowl, Los Angeles, California, its officers, agents, successors, and assigns, shall

1 Cease and desist from

(a) Failing and refusing to bargain with Hospital and Service Employees Union, Local 399, SEIU, AFL–CIO as the exclusive representative of the employees in the following units

> All mechanics, alley persons, janitors, pinchasers, desk employees, children's rooms attendants, concourse attendants employed by Respondent at Westbrook Bowl
>
> All mechanics, alley persons, janitors, pinchasers, desk employees, children's rooms attendants, concourse attendants employed by Respondent at Valley View Bowl
>
> All mechanics, alley persons, janitors, pinchasers, desk employees, children's rooms attendants, concourse attendants employed by Respondent at Verdugo Hills Bowl

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

2 Take the following affirmative action neces sary to effectuate the policies of the Act

(a) On request, bargain with the Union as the exclusive representative of the employees in the above units concerning rates of pay, wages, hours, and other terms and conditions of employment and embody any understandings reached in a signed agreement

(b) Post at its Westbrook Bowl, Valley View Bowl, and Verdugo Hills Bowl facilities, Los Angeles, California, copies of the attached notice marked "Appendix"[13] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and main tained for 60 consecutive days in conspicuous places including all places where notices to em ployees are customarily posted Reasonable steps

[13] 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 Nation al 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

shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material

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

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 National Labor Relations Act and has ordered us to post and abide by this notice

WE WILL NOT refuse to bargain with Hospital and Service Employees Union, Local 399, SEIU, AFL-CIO as the exclusive representative of the employees in the following bargaining units

> All mechanics, alley persons, janitors, pin chasers, desk employees, children's rooms attendants, concourse attendants employed by the Employer at Westbrook Bowl
>
> All mechanics, alley persons, janitors, pinchasers, desk employees, children's rooms attendants, concourse attendants employed by the Employer at Valley View Bowl
>
> All mechanics, alley persons, janitors, pinchasers, desk employees, children's rooms attendants, concourse attendants employed by the Employer at Verdugo Hills Bowl

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, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the above-described bargaining unit

WESTBROOK BOWL, VALLEY VIEW BOWL, AND VERDUGO HILLS BOWL

Ann Reid Cronin Esq for the General Counsel
Michael K Schmier Esq (Schmier & Schmier), of Los Angeles California, for the Respondent

DECISION

STATEMENT OF THE CASE

JAY R POLLACK, Administrative Law Judge On March 19 1985 the National Labor Relations Board issued a Decision and Order in this proceeding,[1] adopting my Order of March 27, 1984, dismissing the complaint for failure to meet the service requirements of Section 10(b) of the Act On August 29, 1986 the United States Court of Appeals for the Ninth Circuit reversed the Board s Order and remanded the case to the Board for further proceedings [2]

In an unpublished Order dated March 30, 1987, the Board found that the unfair labor practice charges underlying the complaint were not barred by Section 10(b) Accordingly, the Board remanded the case to me for the purpose of conducting further hearing and issuing a decision on the merits of the complaint

The initial hearing in this matter closed on February 9, 1984 On July 20 and 21, 1987, I heard the remainder of the case in trial at Los Angeles California

The consolidated complaint alleges that Respondent Naftalie Deutsch, Frank DeMascio, Kenneth Childs, a Partnership d/b/a Westbrook Bowl, Valley View Bowl, Verdugo Hills Bowl,[3] violated Section 8(a)(5) and (1) by refusing to bargain with the Union, Hospital and Service Employees Union, Local 399, SEIU, AFL-CIO by withdrawing recognition from the Union and refusing to honor a multiemployer bargaining agreement with the Union, allegedly covering the employees of the three bowling alleys, Verdugo Hills Bowl, Westbrook Bowl, and Valley View Bowl

All parties have been afforded full opportunity to participate, to introduce evidence, to examine and cross examine witnesses, and to file briefs Based on the entire record, on the briefs filed on behalf of the parties, and on my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I JURISDICTION

At the times material, Frank DeMascio was the general supervisor of all three bowling alleys [4] Naftalie Deutsch was the managing partner for all three alleys and had a partnership interest in both Westbrook Bowl and Valley View Bowl Verdugo Hills Bowl was owned by a partnership consisting of DeMascio Kenneth Childs and Lazben Investment Co Deutsch was the general partner in Lazben Investment Co a limited partnership

At the times material, each bowling alley received annual gross revenues in excess of $500,000 and purchased and received more than a de minimis amount of goods that originated outside the State of California Accordingly, I find that each alley is an employer engaged in commerce and in a business affecting commerce

---

[1] 274 NLRB 1009 (1985)

[2] *Service Employees Local 399 v NLRB* 798 F 2d 1245 (9th Cir 1986)

[3] The partnerships that own the bowling alleys are incorrectly named However Naftalie Deutsch the managing partner for each partnership was properly served For purposes of this case the three bowling alleys are treated as a single business enterprise As will be seen below whether the bowling alleys are treated as a single enterprise or three separate businesses the conclusions herein are the same

[4] DeMascio died sometime between the initial hearing in 1984 and the resumption in 1987

within the meaning of Section 2(2), (6) and (7) of the Act

Further, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act

II THE UNFAIR LABOR PRACTICES

The Union represents employees employed by bowling alleys in the Los Angeles California area Since at least 1972, the Union has been party to a bowling center agreement with the Bowling Properties Association of Southern California Inc covering the employees of the employer member bowling alleys of the Association Verdugo Hills became party to the 1972–1975 Association Union agreement in November 1972 DeMascio signed an agreement making Valley View Bowl a party to the 1972–1975 agreement in October 1974 In October 1975, DeMascio signed an agreement with the Union binding Westbrook Bowl to the 1972–1975 agreement between the Union and the Association [5]

To the extent DeMascio could not recall signing the agreements or to the extent he denied that the signatures were his own, DeMascio is not credited DeMascio was a difficult and uncooperative witness who delighted in the vague or argumentative response Further the signatures on the contracts in question bear a striking resemblance to signatures on documents that admittedly belonged to DeMascio

DeMascio signed an agreement in the fall of 1975 retroactive to August 1 1975, agreeing to the 1972–1975 agreement as amended by the 'Bowling Agreement Improvements effective August 1, 1975 through July 1, 1978 Although this agreement does not mention any of the three Respondent bowling alleys by name, the wages and benefit provisions were applied to employees of all three bowling alleys during the period from 1975 until 1978

At the time of the 1978–1981 Bowling Properties Agreement only Valley View Bowl was a member of the Association However, the terms of the agreement were placed in effect at all three of the alleys managed by DeMascio Dick Davis, the Union's executive vice president, credibly testified that both the Union's and the Association's representatives treated the three bowling alleys run by DeMascio as one and the same during the 1978 negotiations The Association and the Union referred to the three bowling alleys as DeMascio's bowling alleys

In February 1980, DeMascio wrote the Association canceling Valley View's membership in the Association However, no notice of this cancellation was sent to the Union On August 10 1981,[6] the Union wrote DeMascio a separate letter with respect to each of the bowling alleys, indicating that it had been informed that the alleys were no longer represented by the Association and that the Union would meet and bargain separately with the bowling alleys if the alleys did not authorize the Association to represent them The Union requested a meeting on August 18, 1981, for separate negotiations Neither DeMascio nor any other agent of Respondent responded to the Union's letters

During the 1981 negotiations between the Union and the Association for an agreement to succeed the 1978–1981 agreement, the Union was informed that DeMascio's bowling alleys were no longer interested in being represented by the Association Thus all three bowling alleys were sent the letter described above requesting a meeting on August 18, 1981 As mentioned earlier, Respondent never responded to this letter Further Respondent never notified the Union that it had withdrawn from the Association nor did Respondent ever request separate bargaining

On August 10, 1981 the Respondent filed a representation petition with the Board in Case 31-RM-902 on behalf of Verdugo Hills/Valley View/Westbrook Bowl Deutsch directed that the petitions be filed because DeMascio had informed him that the employees had voted against representation by the Union and because there had been acts of vandalism[7] shortly after the employees had held their elections Deutsch sought a Government conducted election as a peaceful means of settling that dispute Deutsch was not aware of the Union's correspondence with DeMascio Further, Deutsch was unaware that DeMascio had previously given the Association authority to bargain on behalf of the bowling alleys, had signed Association agreements on behalf of the bowling alleys, and had applied the agreements to all three bowling alleys

On September 10, 1981 the Union filed three charges, one against each bowling alley alleging a failure to bargain 'within the last two months' by refusing to commence renewal negotiations with the Union

The General Counsel contends that Respondent became bound by the terms of the 1981–1984 Association Union agreement On October 13 1981 Davis sent the three bowling alleys copies of the 1981–1984 Association Union agreement and requested that two signed copies be returned to the Union The 1981–1984 agreement between the Association and the Union lists the bowling alleys covered by the agreement but does not mention any of the DeMascio alleys Respondent did not respond to the October 13 1981 letter

Respondent's Defense

DeMascio denied knowing that the Union claimed to represent Respondent's employees That testimony is inherently incredible and is not worthy of belief DeMascio further testified that Respondent made trust fund payments to the Union, had deducted union dues and had entertained a number of employee grievances but only for union members However the evidence does not establish a members only agreement Rather, the evidence establishes that all employees received the cost of living increases requested by the Union in 1980 Virtual

[5] DeMascio became general manager of Westbrook Bowl on August 1 1975

[6] That same date the Board's Regional Office mailed the Union a copy of the representation petition filed by the Respondent covering all three bowling alleys

[7] There is no objective evidence to connect the Union with the vandalism Moreover the vandalism is irrelevant to the determination of this case

ly all employees received the wage rates provided for in the agreements and received their wage raises as provid ed for in the agreements No witness with knowledge corroborated DeMascio s contention that the agreements applied to members of the Union only While Deutsch, a credible witness, testified that he believed trust fund pay ments were made only for those employees that request ed the Union s coverage because of past or present mem bership, Deutsch s knowledge was based on information given him by DeMascio The record reveals that, in this regard and others, DeMascio did not relay accurate in formation to Deutsch For example, DeMascio told Deutsch that the bowling alleys were members of the Association for purposes of receiving group discounts but were not represented for purposes of bargaining by the Association Deutsch had no knowledge that DeMas cio had given written authorization for the Association to represent Valley View in bargaining and had applied Valley View s agreement to the other two alleys

In the spring or summer of 1981, Bill Gibson, a busi ness agent for the Union, went to Verdugo Hills Bowl to obtain a signed copy of the 1978–1981 agreement The Health and Welfare Benefit Trusts had notified the Union that payments were being received from Verdugo Hills Bowl but the trust fund had no signed copy of an agreement for that Employer Gibson spoke with Red Morse, manager of that alley, in an attempt to obtain a signed copy from DeMascio After several visits, Gibson finally got to see DeMascio and asked him to sign a con tract DeMascio said he would not sign a contract be cause Max Stone, another union business agent, had in sulted DeMascio and DeMascio s secretary DeMascio claimed that he and Morse were going to start their own union and get rid of the Union DeMascio then told Gibson that if the Union fired Gibson, he (DeMascio) would give Gibson a job A couple of weeks later Gibson and Davis went to Verdugo Hills Bowl in an at tempt to obtain a signed agreement from that alley Gibson met with the employees while Davis went to see DeMascio DeMascio refused to sign anything

Virginia Scotty Mayolett general manager of Valley View Bowl testified that in approximately August 1981 she and DeMascio were informed by two employees that the employees had conducted an election and that the majority of employees had voted against representation by the Union Valley View had approxi mately 30 employees and only one employee had voted for union representation Mayolett testified 7 to 10 em ployees had complained about the Union since at least 1979 citing poor handling of benefit claims The employ ees received no advance notice of this election Further, DeMascio had a video monitor in his office from which he could view the front desk area where the election took place [8]

Darryl Longnecker an employee at Verdugo Hills Bowl, testified that he was told by an employee, Keith Sanderson[9] that Sanderson was unhappy with the Union and that Sanderson was going to contact employees of Valley View and Westbrook Shortly thereafter, Long necker attended the meeting held by Davis and Gibson of the Union Davis told the employees that if DeMascio did not sign a union contract the employee benefits would be discontinued in a month Shortly thereafter, Sanderson conducted an election among the employees at Verdugo Hills Bowl Sanderson gave the employees slips of paper to mark yes or no The slips were used as ballots and put into a shoe box Longnecker and Sander son counted the ballots All the employees except one voted against union representation No advance notice of this election was given to employees Sanderson told the employees that a similar election was being conducted at Westbrook and Valley View Sanderson and Longnecker then informed Red Morse, general manager and Lou Parell, bowling manager, of the results of the election

Tammy Nalepa, a bookkeeper at Valley View Bowl, testified that she voted in the election at Valley View in the summer of 1981 A secret ballot election was held After the ballots were counted, the results were an nounced Approximately 20 employees had voted against union representation and only 1 had voted in favor of representation Valley View had approximately 30 em ployees at the time of the election

There was no direct testimony regarding the election at Westbrook Bowl DeMascio was told that a majority of employees at Westbrook Bowl had voted against union representation DeMascio reported this information to employees, managers and to Naftalie Deutsch

Naftalie Deutsch testified that he was told by DeMas cio that the employees had held their own elections at each bowling alley and had voted against union repre sentation Deutsch checked this information by calling the managers of the bowling alleys The managers con firmed that the employees had in fact voted against union representation Thereafter Deutsch learned of ma licious damage to cars and property at the bowling alleys Deutsch connected this sabotage to the union rep resentation question and directed his attorney to file a petition with the Board so that the representation ques tion could be settled peacefully

Discussion and Conclusions

The Board recognizes the appropriateness of multiem ployer bargaining units where the parties have voluntari ly consented to such an agreement See *Tennessee Con solidated Coal Co*, 187 NLRB 821 (1971) Once there is an established multiemployer bargaining unit the Board will not permit the withdrawal of an employer or a union from a duly established multiemployer unit, *except on adequate written notice given prior to the date set by the contract for modification or to the agreed upon date to begin the multiemployer negotiations* Emphasis added *Retail Associates*, 120 NLRB 388 395 (1958) Once nego tiations for a new contract have commenced however, withdrawal is permitted only if there is mutual consent or unusual circumstances exist Id In *Charles D Bon anno Linen Services v NLRB*, 454 U S 404 (1982), the Supreme Court adopted the Board s *Retail Associates* rule and held that a bargaining impasse is not an unusual cir

[8] There is no evidence that DeMascio did in fact view the employee conducted election

[9] At the time of the hearing Sanderson was no longer employed by Respondent and did not testify

cumstance justifying untimely withdrawal from multiemployer bargaining

In the instant case, Respondent gave timely written notice of withdrawal to the Association but not to the Union However, the Union received timely notice from the Association Upon receipt of notice from the Association, the Union wrote all three bowling alleys giving them the option of bargaining as part of the Association or bargaining separately Respondent did not reply to the Union but filed a representation petition with the Board's Regional Office After receiving Respondent's representation petition, the Union filed charges against all three bowling alleys for refusing to commence renewal negotiations There was no contention that the alleys had unlawfully withdrawn from the Association bargaining Thereafter, the Union bargained with the Association and reached a multiemployer agreement that specifically listed the Employers covered by the agreement None of the DeMascio bowling alleys were listed

Under these circumstances, it appears that the Union acquiesced in Respondent s timely withdrawal from the multiemployer unit The Union gave Respondent the option to withdraw from the multiemployer group and to bargain separately It reached a separate agreement with the Association Only after the Association had reached agreement on a collective bargaining contract did the Union take the position that Respondent was bound by the multiemployer bargaining The Union never took such a position during the bargaining Accordingly, I find that Respondent did not become bound by the multiemployer contract reached by the Union and the Association

In the alternative, the General Counsel argues that the bowling alleys were obligated to bargain separately with the Union in August 1981 and that they unlawfully withdrew recognition from the Union The starting point for analysis is the applicable law regarding a union s presumption of majority stemming from its collective bargaining agreement

> It is well settled that the existence of a prior contract, lawful on its face, raises a dual presumption of majority—a presumption that the Union was the majority representative at the time the contract was executed and a presumption that its majority continued at least through the life of the contract Following the expiration of the contract, the presumption continues and, though rebuttable the burden of rebutting it rests on the party who would do so To withdraw recognition lawfully either this presumption must be overcome by competent evidence that the Union in fact did not represent a majority at the time of the withdrawal, or the Employer must establish on the basis of objective facts that it had a reasonable doubt as to the Union s continuing majority status This latter test, which Respondent claims it meets, requires more than mere evidence of the Employer s subjective state of mind For the test to be met, the assertion must be supported by objective considerations, that is, some reasonable ground for believing that the Union has lost its majority status [Citations omitted]

Sahara Tahoe Hotel, 241 NLRB 106, 107–108 (1979), enfd 648 F 2d 553 (9th Cir 1980) The Union s presumption of majority survives the Employer s withdrawal from the multiemployer bargaining unit *NLRB v Tahoe Nugget Inc*, 584 F 2d 293 (9th Cir 1978) Thus, after the withdrawal from the multiemployer bargaining unit, there was a presumption of continuing union majority status within the single employer unit

In the instant case, the three bowling alleys were considered by all parties, Respondent, the Union and the Association, as a single entity When that entity withdrew from the multiemployer unit, the appropriate bargaining unit became a unit consisting of the employees at all three alleys Cf *Miles & Sons Trucking* 269 NLRB 7 (1984) As discussed above after the expiration of the 1981 agreement, the Union enjoyed a presumption of continuing majority support in the unit consisting of employees at all three locations Respondent could overcome the presumption by showing that the Union did not represent a majority of the employees in August 1981 or that Respondent had a good faith doubt, based on objective facts, as to the Union s continuing majority status *Bartenders Assn of Pocatello* 213 NLRB 651 (1974), *Pioneer Inn Associates v NLRB*, 578 F 2d 835 (9th Cir 1978)

In the summer of 1981, Respondent received information that their employees at all three bowling alleys had held secret ballot elections and had voted against union representation Respondent was told that only four employees had voted for union representation and that a large majority had voted against representation I find that this constitutes adequate evidence to support Respondent s contention of a good faith belief sufficient to rebut the presumption of the Union s continued majority See *Carolina American Textiles* 219 NLRB 457 (1975)

The General Counsel argues that the employees elections are not the equivalent of a Board conducted representation election However the question presented here is whether the employees elections are sufficient to raise a good faith doubt I find that the election results indicating that a vast majority had voted against representation and only a handful of employees had voted for representation establishes a good faith doubt based on objective evidence Moreover Respondent sought to have the Board conduct a proper representation election, but its petition was blocked by the instant unfair labor practice charges

The General Counsel correctly argues that the defense that the Union no longer enjoys majority status can only be raised in a context free of unfair labor practices *Engineered Control Systems*, 274 NLRB 1308 (1985), *Western Truck Services*, 252 NLRB 688, 691 (1980) The theory being that the employer s misconduct may well have induced the union's loss of majority *Frank Bros Co v NLRB*, 321 U S 702 705–706 (1944) However, as discussed above, I have found that Respondent's timely withdrawal from the multiemployer group had not been unlawful Further while the General Counsel correctly argues that DeMascio was strongly opposed to the Union, there is no evidence that DeMascio unlawfully induced the Union s loss of majority Nor is there any

evidence of independent violations of Section 8(a)(1) of the Act DeMascio s union animus alone is insufficient to establish unfair labor practices or to rebut Respondent s objective basis for its good faith doubt

CONCLUSIONS OF LAW

1 Westbrook Bowl, Valley View Bowl, and Verdugo Hills Bowl are employers engaged in commerce and in businesses affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act

2 The Union, Hospital and Service Employees Union, Local 399, SEIU, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act

3 The General Counsel has failed to establish that Respondent violated Section 8(a)(5) and (1) of the Act as alleged

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The complaint is dismissed in its entirety

[10] 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