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Raymond Interior Systems and Operative Plasterers' and Cement Masons' International Association, Local Union 200, AFL-CIO

Raymond Interior Systems and Southern California Plastering Institute Group Benefit Trust c/o American Benefit Plan Administrators, Inc. and Southern California Plastering Institute Pension Trust Fund c/o American Benefit Plan Administrators, Inc. and Southern California Plastering Institute Apprenticeship and Training Trust c/o American Benefit Plan Administrators, Inc. and Southern California Plastering Institute Administrative Trust Fund c/o American Benefit Plan Administrators, Inc. and Southern California Plastering Institute Labor-Management Work Preservation Trust c/o American Benefit Plan Administrators, Inc. and Southern California Plastering Institute Vacation Trust and Vacation Administration Trust c/o American Benefit Plan Administrators, Inc.

Southwest Regional Council of Carpenters and Operative Plasterers' and Cement Masons' International Association, Local Union 200, AFL-CIO. Cases 21-CA-38492, 21-CA-38589 and 21-CB-14576

December 30, 2011

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS BECKER
AND HAYES

On March 5, 2010, Administrative Law Judge John J. McCarrick issued the attached decision. The Respondents, Raymond Interior Systems (Raymond) and Southwest Regional Council of Carpenters (Carpenters), each filed exceptions and a supporting brief. The General Counsel, and the Charging Parties Operative Plasterers' and Cement Masons' International Association, Local Union 200, AFL-CIO (Plasterers), and Southern California Plastering Institute Group Benefit Trust c/o American Benefit Plan Administrators, Inc., Southern California Plastering Institute Pension Trust Fund c/o American Benefit Plan Administrators, Inc., Southern California Plastering Institute Apprenticeship and Training Trust c/o American Benefit Plan Administrators, Inc., Southern California Plastering Institute Administrative Trust Fund c/o American Benefit Plan Administrators, Inc., Southern California Plastering Institute Labor-

Management Work Preservation Trust c/o American Benefit Plan Administrators, Inc., and Southern California Plastering Institute Vacation Trust and Vacation Administration Trust c/o American Benefit Plan Administrators, Inc. (collectively Plasterers Trusts), filed answering briefs to Raymond's and Carpenters' exceptions. Raymond and Carpenters each filed a reply brief to Plasterers' and Plasterers Trusts' answering briefs.¹

The Charging Parties Plasterers and Plasterers Trusts each filed cross-exceptions and supporting briefs. Raymond and Carpenters filed answering briefs to these cross-exceptions, and Plasterers filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings,² findings,³ and conclusions, to modify his remedy, to

¹ Plasterers filed a motion to strike Raymond's reply brief insofar as it relates to when Raymond received the recognition agreement that Plasterers mailed it. As the date of Raymond's receipt is not critical to our findings that Raymond entered into a 9(a) agreement on June 26, 2003, and later unlawfully withdrew recognition from Plasterers, we find it unnecessary to pass on Plasterers' motion.

² The Respondents have 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 In view of the judge's finding that Plasterers Business Manager Robert Pullen sent Business Agent David Fritchel to Raymond's office on June 26, 2003, with a copy of the voluntary recognition agreement and supporting authorization cards, we agree with the judge that it is unnecessary to correct the transcript of Pullen's testimony as to the date of that event, as Plasterers request. Further, in adopting the judge's finding that Fritchel showed Gary Jaacks, Raymond's vice president, a set of authorization cards on June 26, 2003, we find it unnecessary to rely on the judge's inference that a showing of majority support must have been made or else Raymond would not have signed the agreement on that date.

In finding that Raymond and Plasterers validly converted their 8(f) bargaining relationship to a 9(a) relationship, the judge applied *Staunton Fuel & Material*, 335 NLRB 717, 719-720 (2001), which holds that a written agreement that meets certain requirements is sufficient to prove a 9(a) relationship. In *Nova Plumbing, Inc. v. NLRB*, 330 F.3d 531 (D.C. Cir. 2003), the D.C. Circuit Court of Appeals declined to affirm the Board's finding of a 9(a) relationship where the Board had relied solely on contract language "despite strong record evidence that the union may not have enjoyed majority support." *Id.* at 533. The court observed that "contract language and intent cannot be dispositive at least where, as here, the record contains strong indications that the parties had only a section 8(f) relationship." *Id.* at 537. In the present case, in contrast to *Nova Plumbing*, the record is devoid of any indication that the Union did not enjoy majority support.

Member Hayes would apply the holding of *Nova Plumbing* that contract language alone is insufficient to establish a 9(a) relationship in the construction industry. Contrary to his colleagues, he does not view the court's *Nova Plumbing* holding as limited to circumstances in which there is affirmative extrinsic evidence that the parties had only a 8(f) relationship. *Id.* at 534. Notwithstanding this difference in interpreta-

adopt the recommended Order as modified and set forth in full below,⁴ and to substitute a new notice to conform to the Order as modified.

AMENDED REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist from their unlawful conduct and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent Raymond is ordered to cease assisting and recognizing Respondent Carpenters as the representative of its plastering employees while Plasterers is the 9(a) representative of those employees. In addition, Respondent Carpenters is ordered to cease accepting Raymond's unlawful assistance and recognition. Both Respondents are required to cease and desist giving any effect to the collective-bargaining agreement they entered into on August 6, 2008.

tion of *Nova Plumbing*, Member Hayes agrees with his colleagues that the 8(f) bargaining relationship between Raymond and Plasterers validly converted to a 9(a) relationship. In this regard, based on the credited testimony of Plasterers Business Agent David Fritchel, the judge found that Plasterers provided supporting authorization cards contemporaneous with its demand for recognition as the majority representative of Raymond's plastering employees. Accordingly, the result here would be the same under the D.C. Circuit's decision in *Nova Plumbing* as under *Staunton Fuel & Material*. See *American Firestop Solutions*, 356 NLRB No. 71 (2011); and *M&M Backhoe Service*, 345 NLRB 462 (2005), enfd. 469 F.3d 1047 (D.C. Cir. 2006).

The judge incorrectly found that at the raffle operated by Carpenters on August 6, 2008, each plastering employee received a tool and a cash award totaling \$1600 in value. The record shows that each employee received either a tool *or* a cash award and that the 10 cash awards had a total value of \$3000. However, neither factual error affects our decision to adopt the judge's finding, for the reasons set forth in his decision, that Carpenters violated Sec. 8(b)(1)(A) and (2) by conducting this raffle.

For the reasons stated in his decision, we agree with the judge that Raymond provided unlawful assistance to the Carpenters in violation of Sec. 8(a)(3), (2), and (1) by threatening to enforce the union-security provision of the Carpenters' contract. We also agree that the Carpenters violated Sec. 8(b)(1)(A) and (2) by accepting this unlawful assistance. We note the judge's further findings that Raymond violated Sec. 8(a)(3), (2), and (1) by providing Carpenters with the use of company facilities, holding a mandatory employee meeting with Carpenters officials on company time, and promising increased benefits under a Carpenters contract, and that Carpenters violated Sec. 8(b)(1)(A) and (2) by accepting this unlawful assistance. These matters were not alleged in the complaint and, in any event, we find it unnecessary to pass on them as any findings of the violations would be cumulative of the above unlawful assistance violations and thus would not affect the remedy.

⁴ We shall also modify the judge's recommended Order to conform to the Board's standard remedies for the violations found and 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 notices.

In addition, Respondent Raymond is required to recognize and, on request, bargain with Plasterers as the exclusive collective-bargaining representative of Raymond's plastering employees with respect to wages, hours, and other terms and conditions of employment. As discussed below, we find that an affirmative bargaining order is warranted in this case as a remedy for Raymond's unlawful withdrawal of recognition. Respondent Raymond is also required to restore the status quo ante and make its plastering employees whole for any loss of earnings and other benefits attributable to its unlawful conduct. The make-whole remedy shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

Respondent Raymond is additionally required to make whole its plastering employees by making all delinquent Plasterers Trust fund contributions on behalf of these employees that have not been made since August 5, 2008, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).⁵ Further, Raymond shall be required to reimburse its plastering employees for any expenses ensuing from its failure to make the required fund contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Such amounts should be computed in the manner set forth in *Ogle Protection Service*, supra, with interest at the rate prescribed in *New Horizons for the Retarded*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Further, Respondents Raymond and Carpenters are ordered jointly and severally to reimburse all present and former employees who joined Carpenters on or since August 6, 2008, for all initiation fees, dues, and other moneys paid by them or withheld from them pursuant to the collective-bargaining agreement between Raymond and Carpenters, computed in accordance with *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. However, reimbursement does not extend to those em-

⁵ To the extent that an employee has made personal contributions to Plasterers Trust that have been accepted by them in lieu of Raymond's delinquent contributions during the period of the delinquency, Raymond will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that Raymond otherwise owes Plasterers Trust.

ployees who voluntarily became members of Carpenters before August 6, 2008. See, e.g., *Dairyland USA Corp.*, 347 NLRB 310, 314 (2006), *enfd. sub nom. NLRB v. Food & Commercial Workers Local 348-S*, 273 Fed. Appx. 40 (2d Cir. 2008).

Finally, as stated above, for the reasons set forth in *Caterair International*, 322 NLRB 64 (1996), we find that an affirmative bargaining order is warranted in this case as a remedy for Raymond's unlawful withdrawal of recognition. The Board has consistently held that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." *Caterair International*, supra, 322 NLRB at 68.

In several cases, however, the United States Court of Appeals for the District of Columbia Circuit has required the Board to justify, on the facts of each case, the imposition of an affirmative bargaining order. See, e.g., *Vincent Industrial Plastics, Inc. v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Building Material Corp. v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); *Exxel/Atmos, Inc. v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent Industrial Plastics*, supra at 738, the court stated that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' Section 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." Although we respectfully disagree with the court's requirement for the reasons set forth in *Caterair*, supra, we have examined the particular facts of this case and we find that a balancing of the three factors warrants an affirmative bargaining order.⁶

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the plastering employees who were denied the benefits of collective bargaining through their designated representative by Raymond's unlawful withdrawal of recognition from Plasterers, its resulting refusal to collectively bargain with Plasterers, and its recognition of Carpenters. At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning Plasterers' continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued representation by Plasterers. The order's dura-

tion is not indefinite; it extends only for a reasonable period of time sufficient to remedy the ill effects of the violation. It is only by restoring the status quo ante and requiring Raymond to bargain with Plasterers for a reasonable period of time that employees' Section 7 right to union representation is vindicated. It will also give employees an opportunity to fairly assess Plasterers' effectiveness as a bargaining representative and determine whether continued representation by Plasterers is in their best interest.

(2) An affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. That is, it removes Raymond's incentive to delay bargaining in the hope of discouraging support for Plasterers. It also ensures that Plasterers will not be pressured to achieve immediate results at the bargaining table—results that might not be in the employees' best interest. It fosters industrial peace by restoring the bargaining representative chosen by a majority of the employees and allowing their representative an opportunity to bargain on their behalf without undue time pressure to achieve an agreement. Also, as mentioned, providing this temporary period of insulated bargaining will afford employees a fair opportunity to assess Plasterers' performance in an atmosphere free of the effects of Raymond's unlawful conduct.

(3) A cease-and-desist order alone would be inadequate to remedy Raymond's withdrawal of recognition and refusal to bargain with Plasterers, because it would allow a challenge to Plasterers' majority status before the taint of Raymond's unlawful withdrawal of recognition and subsequent recognition of and agreement with Carpenters has dissipated. Allowing a challenge to Plasterers' majority status without a reasonable period for bargaining would be particularly unfair given that Plasterers needs to reestablish its representative status with Raymond's plastering employees. Indeed, permitting a decertification petition to be filed immediately might very well allow Raymond to profit from its own unlawful conduct. We find that these circumstances outweigh the temporary impact that the affirmative bargaining order will have on the rights of employees who oppose continued representation by Plasterers.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the violation in this case.⁷

⁶ Member Hayes agrees with the D.C. Circuit that a case-by-case analysis is required to determine if an affirmative bargaining order is appropriate. He finds that imposing a bargaining order here is appropriate under that analysis.

⁷ Charging Parties Plasterers and Plasterers Trusts seek to amend this remedy to: (1) rescind the unilateral changes to the hiring procedures that occurred when Raymond repudiated its agreement with Plasterers on August 5, 2008; (2) expand the make-whole remedy to include backpay not only for Raymond's plastering employees, but also for

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that

A. The Respondent, Raymond Interior Systems, Orange, California, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Withdrawing recognition from and failing and refusing to bargain with Operative Plasterers' and Cement Masons' International Association, Local 200, AFL-CIO (Plasterers) as the exclusive collective-bargaining representative of its plastering employees.

(b) Repudiating its collective-bargaining agreement with Plasterers at a time when Plasterers was the exclusive representative of its plastering employees.

(c) Failing to make contributions to the Southern California Plastering Institute Group Benefit Trust c/o American Benefit Plan Administrators, Inc., Southern California Plastering Institute Pension Trust Fund c/o American Benefit Plan Administrators, Inc., Southern California Plastering Institute Apprenticeship and Training Trust c/o American Benefit Plan Administrators, Inc., Southern California Plastering Institute Administrative Trust Fund c/o American Benefit Plan Administrators, Inc., Southern California Plastering Institute Labor-Management Work Preservation Trust c/o American Benefit Plan Administrators, Inc., and Southern California Plastering Institute Vacation Trust and Vacation Administration Trust c/o American Benefit Plan Administrators, Inc. (collectively Plasterers Trusts), as provided in the 2005–2008 collective-bargaining agreement between Plasterers and the Western Wall and Ceiling Contractors Association (WWCCA), California Plastering Conference.

(d) Granting recognition to and entering into a collective-bargaining agreement including a union-security provision with Southwest Regional Council of Carpenters (Carpenters) as the bargaining representative of its plastering employees when Plasterers is their 9(a) exclu-

those employees denied employment as plastering employees as a result of the unilateral changes in hiring procedures; and (3) rescind the unilateral change of ceasing dues-checkoff on August 6, 2008. We deny these requests because the remedies are not related to the complaint allegations sought by the General Counsel or supported by the evidence. A charging party has standing to seek additional remedies not sought by the General Counsel. However, a charging party is not free to seek remedies that require amendment of the complaint or a theory of the case different from the General Counsel's. *ATS Acquisition Corp.*, 321 NLRB 712 fn. 3 (1996), enfd. mem. 127 F.3d 1105 (9th Cir. 1997) (citing *Sunland Construction Co.*, 311 NLRB 685, 706 (1993)). Raymond correctly contends that the complaint did not include allegations for which these remedies would be appropriate.

sive bargaining representative, thereby encouraging membership in Carpenters and discriminating against employees regarding hiring and the terms and conditions of employment.

(e) Giving assistance to Carpenters by threatening plastering employees with job loss for failure to join Carpenters.

(f) Maintaining or giving force and effect to its collective-bargaining agreement with Carpenters covering its plastering employees when Plasterers is their 9(a) exclusive collective-bargaining representative.

(g) 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) Recognize and, on request, bargain with Plasterers as the 9(a) exclusive collective-bargaining representative of its plastering employees concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Apply to its plastering employees the terms and conditions of the collective-bargaining agreement between Plasterers and WWCCA, California Plastering Conference, in effect from August 3, 2003, to August 5, 2008, and any automatic extensions thereof.

(c) Notify Plasterers in writing of all changes made since August 5, 2008, to plastering employees' terms and conditions of employment and, on Plasterers' request, rescind any changes and restore terms and conditions of employment retroactively to August 5, 2008.

(d) Make its plastering employees whole for any loss of earnings or other benefits suffered as a result of its withdrawal of recognition from Plasterers, plus interest, as set forth in the remedy section as amended.

(e) Make all contributions, including any additional amounts due, that it was required to make to Plasterers Trusts pursuant to the 2005–2008 collective-bargaining agreement between Plasterers and the WWCCA, California Plastering Conference, but which it has not made since August 5, 2008, and reimburse its plastering employees, with interest as provided in the remedy section as amended, for any expenses resulting from its failure to make the required payments.

(f) Withdraw recognition from Carpenters as the collective-bargaining representative of its plastering employees.

(g) Make whole all of its plastering employees who joined Carpenters on or since August 6, 2008, for all dues and fees paid by them or withheld from them pursuant to the terms of the union-security clause incorporated

in the August 6, 2008 memorandum agreement, plus interest, as set forth in the remedy section as amended.

(h) 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 and benefits due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its Orange, California facility copies of the attached notice marked "Appendix A"⁸ in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 21, 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. In addition to physical posting 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If 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 5, 2008.

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

B. The Respondent, Southwest Regional Council of Carpenters, Los Angeles, California, its officers, agents, and representatives shall

1. Cease and desist from

(a) Receiving assistance and accepting recognition from Raymond Interior Systems (Raymond) at a time when Operative Plasterers' and Cement Masons' International Association, Local 200, AFL-CIO (Plasterers) is

⁸ 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."

the 9(a) representative of Raymond's plastering employees.

(b) Maintaining or giving force and effect to any collective-bargaining agreement with Raymond covering Raymond's plastering employees or acting as their collective-bargaining representative while Plasterers is the 9(a) representative of those employees.

(c) Maintaining a union-security clause in its collective-bargaining agreement with Raymond at a time when Carpenters does not represent an uncoerced majority of employees in the bargaining unit, thereby causing and attempting to cause Raymond to violate Section 8(a)(3) by encouraging membership in a labor organization and discriminating against employees regarding hiring and the terms and conditions of employment.

(d) Making monetary payments or giving away work tools to induce employees to join the Carpenters when it is not the collective-bargaining representative of the employees.

(e) In any like or related manner 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) Make whole all of Raymond's plastering employees who joined Carpenters on or since August 6, 2008, for all dues and fees paid by them or withheld from them pursuant to the terms of the union-security clause incorporated in the August 6, 2008 memorandum agreement, plus interest, as set forth in the remedy section as amended.

(b) Within 14 days after service by the Region, post at its Los Angeles, California facility copies of the attached notice marked "Appendix B"⁹ in English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by Carpenters' authorized representative, shall be posted by Carpenters and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. In addition to physical posting 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 Carpenters customarily communicates with its members by such means. Reasonable steps shall be taken by Carpenters to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the

⁹ See fn. 8, supra.

Region attesting to the steps that Carpenters has taken to comply.

Dated, Washington, D.C. December 30, 2011

Mark Gaston Pearce, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX A
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 withdraw recognition from and fail and refuse to bargain with Operative Plasterers' and Cement Masons' International Association, Local Union 200, AFL-CIO (Plasterers) as the exclusive collective-bargaining representative of our plastering employees.

WE WILL NOT repudiate our collective-bargaining agreement with Plasterers at a time when Plasterers is your exclusive representative.

WE WILL NOT fail to make contributions to the Southern California Plastering Institute Group Benefit Trust c/o American Benefit Plan Administrators, Inc., Southern California Plastering Institute Pension Trust Fund c/o American Benefit Plan Administrators, Inc., Southern California Plastering Institute Apprenticeship and Training Trust c/o American Benefit Plan Administrators, Inc., Southern California Plastering Institute Administrative Trust Fund c/o American Benefit Plan Administrators, Inc., Southern California Plastering Institute Labor-

Management Work Preservation Trust c/o American Benefit Plan Administrators, Inc., and Southern California Plastering Institute Vacation Trust and Vacation Administration Trust c/o American Benefit Plan Administrators, Inc. (collectively Plasterers Trusts), as provided in the 2005-2008 collective-bargaining agreement between Plasterers and the Western Wall and Ceiling Contractors Association (WWCCA), California Plastering Conference.

WE WILL NOT grant recognition to or enter into a collective-bargaining agreement containing a union-security provision with the Southwest Regional Council of Carpenters (Carpenters) when Plasterers is your exclusive bargaining representative.

WE WILL NOT give assistance to Carpenters by threatening you with job loss for failure to join Carpenters.

WE WILL NOT maintain or give force and effect to our collective-bargaining agreement with Carpenters covering you while Plasterers is your exclusive collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in your exercise of the rights listed above.

WE WILL recognize and, upon request, bargain with Plasterers as the exclusive collective-bargaining representative of our plastering employees and embody any agreement reached regarding employee terms and conditions of employment in writing.

WE WILL apply to you the terms and conditions of the collective-bargaining agreement between Plasterers and WWCCA, California Plastering Conference, in effect from August 3, 2003, to August 5, 2008, and any automatic renewals thereof.

WE WILL notify Plasterers in writing of all changes made to your terms and conditions of employment since August 5, 2008, and on Plasterers' request rescind any changes and restore terms and conditions of employment retroactively to August 5, 2008.

WE WILL withdraw recognition from Carpenters as the collective-bargaining representative of our plastering employees while Plasterers is your exclusive representative.

WE WILL make whole all of our plastering employees who joined the Carpenters' Union on or since August 6, 2008, for all dues and fees paid by them or withheld from them pursuant to the terms of the union-security clause incorporated in the August 6, 2008 memorandum agreement, plus interest.

WE WILL make whole our plastering employees for any loss of earnings or other benefits suffered as a result of our withdrawal of recognition from Plasterers and

repudiation of our agreement with Plasterers, plus interest.

WE WILL make all fund contributions, including additional amounts due, that we were required to make but did not make since August 5, 2008, to Plasterers Trusts pursuant to the 2005–2008 collective-bargaining agreement between Plasterers and the WWCCA, California Plastering Conference, and WE WILL, make employees whole for any losses incurred as a result of our failure to make required contributions.

RAYMOND INTERIOR SYSTEMS

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated 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 on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT receive assistance or accept recognition from Raymond Interior Systems (Raymond) when Operative Plasterers' and Cement Masons' International Association, Local 200, AFL–CIO (Plasterers) is the exclusive bargaining representative of its plastering employees.

WE WILL NOT maintain or give force and effect to any collective-bargaining agreement with Raymond covering its plastering employees, or act as their collective-bargaining representative while Plasterers is the exclusive representative of those employees.

WE WILL NOT maintain a union-security clause in a collective bargaining agreement with Raymond at a time when we do not represent an uncoerced majority of employees in the bargaining unit, thereby causing and attempting to cause Raymond to violate Section 8(a)(3) by encouraging membership in a labor organization and discriminating against employees regarding hiring and the terms and conditions of employment.

WE WILL NOT make monetary payments or give away work tools to induce employees to join us when we are not their collective-bargaining representative.

WE WILL NOT in any like or related manner restrain or coerce you in your exercise of the rights listed above.

WE WILL make whole all of Raymond's plastering employees who joined the Carpenters' Union on or since August 6, 2008, for all dues and fees paid by you or withheld from you pursuant to the terms of the union-security clause incorporated in the August 6, 2008 memorandum agreement, plus interest.

SOUTHWEST REGIONAL COUNCIL OF CARPENTERS

Lisa E. McNeill, Esq., for the General Counsel.

James A. Bowles, Esq. and *Richard S. Zuniga, Esq.* (*Hill, Farrier & Burrill, LLP*), of Los Angeles, California, for Respondent Raymond Interior Systems.

Daniel M. Shanley, Esq. and *Kathleen M. Jorgenson, Esq.* (*DeCarlo, Connor, Shanley*), of Los Angeles, California, for Respondent Carpenters.

Eric B. Myers, Esq. (*Davis, Cowell & Bowe, LLP*), of San Francisco, California, for the Charging Party Plasterers.

Jeffrey L. Cutler, Esq. (*Wohlner, Kaplon, Phillips, Young and Cutler*), of Sherman Oaks, California, for the Charging Party Trusts.

DECISION

STATEMENT OF THE CASE

JOHN J. MCCARRICK, Administrative Law Judge. This case was tried in Los Angeles, California, on September 22–25 and 30, 2009, upon the order consolidating cases, and consolidated complaint (complaint) issued on June 30, 2009, by the Regional Director for Region 21.

The complaint alleges that Raymond Interior Systems (Respondent Raymond) violated Section 8(a)(1), (2), (3), and (5) of National Labor Relations Act (the Act): by refusing to recognize and bargain with Operative Plasterers and Cement Masons' International Association Local Union 200, AFL–CIO (Plasterers Union) as the exclusive collective-bargaining representative of its plastering employees, by refusing to make trust payments into various trust funds, by recognizing Respondent Carpenters Union as the exclusive collective-bargaining representative of its plastering employees and executing a collective-bargaining agreement at a time when the Plasterers Union was the exclusive collective-bargaining representative of Respondent Raymond's plastering employees and, by threatening its plastering employees with loss of work if they did not join Respondent Carpenters Union.

The complaint alleges that Southwest Regional Council of Carpenters (Respondent Carpenters Union) violated Section 8(b)(1)(A) and (2) of the Act: by obtaining recognition from and entering into a collective-bargaining agreement with Respondent Raymond as the collective-bargaining representative of Respondent Raymond's plastering employees, at a time it was not the exclusive representative of the plastering employees and, by giving away tools and money in order to induce

Respondent Raymond's plastering employees to become members of Respondent Carpenters.

Respondents filed timely answers to the complaint stating they had committed no wrongdoing.

Upon the entire record herein, including the briefs from the General Counsel, Charging Parties, and Respondent Raymond, I make the following findings of fact

FINDINGS OF FACT

I. JURISDICTION

Respondents admitted that Respondent Raymond is a California corporation with an office and place of business located in Orange, California, where it is engaged in the building and construction industry as a contractor performing drywall, lathing and plastering work. Annually, Respondent in the course of its business operations purchased and received at its California jobsites goods valued in excess of \$50,000 directly from points outside the State of California.

Based upon the above, Respondent Raymond is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATIONS

Respondents admitted and I find that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ISSUES

1. Did Respondent Raymond enter into a valid voluntarily recognition agreement with the Plasterers Union as the 9(a) representative of its plastering employees?

2. Does Section 10(b) of the Act preclude Respondents from raising the validity of any alleged voluntary recognition agreement?

3. Did Respondent Raymond violate Section 8(a)(1) and (5) of the Act by repudiating its agreement with the Plasterers Union?

4. Did Respondent Raymond violate Section 8(a)(1) and (5) of the Act by ceasing to make contributions to the Trust Funds?

5. Did Respondent Raymond violate Section 8(a)(1), (2), and (3) of the Act in recognizing Respondent Carpenters Union as the exclusive collective-bargaining representative of its plastering employees and signing a collective-bargaining agreement?

6. Did Respondent Raymond violate Section 8(a)(1) and (2) of the Act by threatening its employees with job loss if they did not join Respondent Carpenters Union?

7. Did Respondent Carpenters Union violate Section 8(b)(1)(A) and (2) of the Act by accepting voluntary recognition and entering into a collective-bargaining agreement with Respondent Raymond as the exclusive collective-bargaining representative of Respondent Raymond's plastering employees?

8. Did Respondent Carpenters Union violate Section 8(b)(1)(A) of the Act by giving away tools and cash in order to induce Respondent Raymond's plastering employees to become members of Respondent Carpenters Union when the Plasterers Union was the exclusive collective-bargaining representative?

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

Respondent Raymond operates as a plastering contractor in southern California. Gary Jaacks (Jaacks) was Respondent Raymond's CEO from 1995 until July 2004, and has continued to serve as a consultant and vice president of Respondent Raymond. Travis Winsor (Winsor) has been Respondent Raymond's CEO from July 2004 to the present and was Respondent Raymond's vice president for Southern California Operations from the early 2000's until July 2004.

Respondent Raymond, as a member, at all times material herein, of the Western Wall and Ceiling Contractors Association, Plastering Conference (WWCCA), a multiemployer bargaining association, has been signatory to a series of 8(f) pre-hire collective-bargaining agreements with the Plasterers Union. The agreements with the Plasterers Union covered Raymond's plastering employees defined in article 5, section 2 of the 2005–2008 collective-bargaining agreement. Respondent Raymond admitted that this is an appropriate unit for collective bargaining within the meaning of the Act. The most recent agreements were the August 4, 1999, to August 5, 2003 agreement, the extension of that agreement to August 2, 2005, and the August 3, 2005, to August 5, 2008 agreement.¹

The two most recent collective-bargaining agreements provided as follows concerning bargaining rights:²

Preamble

This Agreement entered into the 5th day of August by and between designated members of the California Plastering Conference of the Western Wall and Ceiling Contractors Association, Inc., and individual contractors who are signatory hereto, parties to the first part, herein after referred to as the Contractors, and Operative Plasterers and Cement Masons International Association Local Union No. 200,

ARTICLE II—UNION RECOGNITION

The exclusive bargaining rights are to be vested in the signatory parties to this Agreement up to and including August 5, 2003.

ARTICLE XV

SECTION 1. Entire Agreement

The foregoing Agreement constitutes the entire contract between the parties signatory hereto, and no additions, alterations or modifications shall occur herein without the voluntary, mutual consent of the parties, during the period of this Agreement; provided, however, that either party may call for a conference on voluntary changes during the life of this Agreement, and both parties shall thereupon meet to confer on such changes.

Jaacks was a member of the WWCCA negotiating committee that negotiated the August 4, 1999 to August 5, 2003

¹ GC Exhs. 2(a), (b), and (c).

² *Ibid.*

agreement with the Plasterers Union and was a member of the WWCCA board of directors until July 2004. Winsor was an officer of the WWCCA and its president from 2005 to 2007.

Under article VII of the most recent collective-bargaining agreements, the members of the WWCCA agree to make trust fund payments to the following trusts: Southern California Plastering Institute Group Benefit Trust, Southern California Plastering Institute Pension Trust Fund, Southern California Plastering Institute Apprenticeship and Training Trust, Southern California Plastering Institute Administrative Trust Fund, Southern California Plastering Institute Labor-Management Work Preservation Trust, Southern California Plastering Institute Vacation Trust, and Vacation Administration Trust, collectively the Trusts.

In late 2002, the Plasterers Union presented the WWCCA with a voluntary recognition agreement³ whereby the WWCCA and its members would recognize the Plasterers Union as the 9(a) representative of members' plastering employees. WWCCA rejected the agreement. In 2003, the Plasterers Union began obtaining voluntary recognition agreements from individual plastering contractors who were signatory to 8(f) collective-bargaining agreements with the Plasterers Union, recognizing the Plasterers Union as the 9(a) majority representative of their plastering employees, including members of the WWCCA.

On about June 20, 2003, Plasterers Union Business Manager Robert Pullen (Pullen) sent Respondent Raymond a letter certified mail with an attached voluntary recognition agreement⁴ seeking 9(a) representative status for the Plasterers Union among Respondent Raymond's plastering employees. The voluntary recognition agreement provides:

VOLUNTARY RECOGNITION AGREEMENT
FOR A SINGLE EMPLOYER BARGAINING UNIT

This agreement is made and entered into by and between Raymond Interior Systems, (herein referred to as the "Employer"), and Local No. 200 of the Operative Plasterers & Cement Masons International Association, AFL-CIO (herein referred to as the "Union").

1. The Union having unequivocally demanded recognition as the majority representative of the employees of the employer in the collective bargaining unit described below, and the Union having submitted satisfactory evidence to the Employer that the Union represents, has the support of, and has been authorized to represent said employees by a majority of the Employer's employees working in the classifications within the jurisdiction of the Union, as established and defined in the collective bargaining agreement commonly known as the Labor Agreement between the Union and the Western Wall & Ceiling Contractors Association, Inc., California Plastering conference, (hereinafter referred to as the "Collective Bargaining Unit"), the Employer hereby unequivocally recognizes the Union as the sole and exclusive majority representative for collective-bargaining purposes for the Employer's em-

ployees in said Collective Bargaining Unit, under Section 9(a) of the National Labor Relations Act, as amended. This recognition refers to the work described in the said Labor Agreement and applies only to the extent that such work is to be performed within the territorial jurisdiction covered by the Labor Agreement.

2. This Voluntary Recognition Agreement shall be effective at the time and date that this Agreement is signed by the Employer and the Union, and if signed on different days, the effective day shall be the day of the latest signature.

On June 26, 2003,⁵ Pullen sent Plasterers Business Agent David Fritchel (Fritchel) to Respondent Raymond's office with a copy of the above voluntary recognition agreement and supporting authorization cards. Fritchel met with Jaacks in Respondent Raymond's conference room where he explained why the Union wanted Respondent to sign a voluntary recognition agreement. Fritchel presented Jaacks employee authorization cards and gave Jaacks the voluntary recognition agreement which Jaacks signed⁶ as well as one or two more copies. While Fritchel was not certain, he thought he signed copies of the Raymond voluntary recognition agreement when he got back to the Union hall. Fritchel is certain that he signed a copy of the Raymond voluntary recognition agreement on June 26, 2003, as represented by General Counsel's Exhibit 4. Fritchel identified both his and Jaack's signatures on General Counsel's Exhibit 4. Jaacks also admitted that his signature and date was authentic and that he had authority to sign contracts on behalf of Respondent Raymond. Jaacks admitted that he made no formal objection to the validity of the voluntary recognition agreement to the Plasterers Union or to the WWCCA.

Jaacks claimed that Fritchel provided him with copies of the voluntary recognition agreement a few days before he signed it on June 26, 2003. This would be consistent with Pullen having mailed a copy of the agreement to Respondent Raymond on June 20, 2003. Jaacks asserts that before he signed the agreement he consulted with WWCCA CEO Ian Hendry (Hendry) and Mark Treadwell (Treadwell), legal counsel for the WWCCA. Hendry denied receiving a call from Jaacks in June 2003 regarding a 9(a) recognition agreement. Jaacks denies a meeting took place with Fritchel on June 26, 2003, where the voluntary recognition agreement was signed and denied that Fritchel produced authorization cards. Jaacks claims he mailed the signed recognition agreement to the Plasterers Union. However, from Jaacks' affidavit of September 17, 2008, it is clear he has very little recollection concerning the events surrounding his signature of the voluntary recognition agreement,

⁵ In its brief, Respondent contends that Pullen sent Fritchel to Respondent Raymond to get a copy of the voluntary recognition agreement signed on June 25, 2003. (Tr. at 71, L. 17.) Respondent incorrectly cites GC Ex. 5 for the proposition that the Raymond voluntary recognition agreement was signed on June 25, 2003. GC Ex. 5 clearly shows that the Raymond agreement was signed June 26, 2003. However from the entire context of Pullen's testimony, it is apparent that he misspoke regarding June 25, 2003, and actually meant June 26, 2003. (Tr. at 72, LL. 4-6 and at 74, L. 4.) Having so found, it is unnecessary to rule on Charging Parties' motion to correct the transcript.

⁶ GC Ex. 4.

³ R. Exh. 2.

⁴ GC Exh. 3.

including whether he consulted an attorney before he signed the agreement or whether he signed the agreement in the presence of a Plasterers union official. Jaack's testimony is not corroborated by Hendry. I credit Fritchel's testimony which was more detailed and specific than Jaack's.

The Plasterers Union filed RC Petitions with the Board in 2005, seeking 9(a) status with several plastering contractors. During the pendency of the RC petitions on July 29, 2005, Pullen sent Hendry a document⁷ purporting to show which WWCCA contractors, including Respondent Raymond, the Plasterers Union had a 9(a) relationship with and when the 9(a) recognition agreement was signed. This document showed Raymond signed a 9(a) recognition agreement on June 26, 2003. Winsor admitted that a few days after July 29, 2005, Hendry gave him a copy of the list provided by the Plasterers Union of member contractors who had signed 9(a) recognition agreements. At the end of July 2005, Winsor called Pullen and said, "I know Raymond has signed a 9(a) [recognition agreement]. I would like to have a copy of it." On July 29, 2005, Pullen faxed a copy of the voluntary recognition agreement to Winsor with Fritchel's signature dated July 29, 2005.

On May 3, 2007, Pullen also sent various voluntary recognition agreements signed by WWCCA members to the WWCCA, including the Raymond voluntary recognition agreement bearing signatures by Jaacks and Fritchel and dates of June 26, 2003 and July 29, 2005.⁸

According to Winsor in a May 2007 WWCCA Board meeting with Hendry and Treadwell present a discussion of the various voluntary recognition agreements signed by WWCCA contractors with the Plasterers Union took place. Winsor claimed Treadwell said the voluntary recognition agreements were invalid. Winsor also claimed that at a July 29, 2005 WWCCA membership meeting Treadwell said the voluntary recognition agreements signed by individual contractors were invalid due to the labor agreement between WWCCA and the Plasterers Union. Winsor claimed that at a September 2007 WWCCA Board meeting with Hendry, Treadwell, and attorney James Bowles present it was agreed that the individual voluntary recognition agreements were invalid due to the labor agreement between WWCCA and the Plasterers Union.

Winsor also claims that at a December 2007 meeting with the Plasterers international president, he expressed his objection to the validity of Raymond's voluntary recognition agreement with the Plasterers Union. However, in his September 4, 2008 affidavit, Winsor did not mention his December 2007 conversation with the Plasterers International president, objecting to the voluntary recognition agreement. Again in an early 2008 meeting with Pullen and Fritchel, Winsor claims to have expressed his opinion that Raymond's voluntary recognition agreement was invalid. At no time did Winsor or the WWCCA make a formal written objection to the voluntary recognition agreements.

Hendry was not as definitive as Winsor concerning Treadwell's statements concerning individual 9(a) plastering contractors' recognition agreements. Thus in conversations with Plas-

terers union representatives, Hendry would venture no more an opinion than the agreements may not be "bullet proof." While Hendry contended that in negotiations WWCCA did not agree to 9(a) language in the multiemployer collective-bargaining agreement, Hendry never claimed that Treadwell said the individual voluntary recognition agreements were invalid. Since 2007, Hendry could not recall a WWCCA meeting where the validity of the voluntary recognition agreements was discussed. At the WWCCA board meeting in May 2007, when the list of the contractors who had signed voluntary recognition agreements was presented, none of the contractors present denied they had signed the agreements, nor did Hendry take the position that the agreements were invalid. At no time did Hendry tell either the Plasterers Union or WWCCA member contractors that the agreements were invalid.

Treadwell admitted that in late 2002, the Plasterers Union began trying to get signatory plastering contractors to sign 9(a) voluntary recognition agreements and in January 2003, the Plasterers Union filed an RC Petition with the Board naming the WWCCA as employer. The petition was withdrawn when Treadwell told the Plasterers Union to seek voluntary recognition agreements with individual employers. Treadwell, who has represented the WWCCA in collective bargaining from 1981 to the present, said that the WWCCA took the position in bargaining with the Plasterers Union in 2002, 2003, and 2005, that if the Plasterers Union wanted to seek 9(a) agreements with individual contractors they could do so. Treadwell claimed that the WWCCA has never taken the position that the labor agreement between WWCCA and the Plasterers Union prohibits the Plasterers Union from seeking individual voluntary recognition agreements.

In assessing the credibility conflict between Treadwell and Winsor concerning the validity of the Plasterers voluntary recognition agreements, I am persuaded that Treadwell was telling the truth. Winsor's responses were simply too convenient, particularly on cross-examination. His testimony lacked substance, detail, was self-serving and was not corroborated by Hendry concerning Treadwell's statements. On the other hand Treadwell's testimony was given in a forthright manner and is all the more credible since it is adverse to his client WWCCA and its former member Respondent Raymond. I also do not credit Winsor concerning his alleged objection to the recognition agreement made to the Plasterers Union given the omission of the December 2007 meeting from his affidavit as well as for the other reasons stated above. I credit Treadwell's testimony over that of Winsor.

During the course of the trial a dispute arose as to the authenticity of the Raymond voluntary recognition agreement. Counsel for the General Counsel also produced a copy of the Raymond voluntary recognition agreement that bears the date July 29, 2005, next to Fritchel's signature.⁹ Fritchel identified the signature as his. The Jaack's signature and date affixed to General Counsel's Exhibit 7 is identical to the date and signature on General Counsel's Exhibit 4. Fritchel explained that on July 29, 2005, he dated an undated copy of the Raymond voluntary recognition agreement he had signed when he obtained it

⁷ GC Exh. 5.

⁸ GC Exh. 9.

⁹ GC Exh. 7.

from Jaacks on June 26, 2003. Fritchel dated the agreement July 29, 2005, at Pullen's direction when Pullen sent a copy of the Raymond voluntary recognition agreement to Winsor on July 29, 2005. Fritchel's explanation is supported by the documents¹⁰ sent by the Plasterers Union to its attorney Jeffrey Cutler on March 25, 2005, which contains a copy of the signature page of the Raymond voluntary recognition agreement that contains Fritchel's undated signature.

In addition to the copies of the Raymond voluntary recognition agreement received as General Counsel's Exhibits 4 and 7, two additional copies were introduced by Respondent as Exhibits 8 and 13. Each of Respondent's copies of the Raymond voluntary recognition agreement bear the date June 26, 2003, together with Jaack's signature as well as Fritchel's signature and the date July 29, 2005. Respondent's Exhibit 13 and General Counsel's Exhibit 7 are identical. There is no doubt that both Jaack's and Fritchel's signatures are authentic on each copy as are the dates printed next to Jaack's and Fritchel's signatures. There are slight variations in the copies. For example on General Counsel's Exhibit 4, Fritchel's title is printed as Business Agent #200 while on General Counsel's Exhibit 7, Respondent's Exhibits 8 and 13, Fritchel's title is printed as Business Agent. The only difference between General Counsel's Exhibit 7, Respondent's Exhibit 8, and Respondent's Exhibit 13 is the reduction in size of the copies of General Counsel's Exhibit 7 and Respondent's Exhibit 13 as a result of copying or faxing. There is no evidence that there was any fraud in the execution of the Raymond voluntary recognition agreement. Fritchel explained why some copies of the Raymond voluntary recognition agreement bear the date July 29, 2005. There is no doubt that the Raymond voluntary recognition agreement was signed by both Jaacks and Fritchel on June 26, 2003. Fritchel merely redated a copy of the agreement on July 29, 2005.

By letter¹¹ dated May 9, 2008, Respondent Raymond notified the Plasterers Union that it was terminating its collective-bargaining agreement and withdrawing from the WWCCA. By letter¹² dated August 5, 2008, Respondent Raymond notified the Plasterers Union that it repudiated its collective-bargaining agreement and collective-bargaining relationship with the Plasterers Union. By letter¹³ of August 11, 2008, the Plasterers Union requested to meet and bargain with Respondent Raymond and by letter¹⁴ of August 12, 2008, advised that the Plasterers Union had a 9(a) bargaining relationship with Respondent Raymond and renewed its request for bargaining. In its letters¹⁵ of August 12, 2008, Respondent Raymond refused to bargain with the Plasterers Union, denied it had signed a valid voluntary recognition agreement establishing a 9(a) bargaining relationship and stated that it had entered into a collective-bargaining agreement¹⁶ with the Respondent Carpenters Union covering its plastering employees.

On August 6, 2008, a meeting involving 30 of Respondent Raymond's plastering employees took place at Raymond's Orange, California facility. Hector Herrera (Herrera), Respondent Raymond's plastering superintendent, Raymond's CEO Winsor as well as about 15 of Respondent Carpenter's representatives were present. Winsor advised the employees that Raymond was not with the Plasterers Union any longer and that they had switched to the Carpenters Union. Winsor said if the employees wanted to continue with Raymond, they had to join the Carpenters Union within 8 days. A memo¹⁷ was circulated among the employees that stated:

Plastering employees who were not previously member[s] of the Carpenters must join the Carpenters Union under the union security provision of the Carpenters labor agreement. This provision allows employees to continue working for 8 work days without joining the Carpenters Union. However, at the expiration of this time all Raymond plastering employees must be members of the Carpenters Union.

At the meeting Herrera said journeymen would get a \$5 raise and foremen a \$7 raise with the Carpenters. After about five Carpenters representatives spoke to the employees, a raffle of tools of the plastering trade, valued between \$5.15 and \$69.97 each was conducted, with each of the 30 employees receiving a prize, as well as an award of cash prizes amounting to about \$1600.

B. The Analysis

1. The 8(a)(1) and (5) allegations

a. *Was the Plasterers Union status converted from an 8(f) to a 9(a) bargaining relationship with Respondent Raymond?*

The complaint alleges at paragraphs 11(b) and 22 that Respondent Raymond violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Plasterers Union at a time when the Plasterers Union was the exclusive collective-bargaining representative of Respondent Raymond's plastering employees pursuant to Section 9(a) of the Act.

The heart of this case is whether Respondent Raymond entered into a valid voluntary recognition agreement with the Plasterers Union that altered the parties' extant 8(f) bargaining relationship and conferred 9(a) status upon the Plasterers Union as representative of Respondent's plastering employees.

Section 8(f) of the Act provides in pertinent part:

It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in section 8(a) of this Act [subsection (a) of this section] as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this act prior

¹⁰ GC Exh. 10.

¹¹ GC Exh. 2(f).

¹² GC Exh. 2(h).

¹³ GC Exh. 2(j).

¹⁴ GC Exh. 2(k).

¹⁵ GC Exhs. 2(l) and (m).

¹⁶ GC Exh. 2(e).

¹⁷ GC Exh. 2(n).

to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment

Thus an employer engaged primarily in the construction industry may enter into a prehire agreement requiring union membership as a condition of employment notwithstanding the undetermined majority status of the union. Ordinarily such an employer would be guilty of an unfair labor practice under Section 8(a)(2) of the Act for extending recognition to a minority union.

The Board in *Allied Mechanical Service*, 351 NLRB 79, 81 (2007), noted that the distinction between an 8(f) and a 9(a) bargaining relationship is significant:

The distinction between a union's representative status under Section 8(f) and under Section 9(a) is significant because an 8(f) relationship may be terminated by either the union or the employer upon the expiration of their collective-bargaining agreement. *John Deklewa & Sons*, 282 NLRB 1375, 1386–1387 (1987), enf'd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988). By contrast, a 9(a) relationship (and the associated obligation to bargain) continues after contract expiration, unless and until the union is shown to have lost majority support. *Levitz Furniture Co.*, 333 NLRB 717 (2001). . . . In furtherance of this objective, *Deklewa* adopted a rebuttable presumption that a bargaining relationship in the construction industry was established under Section 8(f), and placed the burden of proving that the relationship instead falls under Section 9(a) on the party making that assertion. *Id.* at 1385, fn. 41. In so doing, however, *Deklewa* did not foreclose an 8(f) representative from achieving 9(a) status.

In *Allied Mechanical* from all of the circumstances, including a demand for recognition as majority representative, an offer to demonstrate majority status, Respondent's agreement to recognize and bargain with the Union as majority representative as a result of a settlement agreement and other relevant extrinsic evidence, the Board found that the parties intended and did establish a 9(a) relationship. Thus, it is clear that a 9(a) relationship may be established by the parties' conduct.

In addition to establishing a 9(a) relationship through conduct, the parties may agree to form a 9(a) relationship through a written agreement. In *Staunton Fuel & Material*, 335 NLRB 717, 719–720 (2001), the Board set forth the test to determine if a recognition agreement alone creates a 9(a) relationship. The Board held:

A recognition agreement or contract provision will be independently sufficient to establish a union's 9(a) representation status where the language unequivocally indicates that (1) the union requested recognition as the majority or 9(a) representative of the unit employees; (2) the employer recognized the union as the majority or 9(a) bargaining representative; and (3) the employer's recognition was based on the union's having shown, or having offered to show, evidence of its majority support.

The Board also found in *Staunton* that an employer may only challenge its grant of 9(a) status to a union within 6 months of granting that status:

If the employer recognizes the union and then discovers that the union did not in fact have majority support, it may challenge the union's 9(a) status at any time within the 6-month limitations period after wrongfully extending recognition, pursuant to Sec. 10(b) of the Act. *Oklahoma Installation [Co.]*, 325 NLRB 741, 742 [(1998)]. If the employer fails to act within the 10(b) period, it may terminate its bargaining obligation only by affirmatively showing that the union has lost majority support. The burden of making such a showing rests on the employer. *Levitz Furniture Co.*, supra at 8. *Staunton* at footnote 10.

See also *Triple C Maintenance, Inc.*, 327 NLRB 42 fn. 1 (1998); *MFP Fire Protection, Inc.*, 318 NLRB 840, 842 (1995); *Casale Industries*, 311 NLRB 951, 953 (1993). Respondent cites *American Automatic Sprinkler Systems v. NLRB*, 163 F.3d 209, 218 fn. 6 (4th Cir. 1998), for the proposition that Section 10(b) does not preclude a challenge to majority support. While court of appeals cases may hold that Section 10(b) does not bar a challenge to majority support, I am bound to follow Board precedent that the Supreme Court has not overruled. *Los Angeles New Hospital*, 244 NLRB 960, 962 fn. 4 (1979), enf'd. 640 F.2d 1017 (9th Cir. 1981).

In *Madison Industries*, 349 NLRB 1307 (2007), without discussing the 10(b) implications, the Board found that a recognition agreement did not establish a 9(a) relationship despite language that appeared to conform to the *Staunton* standard. The Board concluded that there was an ambiguity in the recognition agreement that had been entered into 3 years prior to the Respondent withdrawing recognition which permitted it to consider extrinsic evidence of the parties' intent. The extrinsic evidence showed that the Union did not offer to prove majority status.

In this case General Counsel has shown that Respondent Raymond and the Plasterers Union entered into a voluntary recognition agreement on June 26, 2003. As noted above, I have found that the voluntary recognition agreement is genuine. The agreement comports with the *Staunton* requirements in that the terms of the agreement provide that the Plasterers Union requested recognition as the majority or 9(a) representative of the plastering unit employees, Respondent Raymond recognized the Plasterers Union as the majority or 9(a) bargaining representative, and Respondent Raymond's recognition was based on the Plasterers Union having shown, or having offered to show, evidence of its majority support.

However, Respondent Raymond argues that the third prong of the *Staunton* test is not fulfilled, because the language of the recognition agreement does not unequivocally say that the 9(a) recognition was based upon a contemporary showing of majority status. Rather Raymond contends that the recognition agreement language, “. . . and the Union having submitted satisfactory evidence to the Employer that the Union represents, has the support of, and has been authorized to represent said employees by a majority of the Employer's employees. . . .” only shows that at some unknown time in the past the Union

submitted evidence of majority support, creating an ambiguity and permitting extrinsic evidence to be introduced under *Madison Industries*.

Raymond's contention that the recognition agreement requires language that the showing of majority status be contemporaneous with the demand for recognition is not supported by *Staunton*. The Board in *Staunton*, at 720, requires only that the voluntary recognition agreement provide: ". . . a statement to the effect that, for example, the union 'has the support' or 'has the authorization' of a majority to represent them." The Board's later reference in *Staunton*, supra at 720, to ". . . recognition was based on a contemporaneous showing, or offer by the Union to show, that the Union had *majority support*" must be read in conjunction with the Board's finding that the contract language in *Staunton* did not establish the union had the "support of" or "authorization of" a majority to represent them. The Board was reemphasizing that the parties' contract language in *Staunton* did not reflect that the Union had majority support of the employees. The significant point made by the Board was not that the showing was not contemporaneous but that there was no showing of majority support. Here the language of the parties' recognition agreement is unambiguous that the Union submitted evidence to Raymond "that the Union represents, has the support of, and has been authorized to represent said employees by a majority of the Employer's employees," fulfilling the *Staunton* test. It can be inferred that the showing of majority support was made at the time the agreement was signed in 2003, or else Raymond would not have signed the agreement.¹⁸ Moreover, at this late date, more than 5 years from granting 9(a) status to the Plasterers Union, Respondent Raymond's challenge to the Union's majority status will not be countenanced. *Staunton*, supra.

In addition Respondent Raymond contends that the Plasterers Union did not make a contemporaneous showing of union support citing *Golden West Electric*, 307 NLRB 1494, 1495 (1992). Raymond argues that since the recognition agreement was not signed, at the earliest in 2005, the Union's 2003 showing of majority support could not be contemporaneous.

Respondent's argument is of no avail for two reasons. First I have found that the agreement was effective when it was signed by Fritch on June 26, 2003, when Fritch showed Jaacks authorization cards.¹⁹ Further, Raymond may not now challenge the Union's majority showing over 5 years after it granted 9(a) status to the Plasterers Union.

Respondent Raymond challenges the validity of the recognition agreement on additional grounds.

Raymond contends that Jaacks' did not have authority to enter into the recognition agreement since only the WWCCA, as Raymond's designated bargaining representative under article II of the collective-bargaining agreement between the Plasterers Union and Raymond through the WWCCA, could enter into collective-bargaining agreements with the Plasterers Union. Raymond takes the position that only the WWCCA could mod-

ify the extant collective-bargaining agreement from its 8(f) to 9(a) status.

Respondent Raymond cites *District Council of Painters (Northern California Drywall Assn.)*, 326 NLRB 1074 (1998) (union negotiates separate agreements with individual members of a multiemployer bargaining association), and *Enterprise Assn. of Steamfitters, Local 638*, 170 NLRB 385, 387 (1968) (union negotiates separate agreements with individual members of a multiemployer bargaining association) support its position that the Plasterers Union could not bypass the WWCCA and enter into voluntary recognition agreements with member employers of the WWCCA.

The General Counsel and the Plasterers Union contend that by soliciting recognition agreements to obtain 9(a) status, the Plasterers Union did not bypass the WWCCA since a 9(a) recognition agreement is not a collective-bargaining agreement but rather an expression of employees' representational desires under Section 7 of the Act.

In *District Council of Painters*, supra at 1078, citing *John Deklewa & Sons*, 282 NLRB 1375 fn 42 (1987), the Board affirmed the ALJ who found that, ". . . the employees of a single employer cannot be precluded from expressing their representational desires simply because their employer has joined a multiemployer association. In *Kephart Plumbing*, 285 NLRB 612 (1987), the Board interpreted *Deklewa*, in the context of multiemployer bargaining, as requiring a union, in order establish that its 8(f) status has been converted to full 9(a) status, to, ". . . prove that it achieved such status among the Respondent's employees on a single-employer basis. Such showing is accomplished only by traditional means, i.e., a Board election or voluntary recognition based on a prior demand for recognition supported by a showing of majority employee support."

I find that the Plasterers Union, in obtaining recognition agreements from WWCCA member employers, including Respondent Raymond, did not bypass the WWCCA. There is a fundamental difference between bargaining over terms and conditions of employment and employees' choice under Section 7 of the Act to be represented by an exclusive bargaining representative. A union's status as a 9(a) representative is not a term and condition of employment but rather the expression of a majority of an employer's employees to be represented by an exclusive bargaining agent of their choice under the Act. The above-cited Board decisions confirm that employees do not lose the right to have their union seek 9(a) recognition from a single employer simply because the union is also signatory to a multiemployer collective-bargaining agreement. The cases cited by Respondent Raymond are inapposite in that they deal with unions who bargained with individual members of a multi employer association over terms and conditions of employment. Nothing in Respondent Raymond's June 26, 2003 voluntary recognition agreement modifies the substantive terms of the 2005-2008 WWCCA/Plasterers Union collective-bargaining agreement. Rather the voluntary recognition agreement alters the nature of the bargaining relationship between Raymond and the Plasterers Union, precluding Respondent Raymond from walking away from bargaining with the Union at the end of the contract and mandating ongoing bargaining.

¹⁸ The evidence has shown that Fritch showed Jaacks authorization cards on June 26, 2003.

¹⁹ There is no evidence that the particular cards Fritch showed Jaacks were "stale."

As a corollary argument, Respondent Raymond argues that Jaacks had no authority to sign the recognition agreement. First, while Raymond admitted Jaacks was both an agent and supervisor of Respondent within the meaning of the Act, it argues there is no evidence that it authorized Jaacks to sign labor-related agreements particularly in view of the WWCCA's exclusive representation of Jaacks in collective bargaining. This argument is without merit. Jaacks was CEO of Raymond and admitted he had authority to sign many types of contracts binding Raymond. At no time did Jaacks disavow his signing the recognition agreement as an *ultra vires* action. I find that Jaacks is both a supervisor and agent of Respondent Raymond cloaked with authority to bind Raymond to all types of contractual obligations. Moreover, Raymond's argument that Jaacks had no authority to sign the voluntary recognition agreement since the Plasterers Union knew Raymond was represented by the WWCCA for purposes of collective-bargaining must fail since the Raymond voluntary recognition agreement did not alter the substantive terms and conditions of the 2005–2008 WWCCA/Plasterers Union collective-bargaining agreement which would have required the consent of the WWCCA.

In addition, Raymond argues that the recognition agreement is invalid since the collective-bargaining agreements themselves provide at article XV, section 1, that the collective-bargaining agreement is the entire contract which cannot be changed without the consent of the parties. Hence, the recognition agreement is invalid since it modifies the collective-bargaining agreement without the assent of the WWCCA. Further, because the 2005–2008 collective-bargaining agreement is defined as the whole agreement between the parties, it supersedes the 2003 recognition agreement between Respondent Raymond and the Plasterers Union.

Having found that the Raymond recognition agreement does not alter the terms and conditions of employment embodied in the parties' 2005–2008 collective-bargaining agreement,²⁰ but rather is an independent agreement affirming employees' Section 7 rights to be represented in a full 9(a) status, the 2005–2008 WWCCA agreement did not supersede the Raymond recognition agreement.

Finally, all parties argue that each side should be estopped from asserting the validity or invalidity of the recognition agreement.

In *Red Coats, Inc.*, 328 NLRB 205, 206–207 (1999), the Board found that principles of equitable estoppel applied in circumstances involving voluntary recognition. The Board cited McClintock, *In Principles of Equity*, at 80 (2d ed. 1948):

The gist of equitable estoppel is that a party who has by his statements or conduct, asserted a claim based on the assumption of the truth of certain facts, whereby he has obtained a benefit from another party, cannot later assert that those facts are not true if thereby the other party will be prejudiced.

²⁰ A union recognition clause in a collective-bargaining agreement is not a mandatory subject of bargaining. *NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958).

The Board added it, “has long identified the essential elements of equitable estoppel as knowledge, intent, mistaken belief, and detrimental reliance.”

In *RPC, Inc.*, 311 NLRB 232, 233 (1993), the Board discussed the meaning of the estoppel doctrine, citing *Lehigh Portland Cement Co.*, 286 NLRB 1366, 1382–1383 (1987):

[. . .] a party that, in obtaining a benefit, engages in conduct that causes a second party to reasonably rely on the “truth of certain facts” that are assumed may not controvert those facts later to the prejudice of the second party. The gravamen of the harm is not the first party's original conduct but rather the inconsistency of its later position. A party may be estopped from denying representations even though that party had no timely knowledge of their falsity. Thus, the estoppel doctrine does not operate only when a party makes an assertion or acts in accord with a valid belief. Rather, the key is that the estopped party, by its actions, has obtained a benefit. Basically, as discussed in *Lehigh*, the validity of a party's belief is irrelevant. Otherwise, a party to be estopped could often escape the application of the estoppel doctrine by simply claiming that it was unaware of all the facts when it acted. Here, the General Counsel has made a persuasive case for application of the estoppel doctrine. The elements of estoppel—knowledge, intent, mistaken belief, and detrimental reliance—have all been satisfied.

Respondent Raymond contends that General Counsel should be estopped from relying on the recognition agreement represented by General Counsel's Exhibit 4, the copy containing both Jaack's and Fritchel's signatures but only the date of June 26, 2003, next to Jaack's signature. The General Counsel argues that it is Respondent Raymond who should be estopped from denying the validity of the recognition agreement while the Plasterers Union contends that Respondent Raymond has failed to prove estoppel should apply.

In support of its estoppel theory, Respondent Raymond posits that the Plasterers Union knew there was a dispute concerning the existence and validity of the Raymond recognition agreement because this was why a copy of the document had been requested in 2005 and 2007 by Hendry and Winsor. It is claimed that the Plasterers Union knew Fritchel signed the recognition agreement on July 29, 2005, which caused Winsor to believe this copy was the operative document. Winsor relied on the document dated July 29, 2005, in concluding it was invalid and Winsor was mistaken as to the real recognition agreement date in terminating the 2005–2008 agreement with the Plasterers Union because the Plasterers Union now claims that the General Counsel's Exhibit 4 is the operative document.

Here, I have found that on June 26, 2003, Respondent, through its CEO and President Jaacks, was aware that it had signed a recognition agreement. On July 29, 2005, the Plasterers Union sent the WWCCA a list of employers who had signed recognition agreements, including Respondent Raymond, noting Raymond had signed a recognition agreement June 26, 2003. Winsor received a copy of the list a few days later. On July 29, 2005, the Union also sent Winsor a copy of Raymond's recognition agreement with Fritchel's signature bearing the date July 29, 2005.

Again on May 3, 2007, Pullen sent various voluntary recognition agreements signed by WWCCA members to the WWCCA, including the Raymond voluntary recognition agreement bearing signatures by Jaacks and Fritchel and dates of June 26, 2003, and July 29, 2005.

The essence of estoppel is that a party who has obtained a benefit by causing another party to reasonably rely on claims it has made may not later change its representations to the detriment of the other party.

Respondent contends that the Plasterers Union, in providing the copy of the recognition agreement bearing the date July 29, 2005, caused it to rely to its detriment on the fact that the effective date of the agreement was July 29, 2005. The trouble with this argument is that Respondent ignores that it was concurrently given another document, General Counsel's Exhibit 5, by the Plasterers Union that stated Respondent Raymond's recognition agreement was "signed June 26 '03'." Having knowledge of the conflicting dates, Respondent made no effort to resolve this ambiguity but rather waited over 3 years and then terminated its agreement with the Plasterers Union and signed a new collective-bargaining agreement with Respondent Carpenters Union. Further for over 3 years Respondent Raymond suffered no harm until it renounced its bargaining relationship with the Plasterers Union in August 2008. Estoppel will not apply where there is no reasonable reliance and where there is no harm. *Lehigh Portland Cement Co.*, 286 NLRB 1366, 1382-1383 (1987). Since Respondent Raymond failed in any way to resolve the discrepancy in signing dates on the recognition agreement for over 3 years, any harm was self imposed. General Counsel will not be estopped in relying on General Counsel's Exhibit 4.

Based upon the above, I find that the recognition agreement signed by both parties on June 26, 2003, effectively converted the Plasterers Union status from an 8(f) to a 9(a) bargaining representative on June 26, 2003. By its August 5, 2008 repudiation of its collective-bargaining agreement and collective-bargaining relationship with the Plasterers Union at a time when the Plasterers Union was the 9(a) representative of its plastering employees, Respondent Raymond violated Section 8(a)(1) and (5) of the Act.

b. The trust fund contributions

The complaint alleges at paragraphs 12, 13, and 22 that Respondent Raymond violated Section 8(a)(1) and (5) of the Act by ceasing to pay contributions to the trust funds without notice to or bargaining with the Plasterers Union.

The parties stipulated at the hearing that on August 5, 2008, Respondent Raymond ceased making contributions into the Trust Funds pursuant to the 2005-2008 collective-bargaining agreement without bargaining with the Plasterers Union.

In *Made4Film*, 337 NLRB 1152 (2002), the Board affirmed that an employer has a statutory obligation to continue to follow the terms and conditions of employment governing the employer-employee relationship in an expired contract until a new agreement is concluded or good-faith bargaining leads to impasse. See also *Air Convey Industries, Ltd.*, 292 NLRB 25 (1988). Having found that the parties had converted their relationship from an 8(f) to a 9(a) bargaining relationship, Respon-

dent Raymond was no longer privileged to walk away from the expired collective-bargaining agreement and was obligated to continue making trust fund payments pursuant to that agreement. Having failed to continue to make the required trust payments, Respondent Raymond violated Section 8(a)(1) and (5) of the Act.

c. The recognition of the Carpenters Union and the Carpenters collective-bargaining agreement

The complaint alleges at paragraphs 14 and 22 that Respondent Raymond violated Section 8(a)(1) and (5) of the Act by recognizing and entering into a contract with Respondent Carpenters Union as the exclusive collective-bargaining representative of Respondent Raymond's plastering employees at a time when the Plasterers Union was the exclusive collective-bargaining representative of Respondent Raymond's plastering employees pursuant to Section 9(a) of the Act.

In view of my findings above that Respondent Raymond violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Plasterers Union at a time when the Plasterers Union was the exclusive collective-bargaining representative of Respondent Raymond's plastering employees pursuant to Section 9(a) of the Act and my findings below that both Respondents Raymond and Carpenters Union violated Section 8(a)(1), (2) and 8(b)(1)(A) of the Act, it is unnecessary to pass on these allegations.

2. The 8(a)(1), (2), and (3) and the 8(b)(1)(A) and (2) allegations

a. Respondent Raymond recognizes the Respondent Carpenters Union and signs a collective-bargaining agreement

The complaint alleges at paragraphs 14, 16, 18, 20, 23, and 24 that Respondent Raymond violated Section 8(a)(1), (2), and (3) of the Act on August 6, 2008, by recognizing and entering into a contract with Respondent Carpenters Union as the exclusive collective-bargaining representative of Respondent Raymond's plastering employees at a time when the Plasterers Union was the exclusive collective-bargaining representative of those employees pursuant to Section 9(a) of the Act thereby encouraging its employees to join Respondent Carpenters Union. It is further alleged that on August 6, 2008, at a jointly held meeting at Respondent Raymond's facility, Raymond rendered assistance to the Carpenters Union by threatening employees with job loss if they did not join the Carpenters Union within 8 days.

b. Respondent Carpenters Union obtains recognition and enters into a contract with Respondent Raymond

The complaint alleges at paragraphs 15, 17, 19, 21, 25, and 26 that Respondent Carpenters violated Section 8(b)(1)(A) and (2) of the Act by obtaining recognition from and entering into a contract with Respondent Raymond as collective-bargaining representative of Raymond's plastering employees when the Plasterers Union and not the Carpenters Union was the 9(a) representative of those employees thus causing Raymond to encourage its plastering employees to join the Carpenters Union, by receiving assistance and support from Respondent Raymond by entering into a collective-bargaining agreement as collective-bargaining representative of Raymond's plastering

employees and by giving away tools and money to Raymond's plastering employees to induce them to become members of the Carpenters Union.

On August 6, 2008, Respondent Raymond recognized Respondent Carpenters Union as the bargaining representative of its plastering employees and entered into a collective-bargaining agreement embodying that recognition. I have previously found that at this time the Plasterers Union was the exclusive collective-bargaining representative of Respondent Raymond's plastering employees pursuant to Section 9(a) of the Act. This agreement contains a union security clause requiring employees to become members of Respondent Carpenters Union within 8 days as a condition of further employment with Respondent Raymond.

An employer violates Section 8(a)(1), (2), and (3) of the Act when it recognizes and enters into a collective-bargaining agreement with a union which contains a union-security clause at a time when the union does not represent an uncoerced majority of its employees. Similarly a union violates Section 8(b)(1)(A) and (2) of the Act by receiving and accepting such assistance from an employer by accepting recognition and entering into a collective-bargaining agreement with an employer containing a union-security clause at the time when it does not represent an uncoerced majority of the employer's employees. *Clock Electric, Inc.*, 338 NLRB 806, 829-830 (2003).

Having found that Respondent Raymond recognized Respondent Carpenters Union as the bargaining representative of its plastering employees and entered into a collective-bargaining agreement embodying that recognition and containing a union security clause when the Plasterers Union was the exclusive collective-bargaining representative of Raymond's plastering employees pursuant to Section 9(a) of the Act, I find that Respondent Raymond violated Section 8(a)(1), (2), and (3) of the Act and that Respondent Carpenters Union violated Section 8(b)(1)(A) and (2) of the Act.

In addition on August 6, 2008, a meeting was jointly conducted at Respondent Raymond's facility. Present were Carpenters Union representatives and Respondent Raymond supervisors including Winsor. At this meeting Winsor advised the employees that Raymond was not with the Plasterers Union any longer and that they had switched to the Carpenters Union. Winsor said if the employees wanted to continue with Raymond, they had to join the Carpenters Union within 8 days. A memo was circulated among the employees that stated Raymond's plastering employees were required to join the Carpenters Union under the union-security provision of its contract with Raymond within 8 working days. Raymond's supervisor Herrera said that employees would get raises with the Carpenters Union. Later the Carpenters Union conducted a raffle for tools of the trade as well as for monetary awards.

Employer conduct that benefits a preferred labor organization over an incumbent violates Section 8(a)(2) of the Act. Thus an employer who provided unlawful assistance to a union by making meeting space available on company time and required employees to attend organizational union meetings violated Section 8(a)(2) of the Act. *Duane Reade, Inc.*, 338 NLRB 943, 944 (2003). Also a supervisor's assistance to a competing

union in organizing efforts is unlawful. *Dobbs International Services*, 335 NLRB 972, 987 (2001).

Concurrently a union that accepts an employer's unlawful assistance, including threats of termination for failing to sign authorization cards and promises of improved benefits, violates Section 8(b)(1)(A) of the Act. *Dairyland USA Corp.*, 347 NLRB 310 (2006). A union that made payments of \$2241 in amounts ranging from \$4.80 to \$114 to 48 of 64 employees in a bargaining unit in preelection period violated Section 8(b)(1)(A) of the Act. *Flatbush Care Center*, 287 NLRB 457, 457-458 (1987).

At the August 6, 2008 meeting both Respondents Raymond and Carpenters conduct violated the Act since Respondents had entered into a contract that violated Section 8(a)(1), (2), and (3) and 8(b)(1)(A) and (2) of the Act. Respondent Raymond by threatening to enforce the union-security provision of the Carpenters contract, by providing meeting space for the Carpenters, by holding a mandatory meeting on company time, and by telling plastering employees that the Carpenters would increase their pay²¹ gave assistance to the Carpenters Union in violation of Section 8(a)(1) and (2) of the Act. In accepting this assistance and in giving employees cash and tools, the Carpenters Union concurrently violated Section 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

On the basis of the above findings of fact and the record as a whole and Section 10(c) of the Act, I make the following conclusions of law.

1. Respondent Raymond Interior Systems has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Southwest Regional Council of Carpenters has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

3. The Charging Party Operative Plasterers and Cement Masons' International Association, Local Union 200, AFL-CIO is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

4. Respondent Raymond Interior Systems violated Section 8(a)(1), (2), (3), and (5) of the Act by recognizing and entering into a contract with Respondent Carpenters Union as the exclusive collective-bargaining representative of Respondent Raymond's plastering employees at a time when the Plasterers Union was the exclusive collective-bargaining representative of those employees pursuant to Section 9(a) of the Act thereby encouraging its employees to join Respondent Carpenters Union. Respondent Raymond further violated Section 8(a)(1) and (2) of the Act by rendering assistance to the Carpenters Union by threatening employees with job loss if they did not join the Carpenters Union within 8 days, by holding a mandatory meeting on company time and premises and by promising increased wages.

²¹ While the complaint did not allege the use of company facilities, holding a mandatory meeting on company time and promising increased benefits as unlawful assistance, the matters are closely related to extant charges and the matters were fully litigated at the hearing. *Redd-I, Inc.*, 290 NLRB 1115, 1115-1116 (1988); *Hi-Tech Cable Corp.*, 318 NLRB 280 (1995).

5. Respondent Southwest Regional Council of Carpenters violated Section 8(b)(1)(A) and (2) of the Act: by obtaining recognition from and entering into a contract with Respondent Raymond as collective-bargaining representative of Raymond's plastering employees when the Plasterers Union and not the Carpenters Union was the 9(a) representative of those employees thus causing Raymond to encourage its plastering employees to join the Carpenters Union, by receiving assistance and support from Respondent Raymond by entering into a collective-bargaining agreement as collective-bargaining representative of Raymond's plastering employees and, by giving away tools and money to Raymond's plastering employees to induce them to become members of the Carpenters Union.

THE REMEDY

Having found that the Respondents violated the Act as set forth above, I shall order that it cease and desist and post remedial Board notices addressing the violations found.

Based upon the above findings of fact and conclusions of law, and on the basis of the entire record herein, I issue the following recommended Order.²²

ORDER

Respondent Raymond Interior Systems, Orange, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from and refusing to bargain with the Plasterers Union as the exclusive bargaining representative of its plastering employees.

(b) Granting recognition to and entering into a collective-bargaining agreement with the Carpenters' Union as the bargaining representative of its plastering employees when the Plasterers Union is the exclusive bargaining representative.

(c) Stopping contributions to the Trust Funds as provided in the 2005–2008 collective-bargaining agreement between the WWCCA Plastering Conference and the Plasterers Union.

(d) Giving assistance to the Carpenters' Union: by threatening its plastering employees with loss of work for failure to join the Carpenters Union, by holding mandatory meetings on company time and premises and, by promising increased wages and by entering into a collective-bargaining agreement with the Carpenters Union at a time when the Plasterers Union is the 9(a) representative of its plastering employees.

(e) Maintaining or giving force and effect to the collective-bargaining agreement with the Carpenters Union covering its plastering employees.

(f) 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.

²² 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.

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

(a) Recognize and, upon request, bargain with the Plasterers Union as the 9(a) representative of its plastering employees and embody any agreement reached regarding employee terms and conditions of employment in writing.

(b) Withdraw recognition from the Carpenters Union as the collective-bargaining representative of its plastering employees.

(c) Notify the Plasterers Union in writing of all changes made to its plastering employees' terms and conditions of employment since August 6, 2008, and on request of the Plasterers Union rescind any changes and restore terms and conditions of employment retroactively to August 6, 2008.

(d) Make whole its plastering employees for all wages and benefits, with interest, that would have been paid since August 6, 2008.

(e) Make whole all its plastering employees who joined the Carpenters' Union on or after August 6, 2008, for all dues and fees plus interest.

(f) Resume contributions to the Trust Funds pursuant to the 2005–2008 collective-bargaining agreement between the WWCCA Plastering Conference and the Plasterers Union since August 6, 2008, and make employees whole for any losses incurred as a result of ceasing contributions to the trust funds.

(g) 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 papers, and all other records, including an electronic copy of such records if stored in electronic form necessary to analyze the amount of backpay and benefits due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its Orange, California facility and at its jobsites where its plastering employees are employed, copies of the attached notice marked "Appendix A"²³ in both the English and Spanish languages. Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current plastering employees and former plastering employees employed by the Respondent at any time since August 6, 2008.

²³ 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."

(i) 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.

ORDER

Respondent Southwest Regional Council of Carpenters its officers, agents, and representatives, shall

1. Cease and desist from

(a) Receiving assistance and accepting recognition from Respondent Raymond at a time when the Plasterers Union is the 9(a) representative of Respondent Raymond's plastering employees.

(b) Maintaining or giving force and effect to any collective-bargaining agreement with Respondent Raymond covering its plastering employees, or acting as their collective-bargaining representative unless it has been certified by the Board or while the Plasterers Union is the 9(a) representative of those employees.

(c) Making monetary payments or giving away work tools to induce employees to join the Carpenters' Union when they are not the collective-bargaining representative of the employees.

(d) 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) Make whole all Respondent Raymond's plastering employees who joined the Carpenters Union on or after August 6, 2008, for all dues and fees, plus interest.

(b) Within 14 days after service by the Region, post at its Los Angeles, California union office copies of the attached notice marked "Appendix B"²⁴ in both the English and Spanish languages. Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current plastering employees and former plastering employees employed by the Respondent at any time since September August 6, 2008.

(c) 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 Carpenter's Union has taken to comply.

Dated, Washington, D.C. March 5, 2010

²⁴ 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."

APPENDIX A

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.

After a trial at which we appeared, argued, and presented evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and has directed us to post this notice to employees in both English and Spanish and to abide by its terms.

Accordingly, we give our employees the following assurances:

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT withdraw recognition from and refuse to bargain with the Operative Plasterers' and Cement Masons' International Association, Local Union 200 AFL-CIO as the exclusive collective-bargaining representative of our plastering employees.

WE WILL NOT grant recognition to or enter into a collective-bargaining agreement with the Southwest Regional Council of Carpenters' as the bargaining representative of our plastering employees when the Plasterers Union is the exclusive bargaining representative.

WE WILL NOT assist the Carpenters Union by threatening our plastering employees with loss of work for failure to join the Carpenters Union, by holding mandatory meetings on company time and premises and by promising increased wages.

WE WILL NOT maintain or give force and effect to the collective-bargaining agreement with the Carpenters Union covering our plastering employees while the Plasterers Union is their 9(a) representative.

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

WE WILL recognize and, upon request, bargain with the Plasterers Union as the 9(a) representative of our plastering employees and embody any agreement reached regarding employee terms and conditions of employment in writing.

WE WILL withdraw recognition from the Carpenters' Union as the collective-bargaining representative of our plastering employees while the Plasterers Union is their 9(a) representative.

WE WILL notify the Plasterers Union in writing of all changes made to our plastering employees' terms and conditions of employment since August 6, 2008, and on request of the Plasterers Union rescind any changes and restore terms and conditions of employment retroactively to August 6, 2008.

WE WILL make whole all our plastering employees who joined the Carpenters Union on or after August 6, 2008 for all dues and fees plus interest.

WE WILL make whole our plastering employees for all wages and benefits, with interest, that would have been paid since August 6, 2008.

WE WILL resume contributions to the trust funds pursuant to the 2005–2008 collective-bargaining agreement between the WWCCA Plastering Conference and the Plasterers Union since August 6, 2008, and make employees whole for any losses incurred as a result of ceasing contributions to the trust funds.

RAYMOND INTERIOR SYSTEMS

APPENDIX B

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated 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.

After a trial at which we appeared, argued, and presented evidence, the National Labor Relations Board has found that we violated the Act and has directed us to post this notice to employees in both English and Spanish and to abide by its terms.

Accordingly, we give our employees the following assurances:

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT receive assistance and accept recognition from Respondent Raymond Interior Systems when the Plasterers Union is the 9(a) representative of its plastering employees.

WE WILL NOT maintain or give force and effect to any collective-bargaining agreement with Respondent Raymond covering its plastering employees, or act as their collective-bargaining representative while the Plasterers Union is the 9(a) representative of those employees.

WE WILL NOT make monetary payments or give away work tools to induce employees to join the Carpenters Union when we are not the collective-bargaining representative of the employees.

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

WE WILL make whole all Respondent Raymond's plastering employees who joined the Carpenters Union on or after August 6, 2008 for all dues and fees plus interest.

SOUTHWEST REGIONAL COUNCIL OF CARPENTERS