International Bridge & Iron Co. *and* Shopmen's Local Union No. 832 of The International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, AFL—CIO. Case 34–CA–12616

August 2, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE AND HAYES

On March 21, 2011, Administrative Law Judge Michael A. Marcionese issued the attached decision. The Respondent filed exceptions with supporting argument. The Acting General Counsel filed an answering brief.

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, supporting argument, and brief and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions and to adopt the recommended Order[3] as modified.[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Bridge & Iron Co., Newington, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order, as modified by substituting the following for paragraph 2(e):

"(e) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representatives, copies of the attached notice marked 'Appendix'[9] to the Union and to all unit employees who were employed by the Respondent at its Newington, Connecticut facility, or who were on layoff status, on February 25, 2010, the date the employees were informed of the intended cessation of operations. In addition to physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means."

Dated, Washington, D.C. August 2, 2011

Wilma B. Liebman, Chairman

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Sarah Pring Karpinen, Esq., for the General Counsel.
Robert D. Noonan, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

MICHAEL A. MARCIONESE, Administrative Law Judge. I heard this case in Hartford, Connecticut, on November 9, 2010.[1] Shopmen's Local No. 832 of the International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, AFL–CIO, the Union, filed the unfair labor practice charge on March 9. On June 29, the complaint issued alleging that International Bridge & Iron Co., the Respondent, violated Section 8(a)(1) and (5) of the Act by failing and refusing to bargain with the Union regarding the effects of its February 26 decision to cease operations and terminate all unit employees and its subsequent unilateral termination of unit employees' health, dental, and life insurance benefits. The complaint further alleges that the Respondent violated Section 8(a)(1) and (5) by failing and refusing to bargain with the Union regarding the impact on unit employees of the Respondent's termination of health, dental, life insurance, and COBRA benefits since the Union requested such bargaining on March 4.

On July 13, the Respondent filed its answer to the complaint

[1] The Respondent has excepted to the judge's denial of its motions to postpone and to continue the hearing. In affirming his rulings, we observe that the judge did not abuse his discretion, and the Respondent's due-process rights were not violated. See Sec. 102.43 of the Board's Rules and Regulations; *Electrical Workers Local 46 (Puget Sound NECA)*, 303 NLRB 48, 57–58 (1991).

[2] The Respondent excepts to 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] In accordance with his dissenting view in *Kadouri International Foods, Inc.*, 356 NLRB No. 148, slip op. at 1 fn. 1 (2011), Member Hayes would delete that portion of the remedy requiring that the minimum backpay due employees should not be less than 2 weeks' pay, without regard to actual losses incurred, and would limit the remedy only to those employees who were adversely affected by the Respondent's unlawful action.

[4] We shall modify the judge's recommended Order to provide for the posting of the notice in accord with *J. Picini Flooring*, 356 NLRB No. 9 (2010). For the reasons stated in his dissenting opinion in *J. Picini Flooring*, Member Hayes would not require electronic distribution of the notice.

[1] All dates are in 2010 unless otherwise indicated.

admitting that it terminated business operations on February 26 but denying that it did so without affording the Union sufficient notice and an opportunity to bargain regarding the effects of the termination on unit employees. The Respondent also denied that it unilaterally terminated the employees' benefits, claiming that the Respondent's insurance coverage was cancelled by the insurance carrier, not by the Respondent.

Posthearing Motions

The parties filed their briefs on November 30. In its posthearing brief, the Respondent moved for dismissal of the complaint or, in the alternative, reopening of the hearing with "the appropriate respondent, the successor to International Bridge." On December 2, counsel for the General Counsel filed a response in opposition to the motion to reopen. The Respondent makes the same arguments in support of its motion to reopen that I rejected at the hearing when the Respondent sought a last-minute continuance to investigate the successorship status of Manafort Brothers, a general contractor for whom the Respondent was fabricating material at the time of its closure. In support of its motion, the Respondent does not claim, as a basis for reopening the record, that there is newly discovered evidence that would materially affect the results here. In fact, the evidence upon which the Respondent relies has been known to the Respondent since shortly after it went out of business. Moreover, its claim that Manafort is a successor is irrelevant to the issues raised by the complaint because any successorship, if it occurred, post-dated the alleged unfair labor practices and would not affect the Respondent's obligations, if any, to bargain with the Union regarding the cessation of operations and termination of benefits. *TNT Logistics North America,* 346 NLRB 1301 fn. 10 (2006). Finally, the Respondent's argument that Manafort is a *Golden State*[2] successor liable to remedy any unfair labor practices found here is an issue that need not be addressed at this stage of the proceedings. Accordingly, for the reasons advanced by the General Counsel, I shall deny the Respondent's motion to reopen the hearing. See *County Waste of Ulster,* 355 NLRB No. 64 (2010), affg. 354 NLRB No. 54 (2009).

On December 2, counsel for the General Counsel also filed a motion to strike exhibit and portions of the Respondent's brief. Specifically, General Counsel seeks to strike the September 27, 2007 letter from Aetna, Inc. to the Respondent that includes 1 page of an insurance contract, which was attached to the Respondent's brief, and any references in the Respondent's brief to this document. General Counsel also seeks to strike from the Respondent's brief references to an affidavit of Joseph Bachta, which was not introduced at the hearing nor attached to the Respondent's brief, and any other references in the brief that are not based on evidence that is part of the record from the hearing. Counsel for General Counsel argues that reliance upon exhibits and evidence outside the record denies General Counsel and the Charging Party of due process.

The Aetna letter and portion of the insurance contract attached to the Respondent's brief was available to the Respondent at the time of the hearing yet it was not proffered as an exhibit. Accordingly, I shall strike the attachment and ignore any references to it in the Respondent's brief. Although Bachta testified at the hearing, his affidavit was not proffered as an exhibit. Thus, it is not properly part of the record before me. See Section 102.45(b) of the NLRB's Rules and Regulations. I shall also ignore any references in the Respondent's brief to Bachta's affidavit. Finally, in making my decision in this matter, I have considered only the testimony taken under oath at the hearing and the exhibits that were properly authenticated and received in evidence. References in the Respondent's brief to any other matters, as described in General Counsel's motion, have been ignored. See *King Soopers, Inc.,* 344 NLRB 842 fn. 1 (2005); *Observer & Eccentric Newspapers, Inc.,* 340 NLRB 124 fn. 1 (2003); *S. Freedman Electric, Inc.,* 256 NLRB 432 fn. 1 (1981).

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, was engaged in the fabrication of structural iron for bridges and other construction at its facility in Newington, Connecticut, where it annually purchased and received goods valued in excess of $50,000 directly from points outside the State of Connecticut. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent has been in the business of fabricating steel, iron, and other metals for the construction industry since 1992. Joseph Bachta is the company founder and served as its president when the events at issue occurred. His daughter, Linda Lough, was the executive vice president and was responsible, among other things, for all insurance and employee benefits issues. The Respondent has recognized the Union as the exclusive collective-bargaining representative of its production and maintenance employees since the early 1990s under a series of collective bargaining agreements. The most recent contract was effective for the period April 1, 2009 –March 31, 2012. That agreement required the Respondent to provide health, dental, and life insurance benefits for its unit employees.

There is no dispute that the Respondent had been experiencing financial difficulties for some time prior to the events at issue here. Anthony Rosaci, the Union's business representative, testified that he has been aware of these difficulties since about 2005. According to Rosaci, over the years there had been occasions when the Respondent could not cover its payroll, or fell behind in paying for employee benefits. There was even an occasion when the Respondent had to temporarily lay off all its employees because its workers' compensation insurance lapsed from nonpayment. Rosaci acknowledged that, during the negotiations for the 2009–2012 collective-bargaining agreement, the Union and its accountant were permitted to review the com-

[2] *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

pany's financial records. Despite these difficulties, however, the Respondent did not seek any concessions from the Union during negotiations, agreeing instead to wage increases in the 2nd and 3rd years of the contract. The Respondent also did not tell the Union during negotiations that it contemplated going out of business as a result of its financial difficulties.

On February 25, the Respondent held a meeting at the shop at which Bachta informed the employees that it was shutting down at the close of business the next day and that their employee benefits would terminate at the end of the month, i.e. February 28. Although the Respondent did not notify the Union in advance that it would be meeting with the employees or that it would be closing and terminating benefits, the Union's shop steward, Salvatore Certo, was present at this meeting. There is no dispute that Certo informed Rosaci after the meeting regarding this announcement. The Respondent ceased operations, as planned, on Friday February 26, laying off all unit employees. Also, as announced, the employees' life insurance and health and dental benfits were terminated on February 28. Also affected were five employees who had been laid off that were receiving benefits under COBRA. These benefits also ceased on February 28 even though the laid-off employees had been paying the premiums to continue receiving these benefits.

At the time the Respondent ceased operations, there were about 14 or 15 unit employees working on a contract to fabricate iron for a Manafort Brothers bridge project. Certo testified that there was about 2 to 3 months worth of work left on this job. The Respondent had also recently completed a contract to fabricate material for a Long Island Railroad job and Bachta had told Certo that he anticipated getting more work on the next phase of that job. Certo also testified that whenever he spoke to Bachta about the company's condition, Bachta responded that he was bidding jobs and expected more work to come in.

On February 26, the Respondent faxed to Rosaci a letter informing the Union that the Respondent was

> ceasing operations on February 26, 2010. All employees will be receiving their termination papers and notification of the termination of the health, dental, and life insurance plans as of 2/28/10. Please call [number omitted] if you have any questions.

Attached to this letter was a copy of the February 25 letter given to the employees announcing the closure and termination of benefits. Rosaci admittedly did not call the Respondent upon receipt of this letter. Instead, he sent the Respondent a letter on February 27 requesting information related to the Respondent's closure and termination of benefits. Rosaci reminded the Respondent, in this letter, that "under the National Labor Relations Act you are obliged to advise the Union of any changes effecting your operation. (sic)" On March 2, Lough responded to Rosaci's information request. Included in the response was a statement that COBRA would be unavailable to terminated employees because there were no benefit plans continuing to which terminated employees could contribute. On March 4, Rosaci sent another letter to the Respondent requesting that the Respondent restore the status quo ante and bargain over the impact of the Respondent's decision to terminate the health insurance, dental insurance, life insurance, and COBRA benefits. The Respondent never responded to this request.

Bachta and Lough testified that the decision to go out of business was made on February 24, after meeting with the company's corporate attorney and a bankruptcy attorney. Lough testified that she and her father were told that the company was no longer viable. They were instructed not to incur any more debt.[3] Lough also testified that the Respondent had lost out on a couple of bids and that there was not much work on the horizon. Lough testified further that, after this meeting, she called the Respondent's health and dental insurance carrier, Aetna, and informed them that the Respondent had to close the company and terminate the employees. According to Lough, she was told that, without an active workforce, the plan would terminate. Lough testified that she was told there was no other option. On February 26, Lough sent letters to Group Dynamic, Inc., the administrator of its COBRA benefits, and Rogers Benefit Group, the Respondent's health, dental, and life insurance administrator, informing them that it was "ceasing operations on 2/26/10 and terminating the health, dental, and life insurance plans as of 2/28/10."[4] On cross-examination, Lough acknowledged that the Respondent had been aware, at least since November 2009, that Webster Bank intended to collect on the debt it was owed, She also acknowledged that, on the prior occasion when the Respondent had to lay off all its unit employees, it was able to continue the benefit plans because she, her father, and the office manager remained as active employees.

There is no dispute that, on March 8, Manafort Brothers, through a new company called CRP, leased the facility occupied by the Respondent, hired some of the unit employees, and used the Respondent's material and equipment to complete the work it had contracted with the Respondent to do. The Union did not meet with Manafort representatives until after the Respondent went out of business.[5] Rosaci testified that the Union negotiated a separate collective-bargaining agreement with the new company to cover the work and that the terms and conditions of employment differed from those in its collective-bargaining agreement with the Respondent. There is no evidence in the record regarding what discussions, if any, took place between the Respondent and Manafort preceding CRP's use of the facility to complete the work under the Respondent's contract with Manafort.

Although an employer has no duty to bargain regarding a decision to go out of business, it is settled law that an employer must bargain with its employees' statutory bargaining represen-

[3] Lough testified that the Respondent owed more than $2 million to Webster Bank, had more than $1 million in accounts payable for February, and was a party to "quite a few lawsuits." The Respondent has never filed for bankruptcy, choosing instead to dissolve the company.

[4] Lough testified that she was instructed to write these letters by the unidentified Aetna representative with whom she spoke about the Respondent's cessation of operations.

[5] Rosaci admitted having one prior discussion with Manafort in late 2009, when the Respondent was having problems making payroll and keeping its workers' compensation insurance in place. According to Rosaci, Manafort's concern at that time was ensuring that the Respondent completed the fabrication work so there would be no disruption on Manafort's construction project.

tative regarding the effects of such a decision on the unit. See *First National Maintenance Corp. v. NLRB,* 452 U.S. 666, 681–682 (1981). In order to satisfy this duty to bargain, an employer must provide the union with timely notice and an opportunity to bargain "in a meaningful manner and at a meaningful time." Id., and *Metropolitan Teletronics Corp.,* 279 NLRB 957, 959 fn. 14 (1986), enfd. mem. 819 F.2d 1130 (2d Cir. 1987). Accord: *AG Communication Systems Corp.,* 350 NLRB 168, 172 (2007); *Willamette Tug & Barge Co.,* 300 NLRB 282, 283 (1990); *Los Angeles Soap Co.,* 300 NLRB 289 (1990). Timely notice in these circumstances generally means that a Union must be notified sufficiently in advance of the closure to allow for the exchange of information and proposals, and review of those proposals at a time when the Union still has leverage to bargain. The Board has, however, excused an employer from giving advance notice of closure in emergency situations where such notice is unrealistic. *Raskin Packing Co.,* 246 NLRB 78 (1979); *M & M Transportation Co.,* 239 NLRB 73 (1978); *National Terminal Bakery Co.,* 190 NLRB 465 (1971). The Board has held that, even in those circumstances where advance notice of closure is excused, the duty to bargain over the effects still exists once the "emergency" has passed. *Cyclone Fence, Inc.,* 330 NLRB 1354 (2000); *National Terminal Bakery,* 190 NLRB supra, at 466. In these cases, the burden is on the employer to demonstrate "particularly unusual or emergency circumstances" that would relieve it of the obligation to provide the Union with effective notice. *Compact Video Services,* 319 NLRB 131 fn. 1 (1995); *Willamette Tug & Barge Co.,* supra.

In the present case, the Respondent did not officially notify the Union that it was ceasing operations and terminating the employees and their benefits until February 26, the day of the closure. The Respondent would argue that it provided timely notice, a day earlier, when Bachta met with the employees to announce the Respondent's decision. Although steward Certo was present at this meeting, he was there in his capacity as an employee, not a union representative. The Board and courts have long held that notice to employees does not constitute sufficient notice to the Union. *Bridon Cordage, Inc.,* 329 NLRB 258, 259 (1999); *Ciba-Geigy Pharmaceuticals Division* 264 NLRB 1013, 1017 (1982), enfd. 722 F.2d 1120 (3d Cir. 1983). The Respondent also argues that the Union was already on notice regarding the Respondent's precarious financial condition before the announcement that it was going out of business. However, the Respondent's own witnesses testified that no decision was made to cease operations until after the February 24 meeting with the Respondent's attorneys and that the Respondent intended to continue in business up until that time. Thus, the Union would have no reason to request effects bargaining before February 24, notwithstanding any concerns it had regarding the Respondent's ability to pay employees their wages and benefits.

The issue then is whether the Respondent's February 26 notice to the Union, on the day it was going out of business, was sufficient to meet its effects bargaining obligation or whether the Respondent's last-minute notice was excused by emergency circumstances. The testimony of Lough and Bachta that they were faced with an "emergency" requiring the cessation of operations on February 26 was elicited by leading questions of counsel and is self-serving. The Respondent offered no evidence to buttress the claims of Lough regarding the Respondent's current debts, prospective liabilities, and lack of incoming work. While it is true that the Union was aware of the Respondent's debt to Webster Bank, because this was disclosed during negotiations in 2009, there is no evidence in the record before me that Webster Bank had taken any action to force the Respondent's closure. The Respondent had in fact been working under this debt burden for some time without making any decision to close. The advice the Respondent received from its own attorneys on February 24 to stop incurring debt was not the type of emergency recognized by the Board to excuse advance notice of a decision to terminate unit employees. This case differs from those cases because there is no third party action, such as denial of a credit line, foreclosure by the bank, theft of company vehicles or equipment, etc., that compelled the Respondent to act when it did. The Respondent could have notified the Union immediately after the February 24 meeting with its attorneys that it had reached a decision to cease operations, thereby affording the Union an opportunity to negotiate over the effects and thus minimize the impact on the unit employees of the inevitable loss of work and benefits. There is simply nothing in this record which establishes that the Respondent had to close on February 26. Because the Respondent was in control of the timing of its decision, it had the ability to give the Union effective and meaningful notice of that decision. Accordingly, I find that the Respondent violated Section 8(a)(1) and (5) of the Act by failing to provide the Union with effective and timely notice of its decision to cease operations, thereby denying the Union an opportunity to bargain regarding the effects of that decision.

One of the effects of the Respondent's decision to cease operations and terminate its employees was the termination of the health and dental and life insurance benefits required under the collective-bargaining agreement. The Respondent attempted to show that the decision to terminate the benefit plans was made by its insurance carrier. The Respondent offered no evidence to support this claim other than the unsupported hearsay testimony of Lough regarding a conversation she had with an unidentified Aetna representative. The correspondence she sent to the plan administrators after this conversation clearly states that the Respondent was terminating the benefit plans. In any event, even assuming it was the carrier that terminated the Respondent's plans, that "decision" was triggered by the Respondent's actions. As noted above, the Respondent had control over the timing of its decision to close. Once it made this decision, the termination of employee benefits followed. Because the Respondent did not inform the Union before February 26 that the employees' benefits would be terminated, and because it ignored the Union's specific request on March 4 to negotiate over the effects of that decision, I find the Respondent has violated the Act as alleged in the complaint.

Throughout this proceeding, the Respondent has attempted to avoid the consequences of its actions by claiming that Manafort Brothers is the true Respondent here, claiming that they are a successor to the Respondent and liable for any unfair labor practices committed, or in the alternative, to remedy those un-

fair labor practices. I find that this argument is nothing more than a red herring. It was the Respondent that made the decision to go out of business, to lay off all its unit employees and to cause the termination of their benefits. Manafort Brothers had no involvement in that decision. Certainly if it did, the Respondent's witnesses would have known about it and testified to such involvement. Instead, the Respondent's witnesses testified it was the company's own attorneys that advised the Respondent to take the action it did. Whatever discussions Manafort had with the Union regarding Manafort's own concerns over completion of the work the Respondent was contracted to do, was not shown by the Respondent to have been a factor in the Respondent's decision to close. Similarly, whatever Manafort and the Union did after the Respondent went out of business to ensure that the work in progress was completed could not excuse the Respondent's unfair labor practices.

I am also not persuaded by the Respondent's attempts to show that Manafort Brothers was a successor liable to remedy the Respondent's unfair labor practices under *Golden State Bottling Co.,* supra. In the first place, the evidence in the record is insufficient to make such a determination. Secondly, the Respondent would have to have been a party to any agreement whereby Manafort Brothers became a successor because it would have to have agreed to purchase the assets of the Respondent and assume its obligations. The Respondent came forward with no such evidence. The Respondent did not even claim that such evidence existed. Instead, the Respondent attempted to prove that negotiations between Manafort Brothers and the Union, which did not own or have control over the Respondent's assets, somehow created successor liability. I am not prepared to make such a novel finding. In any event, if the Respondent has evidence to show that Manafort Brothers acquired its assets with knowledge of the potential liability here and was a true Golden State successor, it may produce such evidence at the compliance stage of this proceeding.

CONCLUSIONS OF LAW

By failing and refusing to bargain with Shopmen's Local No. 832 of the International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, AFL–CIO regarding the effects of its decision to cease operations, terminate all unit employees and terminate the employees' life, health, and dental insurance benefits and COBRA benefits, 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 find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Counsel for the General Counsel has asked for a *Transmarine* remedy for the Respondent's refusal to bargain over the effects of its decision to close.[6] A *Transmarine* remedy requires an employer to bargain over the effects of its decision and to provide unit employees limited back pay, from 5 days after the Board's decision until one of the following occurs: (1) an effects bargaining agreement is reached; (2) a bona fide impasse in effects negotiations is reached; (3) the Union fails to request bargaining within 5 days of receipt of the Board's decision or to commence bargaining within 5 days of the employer's notice of its desire to bargain; or (4) the Union ceases to bargain in good faith. The Board has held that "in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ." 170 NLRB supra at 390. See also *Melody Toyota,* 325 NLRB 846 (1998). I agree with the General Counsel that such a remedy is appropriate here.[7] The limited back pay ordered here shall be paid with interest to be compounded daily in accordance with the Board's recent decision in *Kentucky River Medical Center,* 356 NLRB No. 8 (Oct. 22, 1010).

The fact that some of the unit employees were hired by CRP to finish the Manafort job does not negate the need for a *Transmarine* remedy here. As counsel for the General Counsel notes, not all the unit employees were hired by CRP and those that were hired had a gap in employment. There is also no evidence regarding how long those employees hired by CRP continued to work and or whether their wage and benefits exceeded those they would have received under the Respondent's collective-bargaining agreement with the Union. This case is thus distinguishable from *AG Communications Corp.,* supra, where the Board found a back pay award unwarranted. In that case, the unit employees who lost their jobs as the result of the employer's decision to integrate their jobs into another division, represented by a different Union, suffered no loss as a result and ended up with better terms and conditions of employment. This case is more like *Walter Pape,* 205 NLRB 719, 720 (1973), where it was unclear whether all unit employees were hired by the company to which the employer sold or subcontracted the work. See also *Sea-Jet Trucking Corp.,* 327 NLRB 540, 549 (1999).

The General Counsel also requests a remedy for any unit employees who incurred expenses as a result of the Respondent's termination of their life, health, and dental insurance benefits, or as the result of the denial of COBRA benefits. There is evidence in the record that at least one unit employee, Certo, incurred unreimbursed medical bills in the period between the lapse in coverage under the Respondent's plan and the date he was able to obtain alternate coverage. I agree with the General Counsel that such a remedy is appropriate here in order to make the unit employees whole for any loss they suffered as a result of the Respondent's unfair labor practices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

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

[7] Because I have rejected the Respondent's argument that its decision was necessitated by an emergency or exigent circumstances, the Board's decision in *National Terminal Bakery,* supra, declining to order such a remedy, does not apply.

[8] 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.

ORDER

The Respondent, International Bridge & Iron Co, Newington, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Shopmen's Local No. 832 of the International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, AFL–CIO, the Union, by ceasing operations and terminating all unit employees and the life, health and dental insurance plans covering them without affording the Union sufficient notice and an opportunity to bargain over the effects of this decision on employees in the following appropriate unit:

> All production and maintenance employees who were engaged in the fabrication of iron, steel, metal and other products, or in the maintenance work in and about the Company's plants located in Newington, Connecticut and vicinity.

(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) On request, bargain collectively with the Union with respect to the effects on unit employees of the Respondent's decision to cease operations and terminate employees' life, health, and dental insurance and COBRA benefits.

(b) Pay the former employees in the unit described above, with interest compounded daily, their normal wages when last in the Respondent's employ from 5 days after the date of this decision until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the Respondent's decision to cease operations and terminate the employees' life, health and dental insurance and COBRA benefits; (2) the date a bona fide impasse in bargaining occurs; (3) the failure of the Union to request bargaining within 5 business days after receipt of this Decision, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of the employees exceed the amount he or she would have earned as wages from February 26, 2010, the date the Respondent ceased operations, to the time he or she secured equivalent employment elsewhere; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ, as set forth in the remedy portion of this decision.

(c) Make whole unit employees for any unreimbursed expenses they incurred as a result of the Respondent's termination of its life, health, and dental insurance plans and its termination of COBRA benefits for terminated employees.

(d) 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.

(e) Within 14 days after service by the Region, mail copies of the attached notice marked Appendix,[9] at its own expense, to all employees in the unit described above who were employed by the Respondent at its Newington, Connecticut facility on February 24, the date the Respondent made its decision to cease operations. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondent's authorized representative.

(f) 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.

Dated, Washington, D.C., March 21, 2011

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 fail and refuse to bargain collectively with Shopmen's Local No. 832 of the International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, AFL–CIO (the Union) by ceasing operations and terminating all unit employees and the life, health, and dental insurance plans covering them without affording the Union sufficient notice and an opportunity to bargain over the effects of this decision on employees in the following appropriate unit:

> All production and maintenance employees who were engaged in the fabrication of iron, steel, metal and other products, or in the maintenance work in and about the Company's plants located in Newington, Connecticut and vicinity.

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

[9] 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."

you by Section 7 of the Act.

WE WILL, on request, bargain with the Union regarding the effects of our decision to cease operations and terminate our employees and the life, health, and dental insurance plans covering them and any COBRA benefits to which they are entitled.

WE WILL pay unit employees their normal wages for the period set forth in the remedy section of this decision.

WE WILL make whole unit employees for any losses they incurred, including out-of-pocket medical expenses, as a result of our unlawful refusal to bargain over the effects of our decision to terminate their life, health and dental insurance and COBRA benefits.

INTERNATIONAL BRIDGE & IRON CO.