Circle T Corporation; Meat Men, Incorporated d/b/a Royal T Meat *and* Meat Cutters Union Local 439 Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO. Case 31-CA-7321

September 20, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND MURPHY

On June 2, 1978, Administrative Law Judge William J. Pannier III issued the attached Decision in this proceeding. Thereafter, Respondents Circle T Corporation and Meat Men, Incorporated, d/b/a Royal T Meat filed joint exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Circle T Corporation and Meat Men, Incorporated d/b/a Royal T Meat, Montclair, California, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] The Respondents have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

Statement of the Case

WILLIAM J. PANNIER III, Administrative Law Judge: This matter was heard by me in Los Angeles, California, on February 9 and 10, 1978. On October 31, 1977,[1] the Regional Director for Region 31 of the National Labor Relations Board issued a complaint and notice of hearing, based upon an unfair labor practice charge filed on August 18 and amended on October 31, alleging violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.*, herein called the Act.

All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based upon the entire record,[2] upon the briefs filed on behalf of the parties, and upon my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

Circle T Corporation, herein called Respondent Circle T,[3] was incorporated on March 17, 1965. Since December 1968, it has operated as a wholesale supplier of meats and related items at a facility located at 5450 Olive Street, Montclair, California, which it leased from Frank Tomkins. In 1969, Respondent Circle T recognized Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, herein called the Union,[4] as the bargaining representative of its employees. This relationship continued, without interruption, until the closure of Respondent Circle T on May 20. Thus, the parties stipulated that at all times material up to and including May, Respondent Circle T had been an employer-member of Associated Meat and Food Suppliers of Southern California, which Respondent Circle T had designated as its representatives for purposes of collective bargaining and which had, on behalf of all of its employer-members including Respondent Circle T, entered into a collective-bargaining agreement effective October 1, 1976, through October 1, 1979.[5]

On May 20, Respondent Circle T ceased conducting active operations at the Olive Street facility. One week earlier, on May 13, Roy Tomkins, Respondent Circle T's president and general manager, and the son of Frank Tomkins, had told the Union's representatives that he intended to close the plant, although he did not specify a date for closure and had said only that Respondent Circle T would close once it had finished boning seven chucks, doing some grinding patty work and completing some shipping and cleaning up.

[1] Unless otherwise stated, all dates occurred in 1977.

[2] Certain errors in the transcripts are hereby noted and corrected.

[3] Originally, Respondent Circle T's correct name had been Circle T Meat and Provisions, Inc. Shortly after the May 20 closure, discussed *infra*, the articles of incorporation were amended, changing the name to Circle T Corporation, although these amended articles had not been filed by the time of the hearing.

[4] At all times material, the Union has been a labor organization within the meaning of Sec. 2(5) of the Act.

[5] The parties stipulated that an appropriate bargaining unit, within the meaning of Sec. 9(b) of the Act, is:

> All maintenance men, meat cutters, beef breakers, hog cutters, poultry men, corned beef men, checkers, shipping clerks, grinders, dicer/pork shop cutters, apprentice meat cutters, receiving clerks, order clerks, freezer men, choppers, mixers, cooler men, cryovac and vac machine operators, turntable take-off men, patty machine operators, order runners, wrappers, strappers, packers, cryovac sealers, common laborers, janitors and cleanup men employed by employer-members of Associated Meat and Food Suppliers of Southern California; excluding office clerical employees, guards and supervisors as defined in the Act.

The parties further stipulated that a majority of the employees in this unit had designated or selected the Union as their representative for collective bargaining at all times material.

Ten days later, Tomkins sent a letter to the Union, asserting, *inter alia*, that due to "sustained operating losses over the past twenty-four months, a decision has been made by the Board of Directors of Circle T Meat and Provisions, Inc. to cease all meat production activities as of May 20, 1977." However, the Union has never requested bargaining regarding Respondent Circle T's discontinuance of the business.

Following the closure, activities of the Olive Street facility were confined to the gradual selling of inventory that had been on hand on May 20. On July 5, full operations resumed at Olive Street, assertedly under the control and ownership of Meat Men, Incorporated, d/b/a Royal T Meat,[6] herein called Respondent Royal T, which, on the surface, had no relationship to Respondent Circle T other than the fact that the shareholders of Respondent Royal T formerly had been employees of Respondent Circle T.[7] Thus Roy Tomkins, the sole owner of all 430 shares of Respondent Circle T's stock, owned none of Respondent Royal T's 29 shares of outstanding stock, of which 10 shares each were owned by Dale Diebold, formerly Respondent Circle T's manager, and Robert George Eldred, with 5 of the remaining shares owned by Ralph William Cook and 4 by Gail Berry Carr. None of the three directors of Respondent Circle T—Roy Tomkins, his father, Frank, and Roger M. Holloway—was an owner, officer, or director of Respondent Royal T, whose board of directors consisted of the 4 shareholders, with Diebold serving as president, Eldred as secretary-treasurer, and Cook and Carr as vice presidents. Moreover, Respondent Royal T signed an agreement to purchase the inventory of Respondent Circle T for a reasonable price, leased the Olive Street facility from Frank Tomkins for the same rental price as Respondent Circle T had paid Frank Tomkins, and leased the equipment from Respondent Circle T for a price which is not inherently low. Consequently, at first blush, the transaction by which operations were transferred to Respondent Royal T appears to be no different from similar business transactions whereby employees purchase the failing business of their employer and commence operating it as owners.

Nevertheless, there is other evidence which supports the General Counsel's assertion that Respondent Royal T is the *alter ego* of Respondent Circle T and that the two are, in reality, a single employer, with the closure and subsequent reopening being no more than an effort by a firm losing money to be rid of the costs of unionization.

Most prominent in this regard is the undisputed evidence that Tomkins had been attempting to be relieved of the obligation to continue recognizing the Union. For example, it is undisputed that in January he had convened an employee meeting at which he had advised them that Respondent Circle T had lost $50,000 in 1976; that one of its major expenses was having to make so many payments to the Union; that the employees would be better off without the Union; and that they could vote it out, form their own in-house union, deal directly with him, rather than having to go through the Union, and be paid an additional amount of money over scale. Further, it is uncontroverted that he had been overheard remarking that his attorneys were working on getting Respondent Circle T out of the collective-bargaining agreement and that he intended to get the Union out of Respondent Circle T. Consequently, the record supports the conclusion that Roy Tomkins viewed the Union as being responsible for excessive expenses being incurred by Respondent Circle T and also supports the conclusion that he was endeavoring to terminate the Union's representative status for that reason.

Indeed, there is more direct and more proximate evidence that Tomkins had intended to close Respondent Circle T and to reopen under a different name, with a somewhat modified ownership structure, as a device for eliminating the Union. It is undisputed that, during a luncheon conversation on May 6, Tomkins had announced to former steak cutter Mickey Short that Respondent Circle T was going to be out of business in 4 or 6 weeks, that he had plans to start another company, and that this was being done as a "maneuver" to get the Union out.[8] Toward the end of that same month, Tomkins often had mentioned the new company during casual conversations with Short and, on May 26 or 27, he had summoned Short to his office where he again stated that he intended to start a new company; that he and the officers had decided to invite Short to participate; that he would be "going out front" for the credit with each of the officers contributing about $1,000 from their sick leave and vacation pay; and that while he would not be around for a few months until things got leveled out, he would be receiving 60 percent, and the other officers 40 percent, of the profits. Short testified that among the papers on Tomkins' desk during this conversation had been one containing the names of the officers of the new company on which were listed Dale Diebold as president, Roxanne Peterson as secretary-treasurer, and Eldred, Carr, and Cook as vice presidents. Also listed was the name of the new entity which, though Short testified that he had not paid close attention, appeared to have been "Minute Men."

Nor was Mickey Short the sole witness to testify regarding offers by Roy Tomkins pertaining to the new company. J. C. Short testified that during the week of June 20, Roy Tomkins had related that he wanted to start a nonunion shop; that he would be taking 60 percent; that the officers, each of whom would be former employees of Respondent Circle T contributing $1,000 from vacation and retroactive

[6] The name of Meat Men, Incorporated d/b/a Royal T Meat appears as amended at the hearing.

[7] There was no significant change in operations initially nor, for that matter, ultimately, since the change effected in the retail counter was not shown to have had any significant effect upon the duties of the unit employees. Respondent Circle T had employed 20 employees in the unit when it had closed. Aside from the shareholders, only 6 of these employees were rehired by Respondent Royal T.

[8] Diebold testified that after Tomkins had replaced Mickey Short as manager, approximately 2 years before the hearing in the instant case, the latter had harbored ill feeling toward and had made numerous adverse comments about Tomkins. Short, however, denied that he had harbored any ill will toward Tomkins as a result of the incident, testifying that it had been "explained to me why I was let go and I understood." Asked to specify and describe even one such instance of Short making adverse comments about Tomkins, Diebold equivocated and never did answer the question. Moreover, while Diebold contended that he "could fill the courtroom with people that would go along with my belief," no witnesses were called to corroborate either his opinion of Short's attitude toward Tomkins or his assertion that the former had made numerous adverse comments concerning the latter. Mickey Short appeared to be a straightforward witness and I credit his testimony.

pay, would be receiving 40 percent; that these officers would be Diebold, who would be president, and Carr, Cook and Eldred, who would be vice presidents; and that he (Tomkins) would not be around there. According to J. C. Short, Tomkins had offered him a job on the boning table at $30 over scale with provision for additional piecework rates. Boner Gilbert Moreno described a similar conversation, occurring approximately 7 weeks after the closure, in which Roy Tomkins had said that they were thinking about opening up under a different name; that the new business would be incorporated; that Moreno would be one of the previous employees to be afforded an opportunity to become a part owner with an investment of $1,000; and that Moreno would be in charge of the Portion Control Department at a rate of $330 per week plus benefits. Neither Moreno nor Mickey Short accepted the part ownership offers.

Asked about these conversations, Roy Tomkins conceded that they had occurred, but when asked specifically if he had made the particular remarks recited above, he claimed lack of recollection, leaving the descriptions of Moreno and the Shorts largely undisputed. However, Tomkins did claim that he had participated in these conversations and had made the part ownership offers at the request of Diebold. Diebold corroborated Tomkins in this respect. Yet, Diebold testified that he had made similar offers to the Shorts, on two occasions to each. Unexplained was why, if Diebold had done so, he had felt it necessary to have Tomkins do likewise. Further, Diebold claimed that he did not recall having told Tomkins what to tell the Shorts in making these offers—a strange procedure in light of Diebold's assertion that he had been the person to establish employment terms for Respondent Royal T and, presumably, would have wanted Tomkins to advise these men accurately concerning the terms under which they would be associated with Respondent Royal T. Finally, no explanation was advanced to explain why it had been Roy Tomkins who had approached Moreno regarding a part ownership interest in Respondent Royal T.

Diebold and Roy Tomkins also testified that there had been discussions about the latter taking a 60-percent interest in Respondent Royal T, but they claimed that this had been but one of several alternative arrangements discussed. Tomkins testified that the discussions of this alternative had only been pursued "until the first week or so in June" and, similarly, Diebold testified that this possibility had been abondoned by the date of Respondent Royal T's incorporation on June 13. Yet, relying upon a proximate doctor's appointment as the basis for fixing the week of his above-described conversation with Roy Tomkins, J. C. Short testified that it had occurred during the last full week in June—after Respondent Royal T had been incorporated. On cross-examination, Roy Tomkin's protestations that Short had been in error about the date and that the conversation had occurred early in the month collapsed when he was shown his pretrial affidavit, stating that his conversation with J. C. Short had occurred in "late June." Confronted with this affadavit, Tomkins admitted that the conversation might have been in late June, thereby undermining both his own and Diebold's explanation that consideration of the 60/40 plan had been but an alternative plan of organization that had been abandoned well before Respondent Royal T had commenced operations.

That the plan to simply incorporate in a fashion which left Roy Tomkins in control of the business had never been abandoned and, to the contrary, had been implemented, is shown by the conformity of Respondent Royal T's incorporation to Tomkins' earlier descriptions of the steps which would be taken to do so, advanced during the above-recited conversations with the Shorts and Moreno. Thus, both Diebold and Eldred did contribute $1,000 to purchase stock of Respondent Royal T. Carr and Cook did not contribute this amount. Yet, this was not for want of desire to do so. Diebold testified that while "what we were trying for was a thousand dollars apiece," this could not be accomplished since "[t]wo of the stockholders were short of money." Consequently, the $1,000 contribution plan by former employees of Respondent Circle T had been followed to the degree possible.

As listed on the papers on Roy Tomkins' desk, when Mickey Short had been in his office in late May, Diebold did become president of Respondent Royal T, while Eldred, Carr, and Cook became vice presidents. Contrary to the list, Roxanne Peterson did not become secretary-treasurer. However, she did become Respondent Royal T's bookkeeper and, as the offers to Moreno and to Mickey Short show, at the time of the late May discussion, Respondent Royal T's operation was still in the planning stage and its plans had not yet solidified. Further, the name "Minute Men," which Mickey Short testified appeared to be the name listed for the new company which he had seen that day, is quite close to the name Meat Men and Short conceded that he had not examined the name closely as his attention had been diverted elsewhere.[9]

The most significant similarity between the description of the operations of the new business advanced by Roy Tomkins to Moreno and the Shorts and the manner in which Respondent Royal T did, in fact, operate pertained to the role of Roy Tomkins himself. As set forth above, Tomkins had said that he would not be around for a period of time after the new company opened. That, in fact, was what occurred. However, in August, he began coming to the Olive Street facility for approximately 2 days each week. While there, he engaged in managerial, as opposed to consultant, activities. Thus, he exhorted employees, both individually and in group meetings, to improve their performance and suggested means by which this could be accomplished. He informed Diebold of the price and payment terms of products in response to at least one customer's inquiry. When a customer, Primal Meat Company, fell into arrears in its payments, Tomkins was the individual who notified that firm that Respondent Royal T would not ship additional meat to it until the overdue payments were

[9] Interestingly, Diebold equivocated when asked about the source of that name: "I don't know who come [sic] up with the Meatman . . . that was in a conversation with all the corporate members who are now, and Roy Tomkins was there too." Tomkins did not testify on this point and none of the other shareholders was called as a witness. What is clear, however, is that the name Royal T had been associated with Respondent Circle T prior to the events at issue in the instant case. It had been used, in lieu of a grader stamp, as a beef brand up to 3 or 4 years prior to the closure, when Respondent Circle T branded beef. Although this operation may have been discontinued, the name continued to be associated with Respondent Circle T as shown by its May 23 letter to the Union, which, in the lower right corner, bears the legend "The Home of Royal 'T' Brand Beef." Roy Tomkins claimed that it had been Diebold who had selected this name for Respondent Royal T, but Diebold did not corroborate Tomkins in this regard.

received.[10] In sum, following his return to the Olive Street facility, which ultimately became a daily occurrence, Roy Tomkins appears to have functioned in much the same manner as he had prior to May 20. Although Diebold and Tomkins both asserted that it had been the former that had set the employment terms for the employees, not a single specific instance of such independent conduct by Diebold was adduced to support the assertion. Nor is there any objective fact in the record to support their assertion.

However, both Tomkins and Diebold claimed that the former's return had been occasioned by difficulties which the latter had encountered after he began operating the facility. While their explanation was implausible, the testimony describing the asserted difficulties of Diebold was relatively vague. It was not supported by either documentary or by other testimonial evidence. Moreover, there is no evidence showing that these difficulties were of such magnitude as to require the continuing presence of Tomkins every day at the Olive Street facility. While Diebold advanced a general list of changes which Roy Tomkins had instituted following his reappearance at the facility, at no point did either he or Diebold explain the precise manner and means by which 5 days a week was required to improve the operations of Respondent Royal T. Finally, although asked about the matter, Diebold never was able to explain with any degree of logic and clarity why, if he had been experiencing such difficulties, he had chosen to turn to Roy Tomkins who, after all, had been the person in charge of Respondent Circle T during its period of financial decline prior to May 20. Indeed, Diebold had worked at Respondent Circle T for almost a decade and it is difficult to perceive any additional contribution which someone who had also worked there, such as Tomkins, could make to Diebold's knowledge of the business.

Neither Diebold nor Roy Tomkins was a persuasive witness. The latter's remarks to Moreno and the Shorts, who were credible witnesses, were uncontroverted. Those remarks show that Roy Tomkins was dissatisfied with the expense of the Union's collective-bargaining agreement and that he was planning to create Respondent Royal T as a "maneuver" to eliminate the Union as the representative of the Olive Street facility employees. The descriptions of how Respondent Royal T would be organized, as advanced by Tomkins in May and June, correspond to what ultimately did occur. Consequently, there is considerable direct evidence showing that Respondent Royal T is no more than "a disguised continuance" of Respondent Circle T. See *Howard Johnson Co., Inc.* v. *Detroit Local Joint Executive Board, etc.*, 417 U.S. 249, 259, fn. 5 (1974).

That Respondent Royal T is the *alter ego* of Respondent Circle T is shown also by certain other factors. First, Respondent Royal T is no more than a shell for all practical purposes. All of the assets used in its business—the Olive Street facility, the adjacent lot, and the equipment—are owned by Frank and Roy Tomkins, either directly or by virtue of Roy Tomkin's ownership of all stock of Respondent Circle T. Accordingly, Respondent Royal T owns no capital assets that would commit it to continued operation of the business.

Second, while the closure was followed by numerous discussions pertaining to planning continued operation of the business by former employees of Respondent Circle T, not even an effort was made by Roy Tomkins to ascertain if the business as a unit or its assets could be sold. Rather, for 6 weeks, Tomkins merely sat on the business, selling inventory leisurely and formulating a plan whereby several of the employees could become shareholders in a new operating entity that would serve as a vehicle for continuing the business. Such conduct is hardly consistent with the posture of a businessman who is withdrawing completely from an enterprise and who, presumably, would desire to dispose of its assets as quickly as possible before they depreciated further.

Third, Roy Tomkins' testimony concerning the events which had led him to decide to close is inconsistent with other evidence. He contended that he had made the closure decision on Monday, May 16, upon learning the preceding Friday that a large customer had gone out of business owing Respondent Circle T approximately $16,000. Yet, it is undisputed that 10 days earlier, on May 6, he had announced to Mickey Short that the business was to be closed. This earlier announcement to Short undermines the inherent logic of the sequence of events advanced by Roy Tomkins to justify the closure decision. Moreover, while it is undisputed that Respondent Circle T had sustained losses prior to its closure, no evidence was produced to support the contention that these losses had been of such magnitude as to necessitate closure. See *N.L.R.B.* v. *Sam Wallick, and Sam K. Schwalm, d/b/a Wallick and Schwalm Company, et al.*, 198 F.2d 477, 483 (C.A. 3, 1952).

Finally, as predicted to the Shorts, Roy Tomkins was absent from the Olive Street facility during the initial phase of Respondent Royal T's operations. However, his father, who had come to the facility only on weekends, if at all, prior to the closure, suddenly began appearing daily during the period after July 5. He continued to do so until his son returned, at which point, as Diebold testified, the elder Tomkins "gradually ceased working there the more Roy came on the premises." Frank Tomkins was never called as a witness nor was the failure to call him explained by Respondents. Thus, the record is devoid of any explanation for either his sudden appearance at the facility or for his cessation of those appearances upon his son's return.[11] Moreover, other than Diebold's passing reference to the fact that Frank Tomkins had performed some equipment maintenance, no evidence was produced as to what work he had performed while there. In these circumstances, it is a fair inference that had Frank Tomkins been called, his testimony would have been adverse to Respondent's position. *Colorflo Decorator Products, Inc.*, 228 NLRB 408, 420

[10] Although Diebold testified that he had asked Roy Tomkins to make this as well as similar calls, his testimony in this regard was uncorroborated. Moreover, he advanced no reason for having requested Tomkins, purportedly a consultant, to make calls of this nature, rather than, as president of Respondent Royal T, having made the calls himself. The fact that it was Tomkins who made such calls—as opposed to simply rendering advice on credit matters—is more consistent with the role of one who is in control of management than with the role of one who is merely advising management regarding improving operations.

[11] There is some evidence that there is a degree of friction between Frank and Roy Tomkins. However, this point was never developed and there is neither a contention nor evidence to support a contention either that Frank Tomkins ceased reporting to the Olive Street facility because of his son's return or that he was not called as a witness because of any hostility toward his son.

(1977); *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)* v. *N.L.R.B.*, 459 F.2d 1329, 1335-38 (C.A.D.C., 1972). It is an equally fair inference that in Roy Tomkins' absence, designed to create the impression of separateness of Respondents, his father had begun reporting daily to manage the business until his son felt his separateness sufficiently established to resume reporting on a daily basis.

The factors significant in making an *alter ego* determination are reviewed in *Jersey Juniors, Inc.*, 230 NLRB 329, 333 (1977). There, no *alter ego* was found. In the instant case, however, the evidence is not sufficient to conclude that Respondent Circle T had been compelled to terminate its business, either by virtue of external pressure or by virtue of the adverse financial posture in which Roy Tomkins found himself in May. No evidence was presented on this point beyond the testimonial assertions of Tomkins. Further, his comments throughout 1977, beginning with the employee meeting in January, show that Tomkins had viewed the expense of observing the collective-bargaining agreement as excessive and that he had desired to eliminate that expense. His comments also show that the device for accomplishing this objective was closure of Respondent Circle T and reopening as a different firm. Accordingly, Tomkins' conduct was motivated by a nefarious purpose. Moreover, there has been no transfer of assets nor similar commitment that would warrant the conclusion that the transaction giving rise to creation of Respondent Royal T was other than a mere "paper arrangement." Indeed, the lease for the facility was not signed until after the complaint had issued in the instant matter. Finally, while there has been no showing that Roy Tomkins enjoys an ownership interest in Respondent Royal T, he continues to be present daily at the facility, continues to make managerial decisions and is the only individual there who has been shown with any degree of specificity to do so. In these circumstances, and in light of his earlier comments to the employees of Respondent Circle T, it is a fair inference that Respondent Royal T is no more than a front for Respondent Circle T and, accordingly, for Roy Tomkins' interests.

Therefore, I find that a preponderance of the evidence establishes that Respondent Royal T is the *alter ego* of Respondent Circle T, being no more than a "disguised continuance" of the latter, and, accordingly, I deny Respondents' motion to dismiss the complaint on the basis that no such relationship has been shown to exist. This being the fact, certain other conclusions follow. First, the parties stipulated that during the 12-month period prior to May 20, Respondent Circle T, found above to have been engaged in the wholesale selling of meats and related products, had purchased and received goods or services valued in excess of $50,000 directly from suppliers located outside the State of California. Since Respondent Royal T is the *alter ego* of Respondent Circle T, Respondents are a single employer, within the meaning of Section 2(2) of the Act, engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Second, by terminating all of its employees on May 20 as part of its effort to escape the economic obligations imposed by the 1976-79 collective-bargaining agreement, to which it was a party by virtue of its membership in Associated Meat and Food Suppliers of Southern California, Respondent Circle T violated Section 8(a)(3) and (1) of the Act. *Los Angeles Marine Hardware Co., A Division of Mission Marine Associates, Inc.; and California Marine Hardware Co., A Division of Mission Marine Associates, Inc.*, 235 NLRB 720 (1978).

Third, as the *alter ego* of Respondent Circle T, Respondent Royal T has been bound to the 1976-79 collective-bargaining agreement to which Respondent Circle T is bound. "A company which has not agreed to be bound by the collective-bargaining contract of another company may nevertheless be held to the contract if it is an *alter ego* of the signing company . . . ." *Peter Kiewit Sons' Co., and South Prairie Construction Co.*, 206 NLRB 562 (1973), vacated on other grounds 518 F.2d 1040 (C.A.D.C., 1975), affd. in part, vacated in part, and remanded 425 U.S. 800 (1976). An employer who is bound to a collective-bargaining agreement is not free, notwithstanding the existence of valid economic considerations, to change the terms of that agreement without the consent of the signatory union. See *Los Angeles Marine Hardware Co., supra*, and cases cited therein. Here, Respondent Royal T operates on a nonunion basis. Not only has it disregarded the terms of the 1976-79 collective-bargaining agreement, but it has ignored its obligation to continue recognizing the Union as the representative of its employees who are performing essentially the same duties as they had been performing prior to May 20. In these circumstances, and in light of the *alter ego* status of Respondents, I find that by repudiating the collective-bargaining agreement, by modifying employment terms, and by withdrawing recognition of the Union as the representative of its employees, Respondents have violated Section 8(a)(5) and (1) of the Act. See *Appalachian Construction, Inc., and SE-OZ Construction Company, Inc.*, 235 NLRB 685 (1978).

Finally, the General Counsel alleges that Section 8(a)(5) and (1) of the Act was violated by the decision to close and by the closure of Respondent Circle T on May 20, as well as by the reopening of the facility, without prior notification to the Union and affording it the opportunity to bargain concerning these matters. It is, as found above, true that on May 13, Roy Tomkins did advise the Union that he intended to close the plant and that the Union never sought to bargain about either this decision or its effects upon the employees in the bargaining unit. In other circumstances, these events might well have served to terminate any possibility of finding a violation of Section 8(a)(5) and (1) of the Act based upon the closure. See *The Lange Company, A Division of Garcia Corporation*, 222 NLRB 558, 562-564 (1976); *Joseph Macaluso, Inc., d/b/a Lemon Tree*, 231 NLRB 1168, 1178 (1977). However, the closure and reopening in the instant case were designed and implemented as a "maneuver" to eliminate the Union as the bargaining representative of the unit employees. Such a motive is inconsistent with the principles of collective bargaining and, further, demonstrates that Respondent Circle T had no intention of bargaining in a manner that would lead to preservation of its bargaining relationship with the Union and continued observation of its obligation to abide by the terms of the 1976-79 agreement. Therefore, I find that by

deciding to close, by closing and by reopening the business, Respondents did violate Section 8(a)(5) and (1) of the Act.

The Effect of the Unfair Labor Practices Upon Commerce

The activities of Circle T Corporation and Meat Men, Incorporated, d/b/a Royal T Meat, set forth above, occurring in connection with their operations, described above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and tend to lead, and have led, to labor disputes burdening and obstructing commerce and the free flow of commerce.

Conclusions of Law

1. Circle T Corporation and Meat Men, Incorporated, d/b/a Royal T Meat are a single employer within the meaning of Section 2(2) of the Act, engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By closing on May 20, 1977, and by discharging and refusing to reinstate employees of Circle T Corporation, Circle T Corporation and Meat Men, Incorporated, d/b/a Royal T Meat violated Section 8(a)(3) and (1) of the Act.

4. A unit appropriate for collective bargaining is:

> All maintenance men, meat cutters, beef breakers, hog cutters, poultry men, corned beef men, checkers, shipping clerks, grinders, dicer/pork shop cutters, apprentice meat cutters, receiving clerks, order clerks, freezer men, choppers, mixers, cooler men, cryovac and vac machine operators, turntable take-off men, patty machine operators, order runners, wrappers, strappers, packers, cryovac sealers, common laborers, janitors and cleanup men employed by employer-members of Associated Meat and Food Suppliers of Southern California, including Circle T Corporation and Meat Men, Incorporated, d/b/a Royal T Meat at their 5450 Olive Street, Montclair, California, facility; excluding office clerical employees, guards and supervisors as defined in the Act.

5. At all times material, Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, has been the exclusive collective-bargaining representative of the employees in the above-described unit within the meaning of Section 9(a) of the Act.

6. By deciding to close and by closing Circle T Corporation on May 20, 1977, and by opening Meat Men, Incorporated, d/b/a Royal T Meat on July 5, 1977, without prior notification to Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, in an effort to terminate their existing bargaining relationship and to escape the obligations imposed by their collective-bargaining agreement; by failing and refusing to apply the terms and conditions of the current collective-bargaining agreement to the employees employed by Meat Men, Incorporated, d/b/a Royal T Meat in the bargaining unit described in Conclusion of Law 4, above; by repudiating the current collective-bargaining agreement; and by withdrawing recognition of Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, as the bargaining representative of employees in the bargaining unit described in the Conclusion of Law 4, above.[12] Circle T Corporation and Meat Men, Incorporated, d/b/a Royal T Meat have violated Section 8(a)(5) and (1) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Circle T Corporation and Meat Men, Incorporated, d/b/a Royal T Meat engaged in certain unfair labor practices, I shall recommend that they be ordered to cease and desist therefrom and that they take certain affirmative action to effectuate the policies of the Act.

Circle T Corporation and Meat Men, Incorporated, d/b/a Royal T Meat shall be required to offer immediate reinstatement to their former positions of employment or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, to all employees terminated as a result of the May 20, 1977, closure of Circle T Corporation—including those employees who were subsequently hired on and after July 5, 1977, since, as discriminatees, they are entitled to offers of reinstatement and not simply offers of employment, *D.R.C., Incorporated, et al.*, 233 NLRB 1409, 1421 (1977); *Colorflo Decorator Products, Inc.*, 228 NLRB 408, 420 (1977)—dismissing, if necessary, anyone who may have been assigned or hired to perform the work which they had been performing prior to their termination on May 20, 1977.[13] Circle T Corporation and Meat Men, Incorporated, d/b/a Royal T Meat shall be required to make these employees whole for any loss of earnings they may have suffered by reason of their unlawful terminations, with backpay to be computed on a quarterly basis, making deductions for interim earnings, *F. W. Woolworth Company*, 90 NLRB 289 (1950), and, additionally, shall be required to make whole all employees for any losses sustained by the failure to apply the terms and conditions of the 1976-79 collective-bargaining agreement to employees working for Meat Men, Incorporated, d/b/a Royal T Meat on and after July 5, 1977. In both classes of cases, interest is to be paid

[12] Although there is no allegation in the complaint that recognition was withdrawn unlawfully and the General Counsel does not urge that such a violation be found, it is a matter which was "part and parcel of [Respondent's] persistent antiunion campaign," was "fully litigated at the hearing," and was a matter concerning which Respondents "had ample opportunity to offer, and in fact did offer, evidence on this point." Seemingly, therefore, the Board deems such situations to require provision of an appropriate remedy. *Alexander Dawson, Inc. d/b/a Alexander's Restaurant and Lounge*, 228 NLRB 168 (1977); *GTE Automatic Electric, Inc.*, 196 NLRB 902 (1972). Contra: *Medicine Bow Coal Company*, 217 NLRB 931, fn. 2 (1975); *Richman-Gordman Stores, Inc.*, 220 NLRB 453, fn. 1. (1975).

[13] Although the General Counsel requests an order placing any former employees of Circle T Corporation who cannot be reinstated on a preferential hiring list, such an order appears to be unwarranted in the circumstances, since the employment complement at the time of the hearing numbered the same as it was on May 20, 1977. Thus, positions exist for all of the discriminatees should they desire to return.

on the amounts owing and is to be computed in the manner prescribed in *F. W. Woolworth, supra,* and *Florida Steel Corporation,* 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.,* 138 NLRB 716 (1962), enforcement denied on different grounds 322 F.2d 913 (C.A. 9, 1963); see, generally, *Los Angeles Marine Hardware, supra.*

Upon the foregoing findings of fact, and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommend:

ORDER[14]

The Respondents, Circle T Corporation and Meat Men, Incorporated, d/b/a Royal T Meat, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and to bargain collectively with Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, as the exclusive bargaining representatives of their employees in the bargaining unit heretofore found appropriate in Conclusion of Law 4, above.

(b) Deciding to close, closing, and reopening facilities under a different name without prior notification to Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, in an effort to terminate their existing bargaining relationship and to escape the obligations imposed by their collective-bargaining agreement.

(c) Failing and refusing to apply to all their employees in the aforesaid contractual bargaining unit all terms and conditions of the current collective-bargaining agreement, absent express written consent of Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO.

(d) Terminating operations, replacing, discharging, or otherwise discriminating against employees with regard to hire or tenure of employment or any term or condition of employment for engaging in activities on behalf of a labor organization or for engaging in activity protected by Section 7 of the Act.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of any right guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the purposes of the Act:

(a) Upon request, recognize and bargain collectively with Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, as the exclusive bargaining representative of their employees employed in the bargaining unit heretofore found appropriate in Conclusion of Law 4, above.

(b) Apply the terms and conditions of the current collective-bargaining agreement with Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, to their employees employed in the aforesaid contractual bargaining unit.

(c) Make whole employees for any loss of pay or benefits which would have accrued to them under the collective-bargaining agreement but for the failure to continue applying its terms and conditions to employees employed in the aforesaid contractual bargaining unit.

(d) Offer to all employees terminated as a result of the closure of the Olive Street facility on May 20, 1977, immediate and full reinstatement to their former positions of employment dismissing, if necessary, anyone who may have been hired to perform the work that they had been performing prior to the date on which they were terminated or, if their former positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay and benefits they may have suffered as a result of the discrimination, in the manner set forth above in the section entitled "The Remedy."

(e) Preserve and, upon request, make available to the Board or its agents all payroll and other records necessary to compute the backpay and reinstatement rights set forth in The Remedy section of this Decision.

(f) Post at the Montclair, California, facility copies of the attached notice marked "Appendix."[15] Copies of the notice, on forms provided by the Regional Director for Region 31, after being duly signed by the authorized representative of Circle T Corporation and Meat Men, Incorporated, d/b/a Royal T Meat, shall be posted by Respondents immediately upon receipt thereof and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Circle T Corporation and Meat Men, Incorporated, d/b/a Royal T Meat to ensure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps Respondents have taken to comply herewith.

[14] In the event no exemptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[15] In the event that 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

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

The National Labor Relations Act, as amended, gives all employees the following rights:

To organize themselves

To form, join, or support unions

To bargain as a group through a representative they choose

To act together for collective bargaining or other mutual aid or protection

To refrain from any or all such activities except to the extent that the employees' bargaining representative and employer have a collective-bargaining agreement which imposes a lawful requirement that employees become union members.

In recognition of these rights, we hereby notify our employees that:

WE WILL NOT refuse to recognize and bargain collectively with Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL CIO, as the exclusive bargaining representative of our employees in the following appropriate unit:

All maintenance men, meat cutters, beef breakers, hog cutters, poultry men, corned beef men, checkers, shipping clerks, grinders, dicer/pork shop cutters, apprentice meat cutters, receiving clerks, order clerks, freezer men, choppers, mixers, cooler men, cryovac and vac machine operators, turntable take-off men, patty machine operators, order runners, wrappers, strappers, packers, cryovac sealers, common laborers, janitors and cleanup men employed by employer-members of Associated Meat and Food Suppliers of Southern California, including Circle T Corporation and Meat Men, Incorporated, d/b/a Royal T Meat and their 5450 Olive Street, Montclair, California, facility; excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT decide to close, close, or reopen our facility under a different name without prior notification to Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, in an effort to terminate our bargaining relationship and to escape the obligations imposed by our collective-bargaining agreement with that labor organization.

WE WILL NOT fail and refuse to apply to our employees in the above-described bargaining unit all the terms and conditions of our current collective-bargaining agreement, absent written consent of Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO.

WE WILL NOT terminate our operations, replace you, discharge you or otherwise discriminate against you for engaging in activities on behalf of Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of your rights under the National Labor Relations Act as set forth above.

WE WILL recognize and bargain collectively with Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, as the exclusive collective-bargaining representative of all employees in the above-described bargaining unit.

WE WILL apply the terms and conditions of our current collective-bargaining agreement with Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, to all our employees in the above-described bargaining unit.

WE WILL make whole all employees for any losses sustained by our failure to apply the terms and conditions of our collective-bargaining agreement with Meat Cutters Union Local 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO.

WE WILL offer immediate and full reinstatement to all employees who were terminated as a result of the closure of our Olive Street facility on May 20, 1977, to their former positions of employment (dismissing, if necessary, anyone who may have been hired or assigned to perform the work which they had been performing prior to the time they were terminated) or, if their former positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges, and make them whole for any loss of pay they may have suffered as a result of our discrimination.

CIRCLE T CORPORATION; MEAT MEN, INCORPORATED D/B/A ROYAL T MEAT