Typographic Service Co.; Eureka Press Co.; Modern Typesetting Co.; Central Typesetting Co.; and Printing Industries Association, Inc. of Southern California, Union Employers Section *and* Los Angeles Typographical Union Local 174, International Typographical Union, AFL-CIO. Cases 21-CA-15334, 21-CA-15433, 21-CA-15434, 21-CA-15435, and 21-CA-15436

September 29, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND MURPHY

On September 9, 1977, Administrative Law Judge Jerrold H. Shapiro issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Charging Party filed exceptions and a supporting brief, and Respondents filed a brief in answer to exceptions.

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 briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

We disagree with our dissenting colleague's conclusions that the facts do not establish an effective dissolution of the multiemployer bargaining unit but, instead, evidence union desire and conduct directed toward preserving the viability and integrity of the unit, by "breaking the . . . impasse and getting all parties to return to the bargaining table to explore again possible areas of agreement."

The facts are plain. Following a bargaining impasse, the 17 employer-members of PIA, their bargaining representative, placed into effect PIA's final contract proposal, and on the following day the Union struck all 17. During the next several months, the Union contacted each employer separately and (1) offered to end the strike against any who would agree to reinstate the terms of the expired contract; (2) sought to assure them, through a copy of a letter from its attorney, that they were free not only to operate under the terms of the expired contract (rather than under the terms of PIA's last proposal), but also were free to sign separate agreements with the Union; and (3) claimed that its efforts to meet with PTA were unsuccessful and offered to meet with the employers "singly or collectively, with or without your PIA representative."

Hughes, the Union's president and chief negotiator, continued to orchestrate this theme with various employers to whom he complained that Sabo, PIA's chief negotiator, was responsible for the impasse. Hughes suggested that negotiation progress would be possible if Sabo were removed and offered to remove himself from negotiations if Sabo did likewise. Hughes also affirmatively sought to persuade these employers to initiate an employerwide movement to "form [their] own association and negotiate without [PIA]" or to "get . . . together to settle the dispute."

Having failed in its direct PIA-ouster endeavor, the Union approached the matter indirectly by bypassing PIA and bargaining individually with 7 of the 17 employers. Those seven, in return for a cessation of the strike against them, agreed to scrap PIA's contract proposals (which, of course, triggered the impasse and strike) and entered into separate oral agreements which reinstated the expired contract. During those separate negotiations, however, the Union also presented one employer with a choice of *executing* an agreement based on such final contract as may be negotiated between the Union and PIA, or based on contracts negotiated between the Union and either of two companies, neither of which are unit members. The Union made this same stranger-company-contract offer to another employer to whom it also offered for consideration two other complete contract proposals, both of which differed from PIA's. In December 1976, following a bargaining session with PIA, the Union again contacted each employer by letter, in which the Union criticized the bargaining positions assumed by PIA at that session, and again suggested that all 17 employers join with the Union in a meeting which "might afford all of us the opportunity of finding an equitable and liveable settlement."

On January 4, 1977, Sabo met with, and formally notified, the Union that the multiemployer unit members were withdrawing from the unit, citing as reasons the Union's past conduct, including its contractual arrangements with the aforesaid seven employers. He also notified it that, henceforth, he would represent all 17 employers on an individual basis. The Union protested these actions and insisted that it would bargain only with PIA as representative of all 17 unit members. At the request of a Federal mediator, the Union then agreed to, and did, submit a new bargaining proposal.

Sabo met with Hughes several days later and informed him that several employers had shown interest in the Union's new proposals which he was there to explain in his capacity as individual representative of some employers. Hughes, however, refused to bargain except with PIA and on the 17-employer-unit basis. He maintained this position at a subsequent

bargaining session where Sabo again sought to bargain on an individual basis.

Despite the Union's professed desire to engage in multiemployer unit bargaining, it nevertheless continued to engage in individual bargaining with the employers. Again using the lever of strike cessation, it persuaded two additional employers to enter into oral agreements which reinstated the expired contract and one, with Sabo's concurrence, to execute an agreement based on the Union's new contract proposals, with modifications.

It is difficult to conceive of facts which more compellingly refute our dissenting colleague's views and demand the conclusion that the Union's conduct effectively fragmented and destroyed the integrity of the bargaining unit and thus created the "unusual circumstances" authorizing unilateral unit withdrawal by the employers.[1] Our dissenting colleague, however, finds no such circumstances, basically because he construes the separately negotiated oral agreements as "interim [which] contemplated renewed bargaining for, ultimately, a new multiemployer contract," and the divergent offers of final agreements as "bargaining techniques . . . trial balloons to explore various bargaining possibilities [in pursuit of] further bargaining on the multiemployer basis." Those views are at odds with the undisputed evidence that (1) the Union sought to undermine and destroy the bargaining authority of the multiemployer representative; (2) simultaneously marched directly from the multiemployer bargaining table by offering separately negotiated agreements; and (3) offered to conclude those "interim" agreements with final agreements which differed from the interim agreements, differed from each other, and differed from PIA's proposals and from proposals essential to PIA's bargaining position.[2] Those final offers alone evince a repudiation of the underlying purpose for the establishment of multiemployer bargaining: uniform rates of pay, hours, and working conditions for the employees of the employers in the multiemployer unit. Indeed, an acceptance of those final offers would render impossible a final agreement binding upon all unit members. Our colleague's observation that one employer executed a contract "after Association 'clearance' " affords no support to his position, for Sabo, not the Association, granted the clearance after the dissolution of the unit and obviously did so in his capacity as representative of the individual employers which position by then had superseded his former capacity as representative of the multiemployer unit.

Such conduct by the Union demonstrates a clear intent to undermine the integrity of the multiemployer unit and permitted withdrawal of the individual employers from the unit. Accordingly, we shall dismiss the complaint.

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 the complaint be, and it hereby is, dismissed in its entirety.

CHAIRMAN FANNING, dissenting:

In my view the withdrawing members of the multiemployer bargaining unit, here joined as Respondents, attempted that withdrawal in untimely fashion—though after impasse—while the Union was trying to get the parties back to the bargaining table. My colleagues, like the Administrative Law Judge, concede untimeliness of the withdrawal and then approve dissolution of the unit as resulting from "unusual circumstances" affecting the unit's viability. I cannot agree with their dismissal on the facts of this case.

In mid-November 1976, when the employers implemented their final contract proposal, including the longer workweek to which the Union was strongly opposed, the employees ceased working. The Administrative Law Judge found that the Union immediately contacted each employer offering to end the strike if that employer returned to the terms of the old contract. This was uniform treatment for all unit employers. The "unusual-circumstances" analysis of the Administrative Law Judge is based on 10 out of 17 employers thereafter returning to the 35-hour week, thus leaving 7 employers to support the 38-3/4-hour week implemented pursuant to Association bargaining.[3] He recognized that out of the 10, 7 were obligated to abide by any ultimate contract entered into by the Association with the Union and that to that extent those employers remained a part of the multiemployer unit. Nevertheless, he viewed it as impractical to conclude that they would agree with the seven employers whose employees were still out on strike concerning the workweek issue. Hence, as he saw it, they too had withdrawn; thus the unit was no longer viable. In part he relied on *Connell Typesetting Com-*

[1] *Retail Associates, Inc.*, 120 NLRB 388 (1958).

[2] *Associated Shower Door Co., Inc.*, 205 NLRB 677 (1973), enfd. 512 F.2d 230 (C.A. 9, 1975), cited by our colleague, is inapposite. The issue in *Associated* concerned the propriety of unit withdrawal by multiemployer unit members after impasse. Moreover, there was no abandonment of the multiemployer unit by the union, which bargained on a multiemployer-unit basis subsequent to the impasse and strike, and reached a common agreement with all of the multiemployer unit members, including those employers who improperly withdrew and later retracted their withdrawals.

[3] The proposed pay raise was 1 cent an hour. There is testimony that the employer view was that employee earnings could be increased only by going to a longer workweek.

pany, etc., 212 NLRB 918 (1974), where the Board assessed viability with emphasis on the numbers involved. In that case there remained only 13 out of 36 employers, and an original employee complement of 209 had been reduced to 36 employees. Also, of the 23 employers who withdrew in *Connell*, 10 had executed individual agreements with the union. The instant case was not litigated with respect to the numbers involved. It does, however, appear from the record that 146 employees were included in the established multiemployer unit and that only 2 employees were involved in the one agreement signed individually with Colby Poster Printing, as referred to below.

I would here point out that the expired contract provided:

> Section 37. This Agreement shall be in full force and effect from the sixth day of August 1973, until the fourth day of August 1976, inclusive, provided that if a new contract has not been agreed upon before the expiration date, the wages, hours and working conditions prevailing under this Agreement shall be continued in force while negotiations continue.

The Union consistently urged this clause to employers as a reason for going back to work and continuing the bargaining. There is significant employer testimony corroborating this approach by the Union. At the hearing the General Counsel stated that no violation based upon section 37 was alleged, and the Decision of the Administrative Law Judge makes no reference to that section. However, the urging of this provision of the old contract by the Union is to my mind supportive of the true purpose of the Union at this critical stage of its 10-year bargaining relationship on a multiemployer basis.

Additional evidence of the Union's purpose to resume bargaining negotiations with the unit as a whole is seen in the following letters addressed by the Union to each of the 17 employers.

November 19: The Union enclosed with this letter a copy of a letter from its attorney concerning possible liability of employers for not supporting the Association's inplementation of its proposed contract. The opinion was that there would be no liability even if the employers were to "sign" separate agreements with the Union. None did, except Colby Poster, which had only two employees and was told by Director Sabo of the Association to make its own arrangements since Colby was a specialty shop as distinguished from the commercial and trade shops constituting the employer group. Sabo did not testify.

December 15: The Union expressed increasing concern at the lack of any meeting since November 17, the date when the employers put their proposal into effect and would not permit the employees to work the customary 35-hour week. This letter asserted that every effort to meet since then had come from the Union, contrary to representations by Sabo, and that the only way to resolve differences was to meet.

December 23: This letter referred to a December 20 meeting held in the interim that accomplished nothing and stressed the lapse of 33 days preceding that meeting without a negotiating meeting. As an avenue to solution, it suggested a joint meeting with the Union committee of *all 17 employers* (emphasis as in original) "to make all aware of what is truly happening in negotiations and it might afford us all an opportunity of finding an equitable and liveable settlement."

During the November 16 to December 27 period, 7 of the 17 employers agreed orally to reinstate the old contract terms and its 35-hour workweek, and at these plants the employees returned to work.[4] The Administrative Law Judge credited testimony that two of the seven (Rex Franklin Typesetting and Inter-State Press) had been told by the Union that they would have a choice between the ultimate Association contract or a contract with Parker & Son or with Sorg Printing.[5] As to Leighton-Wood Typographers (also one of the seven) and Skil-Set Typographers, asserted union variations in possible contract terms—as litigated by Respondents—were found by the Administrative Law Judge to lack record support. I would evaluate those variations credited by the Administrative Law Judge in the nature of trial balloons to explore various bargaining possibilities or areas of agreement. They resulted in no signed individual contracts and in my view they constituted bargaining techniques to which the Union was entitled in its effort to pursue further bargaining on the multiemployer basis. Also, the fact that the Union's president suggested removing himself from negotiations if Sabo would do likewise, and even suggested that the 17 employers form their own association, is consistent rather than inconsistent with a sincere effort by the Union to continue bargaining in the established 17-employer unit. The Union's approach in this respect was clearly linked to its felt need for more meetings. It was certainly not an attempt to "coerce" a change of employer bargaining representative.

A January 4 negotiating meeting was held at the office of the Federal Mediation Service with Sabo announcing that, in view of the Union's arrangements to terminate some of the picketing, he was formally

[4] The employees of three more employers went back to work after January 4, Los Angeles Typefounders and Skil-Set Typographers by orally agreeing to reinstate the old contract, and Colby Poster did so by executing the Union's January 5 proposal separately, after Association "clearance."

[5] Parker & Son and Sorg were not among the 17 multiemployer unit employers, but appparently a similar contract was sought for the two. The Union asked Rex Franklin if it would be interested in such a contract should it be obtained.

giving notification that he was now representing the 17 employers on an individual basis, to which the Union responded that it was there to deal with the Association as the representative of all 17 employers. As the Administrative Law Judge found, the Union did not specifically refuse to continue to bargain with Sabo. Pursuant to the mediator's request, the Union agreed to submit a new bargaining proposal. It did this the next day at the Association's office. Two days later, on January 7, Sabo came to the union office and advised that several employers were interested in the January 5 proposal. Asked if he represented the 17 employers, Sabo said "some" on an "individual" basis. The Union's president reiterated the Union's recognition of the 17 employers as one bargaining unit and suggested Sabo contact the mediator if he was prepared to negotiate for the 17. The charge was filed by the Union on January 13. At a January 18 meeting with the mediator, the last meeting of the parties, the Union again stated it was there to bargain with the representative of all 17 employers. (Colby Poster did not execute its individual contract until January 18.)

In the circumstances, I see no impairment of the viability of this multiemployer bargaining unit. Although the Union has gained apparent support from some employers for not increasing the length of the workweek, the work stoppage was applied to all 17 employers and the avowed purpose was to get them back to bargaining for a new contract. The Union executed no substitute contracts on an individual basis, except in the unusual circumstances affecting Colby. Even that exception involved signing the Union's January 5 proposal that had been made to the Association for all 17 employers and in response to urging by the Federal mediator.

In *Associated Shower Door Co., Inc.*, 205 NLRB 677 (1973), enfd. 512 F.2d 230 (C.A. 9, 1975), Member Jenkins and I found that the multiemployer unit had not been destroyed simply because several employers executed individual agreements while the other employers continued bargaining. The Circuit Court of Appeals for the Ninth Circuit enforced that decision based specifically on bargaining by the remaining employers actually having continued after the individual contracts executed by some employers. The court, however, in its opinion indicated a basis which it considered fair for permitting withdrawal of remaining unit members who unequivocally communicate their withdrawal, to wit: If, after impasse, the union engages in selective picketing *and* enters into substantial individual agreements. Neither of those prerequisites has occurred here. The picketing was in no sense selective; it applied to all employers. As to the back-to-work agreements made orally with some employers, they were interim and contemplated renewed bargaining for, ultimately, a new multiemployer contract. Only Colby Poster, which was, in effect, excluded from the unit by the Association's director, signed a new agreement.[6]

The Board is urged by Respondents to use this case to propound equal impasse withdrawal rules for unions and employers. Without passing on the desirability of such consideration, I do not consider this case an appropriate vehicle.[7] Impasse can be broken. In my view the Union's efforts here were directed to breaking the November impasse and getting all parties to return to the bargaining table to explore again possible areas of agreement. The unit was in no sense fragmented. I would therefore find an 8(a)(5) and (1) violation and order the Respondents to bargain with the Union in the multiemployer unit.

[6] Although the Union's strike was a strike of all employers in order to get all to return to the terms of the expired bargaining contract and continue negotiating as it provided, my colleagues characterize it as a direct march from the multiemployer bargaining table "by offering separately negotiated agreements." Having drawn that unwarranted conclusion the majority would hamstring the Union in sounding out even a few employers concerning what direction resumed negotiations might fruitfully take. These efforts they label "final offers," suggesting that the Union at least firmly "offered" to enter into substantial individual agreements. They also suggest that the Colby Poster contract covering only two employees in a specialized printing operation must, because of its timing, have been agreed to by Sabo in his newly asserted capacity of representing the 17 employers individually. Finally, they read the *Associated Shower Door* decision as restricted to the facts of that case, a strained interpretation as I see it. The Court of Appeals for the Ninth Circuit, after emphasizing the fairness of permitting employer withdrawals from a multiemployer unit when impasse has been reached and a union then engages in "selective" picketing and enters into "substantial" individual agreements with employers who have been members of the multiemployer unit, went on to say: "Were the rule otherwise, a union could reach an agreement with one or more employers and then whipsaw the remaining members of the significantly fragmented and weakened multiemployer unit." (532 F.2d at 232.) A strike of all employers does not become whipsawing simply because some employers decide to ask their employees to return to work while continuing contract negotiations as the contract provides, and others continue to take the strike. With only one *insubstantial* individual agreement entered into thereafter, these facts do not satisfy the court's rule in my judgment.

[7] My dissent on the facts here does not change my basic view concerning multiemployer unit bargaining that fully executed individual agreements with some employers, after impasse, do not destroy the continuing duty to bargain by other employers. See, for example, *Beck Engraving Co., Inc.*, 213 NLRB 53 (1974), enforcement denied 552 F.2d 475 (C.A. 3, 1975), a selective strike case where only "selectee" Beck refused to sign. Although the court spoke of redressing the balance created by the Board's decisions in this area, it stated at fn. 15 that it "recognized that it should not dictate to the Board the manner in which the balance should be achieved."

DECISION

Statement of the Case

Jerrold H. Shapiro, Administrative Law Judge: The hearing in these cases held on June 21, 1977, through June 24, 1977, is based upon unfair labor practice charges filed by Los Angeles Typographical Union Local 174, International Typographical Union, AFL-CIO, herein the Union, against the following Respondents: Printing Industries Association, Inc., of Southern California, Union Employers Section, herein called Respondent Association or the Association; Eureka Press Co., herein called Respondent Eureka Press; Modern Typesetting Co., herein called Respondent

Modern Typesetting; Central Typesetting Co., herein called Respondent Central Typesetting; and Typographic Service Co., herein called Respondent Typographic Service. The charges against Respondent Typographic Service were filed December 23, 1976, and amended March 22, 1977. The charges against the remaining Respondents were filed on January 13, 1977. A consolidated complaint issued March 28, 1977, on behalf of the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director of the Board, Region 21, alleging that Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act, herein called the Act. Respondents filed an answer denying the commission of the alleged unfair labor practices.

Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs submitted by the General Counsel and Respondents, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS

Respondent Association is an association of employers, including the Respondents involved in the instant case, who are printers in the graphic arts industry whose businesses are located in Southern California. The Association engages in collective-bargaining negotiations with various labor organizations, including the Union, on a multiemployer and individual basis for and on behalf of its employer-members who authorize it to represent them. The employer-members of the Association in the aggregate meet the Board's indirect outflow jurisdictional standard. The complaint alleges, the parties have stipulated, and I find that Respondent Association and Respondents Typographic Service, Eureka Press, Modern Typesetting, and Central Typesetting, and each of them, are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act. I also find it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Los Angeles Typographical Union Local 174, International Typographical Union, AFL-CIO, the Union, is a labor organization as defined in Section 2(5) of the Act.

III. THE QUESTIONS PRESENTED

During the time material herein Respondent Association was authorized by 17 of its employer-members, including the other Respondents involved in this case, to negotiate a collective-bargaining contract with the Union covering the composing room employees of the 17 employers in a multiemployer bargaining unit. The essential question to be decided is whether, in violation of Section 8(a)(1) and (5) of the Act, Respondent Association since January 4, 1977, has refused to bargain with the Union, as alleged in the complaint, by "repudiating the [aforesaid] multiemployer bargaining unit and refusing to bargain on a multiemployer basis." Also to be decided is whether Respondent Typographic Service, in violation of Section 8(a)(1) and (5) of the Act, on or about December 30, 1976, as alleged in the complaint, "bargained directly with its employees" concerning their terms and conditions of employment "in derogation of the Union as the exclusive collective-bargaining representative."

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts in Chronology*

1. The events which predate the dissolution of the multiemployer bargaining unit

Respondent Association on behalf of its employer-members who designate it as their bargaining representative negotiates collective-bargaining contracts on an individual employer, as well as a multiemployer, basis, and has done so with the Union for well over 10 consecutive years. The last such contract became effective August 6, 1973, and terminated August 4, 1976. The negotiations between the Association and the Union for a successor contract commenced on or about July 15, 1976. On or before July 15, 1976, the Association was authorized by 15 of its employer-members[1] to represent them in these negotiations in a multiemployer bargaining unit. After the negotiations commenced, two other employer-members[2] authorized the Association to represent them as a part of the multiemployer bargaining unit.

The negotiations between the Union and Association as of June 21, 1977, the date of the hearing in this case, had not succeeded in producing an agreement. In early November 1976, the negotiations reached an impasse which has never been broken. The major issues separating the parties are wages, hours, and retroactivity of the terms of a new contract. On November 15 and 16, 1976, after the negotiations had reached an impasse, 16 of the 17 employers, who comprise the multiemployer bargaining unit, placed into effect the Association's final proposal.[3] The proposal, among other things, provided for a weekly minimum wage of $292.56 for a 38-3/4-hour workweek, or $7.55 per hour. The recently terminated contract provided for a 35-hour workweek at $264, or $7.54 per hour. The Union was adamantly opposed to any change in the 35-hour workweek and instructed the employees to refuse to work and told them to engage in a strike if the employers implemented the Association's final offer, in particular if they implemented that part of the offer which increased the employees' hours of work. The result was that on or about November 15 through 17, 1976, the employees of 16 employers refused the 38-3/4-hour workweek instituted by these employers and engaged in a strike.[4]

[1] Colby Poster Printing Co.; Dunn Bros. Commercial Printers; Eureka Press Co.; Guild Printing; Inter-State Press; Leighton-Wood Typographers; Los Angeles Type Founders, Inc.; Modern Typesetting Co.; Monsen Typographers of California; Nicholas-Preston Company; Rex Franklin Typesetting Co.; Trend Typographers; Type Incorporated; Vogel Type Service, Inc. d/b/a Skil-Set Typographers; Typographic Service Co.

[2] Central Typesetting Co. and Advertisers Composition Company Typographers, Inc.

[3] Leighton-Wood Typographers, the 17th employer, did not implement the Association's final offer until on or about November 22, 1976.

[4] The employees of the 17th employer, Leighton-Wood Typographers, struck on or about November 22, 1977, when that employer implemented the Association's final offer.

Immediately, representatives of the Union contacted each struck employer and, as Union President Hughes testified, in effect offered to have an employer's striking employees return to work if the employer agreed to operate under the terms of the recently terminated contract, rather than operate under the terms of the Association's final contract proposal. I recognize that Hughes testified that he did not *in haec verba* offer to end the strike against a particular employer if the employer agreed to operate under the terms of the old contract; however, it is plain from Hughes' entire testimony and the whole record that it was clearly understood by all of the parties—the Union and the 17 employers—that an employer's striking employees would return to work if the employer agreed to reinstate the terms of the old contract, in particular to reinstate the 35-hour workweek. Several employers expressed concern to the Union that the Association would sue them if they discarded the Association's final contract proposal and resumed operation under the terms of the old contract.[5] Hughes consulted the Union's attorney about this question and, on November 19, 1976, sent identical letters to the 17 employers stating "we have been told the employers were given some erroneous information. Maybe the contents of the enclosed letter would be of some information to you." The enclosed letter was a letter to Hughes from the Union's attorney which, in substance, states that in the attorney's opinion the 17 employers would not be liable to the Association if they operated under the terms of the recently terminated contract rather than under the terms of the Association's final contract proposal and concludes with the declaration: "[I]t is my opinion that it would not expose these employers [referring to the 17 employers] to any liability even if they were to sign separate agreements with your union."

On December 15, 1976, Hughes sent identical letters to the 17 employers which informed them, "we [the Union] are becoming increasingly concerned with the lack of activity in negotiations over the last few weeks . . . [and] the barrage of written misinformation given to you and our members." The letter goes on to say that the Union has been trying without success since November 17 to get the Association's director of industrial relations, Lad Sabo, to bargain with the Union and, on this subject, the letter declares: "Let me restate: Our committee is still seeking negotiations with the employers." After discussing the alleged misinformation circulated by the Association, the letter to the employers concludes:

> [W]e need to resolve our differences. The one sure way of doing this is to meet. It does no good for Sabo to lie and say the Union will not meet when every effort toward meeting has come from the Union's side. We stand ready to meet with you singly or collectively, with or without your PIA representative. On two occasions I have offered to step down from my position if such action would result in productive meetings. On both occasions, Sabo refused to approve such action. I repeat the offer now and ask that your efforts be directed to securing such a meeting and resolving our mutual problems.

On December 23, 1976, the Union mailed a bulletin to the 17 employers which in substance informed them that after 33 days without a negotiation meeting the Union and Association negotiators had met on December 20, 1976, and, after describing what took place at this meeting, criticized the Association's bargaining position and concluded:

> It's time to get back to work and it's time to stop what may be irreversible losses to both Employers and Members. In searching for avenues to a solution, may we suggest to the Employers that *all 17 employers* attend a joint meeting with our Scale Committee [the Union's negotiating committee]. This kind of meeting should serve to make all aware of what truly is happening in negotiations and it might afford us all the opportunity of finding an equitable and liveable settlement.

During November and December 1976, after the start of the strike, 7 of the 17 employers entered into separate oral agreements with the Union.[6] The seven employers agreed to scrap the Association's final offer and reinstate the terms of the old contract, in particular the 35-hour workweek. The Union agreed to end, and in fact did end, the strike against the seven employers. The Union, in connection with its agreement to end the strike against Inter-State Press, also agreed that the company would have a choice of executing a regular collective-bargaining contract based upon the final contract that was negotiated between the Union and either the Association, or Parker & Son Printing, or Sorg Printing.[7] Also, the Union's secretary-treasurer, Kelly, asked the plant manager of Rex Franklin Typesetting if the company would be willing to put the strikers back to work under the terms of the old contract and then ultimately agree to the terms of the contract entered into between the Union and Parker & Son Printing. Likewise, the Union's president, Hughes, asked Rex Franklin's plant manager if the company would be willing to agree to a contract embodying the terms of the one executed by the Union with Parker & Son Printing.[8] In addition, during November and December 1976, the Union presented two complete contract proposals to Rex Franklin Typesetting, which differed from the Association's current contract proposal, and asked the company to consider the contracts and whether it would be willing to sign either one of them.[9]

[5] Early in November 1976, the 17 employers met at the Association's office, at which time each one agreed they would implement the Association's final contract proposal when advised to do so by the Association. The Association's attorney, who was present, told the employers it was his opinion that each employer's promise to implement the Association's final contract proposal was a legally binding agreement.

[6] The seven employers and the approximate dates on which they entered into the agreements are as follows: Type Incorporated, 11/16/76; Leighton-Wood Typographers, 11/24/76; Dunn Bros. Commercial Printers, 11/29/76; Guild Printing, 11/29/76; Inter-State Press, 11/30/76; Rex Franklin Typesetting Co., 12/27/76; Trend Typographers, 12/7/76.

[7] Based upon the credible testimony of Phillip Shean, Inter-State Press' general manager, who impressed me as a more credible witness than the Union's president, Hughes, who denied that this occurred.

[8] Based upon the testimony of Richard Robles, the plant manager of Rex Franklin Typesetting, who impressed me as a more credible witness than the Union's president, Hughes, who denied having engaged in this conduct.

[9] Robles, the company's plant manager, testified that Hughes and Kelly presented these contracts to him for the company's consideration and asked

During November and December 1976, union officials told various of the 17 employer-members that in the Union's opinion, Lad Sabo, the Association's director of industrial relations and its chief negotiator, was the person responsible for the bargaining impasse and that without him there would be progress in the negotiations. Also, Union President Hughes on several occasions prior to and during the strike mentioned to the Association's negotiators that he would remove himself from the Union's negotiating committee if Sabo removed himself from the Association's, thus leaving the other members of the committee to conduct the negotiations. However, in certain instances the Union went beyond merely stating bargaining would progress if Sabo was removed as the Association's principal negotiator. Union Secretary-Treasurer Kelly told Robles, the plant manager of Rex Franklin Typesetting, that negotiations were a mess and asked Robles "why don't all you guys [referring to the 17 employers] get together and form your own association and negotiate without the [Respondent Association]." Likewise, Hughes, in Kelly's presence, told an owner of Rex Franklin Typesetting that the company "should try to get the employers together, that nothing seems to be happening through the [Respondent Association]." And Hughes told Frank Kjeldgaard, the owner of Trend Typographers, that the 17 employers needed a leader to settle their contract dispute with the Union and suggested that Kjeldgaard act to get the 17 employers together to settle the dispute.

On January 4, 1977, the Union's and Association's negotiators met at the office of the Federal Mediation and Conciliation Service. The pertinent events which took place at this meeting can be briefly stated. Shortly after the meeting opened, Lad Sabo, the Association's director of industrial relations, told the Union's negotiators that, in view of the Union's conduct and in view of the arrangements that had been made by the Union to terminate its picketing of various employers, he was formally notifying the Union that the members of the multiemployer unit were unilaterally withdrawing from the unit, and from that day forward he would be representing the 17 employers on an individual basis. Kenneth Paririe, the Union's International representative, who was the spokesperson at this meeting for the Union's negotiating team, replied in substance that the Union was there to bargain with the Association as the representative of all 17 employers. The Union, however, did not refuse to continue to bargain with Sabo, but, to the contrary, at the mediator's request, agreed to submit a new bargaining proposal in an effort to break the bargaining deadlock.

2. The events which post-date the dissolution of the multiemployer bargaining unit

On January 5, 1977, a new contract proposal was submitted to Sabo, at the Association's office, by the Union.

On January 7, 1977, Sabo and the Association's attorney met briefly with the Union's president, Hughes, at the Union's office. Sabo told Hughes several of the employers had indicated an interest in the Union's January 5 contract proposal. Hughes asked if Sabo represented the 17 employers. Sabo replied in the negative and indicated he represented some of the employers on an individual basis. Hughes stated the Union recognized the 17 employers as one bargaining unit and if Sabo was prepared to negotiate for the 17 employers as one unit for him to contact the mediator who would arrange for a negotiation meeting. Sabo indicated he would contact the mediator and left.

On January 13, 1977, the Union filed the instant unfair labor practice charges against Respondent Association alleging that the Association violated Section 8(a)(5) and (1) of the Act by "refusing to submit a collective bargaining offer made by the [Union] to the employer members at [sic] Association for a ratification vote, and repudiating a multiemployer bargaining association."

On January 18, 1977, Sabo and the Association's attorney met with the Union's negotiating team at the office of the Federal Mediation and Conciliation Service. They caucused in separate rooms. The Federal mediator informed the Union's negotiators that Sabo wanted to discuss the Union's last bargaining proposal on behalf of some of the 17 employers. The Union's negotiators refused to do this, stating they were there to meet with the representative of all 17 employers. The mediator stated that the Association's attorney had stated that the employers who had made separate deals with the Union had broken up the multiemployer bargaining unit and that the Association represented only those employers that had not made deals with the Union. This was the last meeting between the Union and the Association.

Subsequent to the multiemployer bargaining unit's formal dissolution by the Association on January 4, 1977, the Union ended its strike against three more employers: Colby Poster Printing Company, January 18, 1977; Los Angeles Type Founders, January 13, 1977; and Skil-Set Typographers, late in February or early March 1977. The strike against these employers was terminated pursuant to separate verbal agreements negotiated by the Union with each employer. In Colby Poster Printing Company's case the Union agreed to end its strike when Colby agreed to scrap the Association's final contract proposal and accepted the Union's January 5, 1977, contract proposal with several modifications.[10] Regarding Skil-Set Typographers and Los Angeles Type Founders, the Union agreed to end the strike against them when the company agreed to scrap the Association's final proposal and to reinstate the terms of the old contract, in particular the 35-hour workweek.[11]

him whether the company would be willing to sign either one of the contracts. Kelly did not deny that this occurred. Hughes denied having engaged in this conduct; however, Robles impressed me as the more credible witness.

[10] Based upon the credible testimony of Colby's owner, Herbert Colby, who impressed me as a more credible witness than Union President Hughes, who denied that the Union entered into this agreement with Colby. Colby's union chapel chairman, Don Pauleus, who was in a position to corroborate Hughes' denial, did not testify.

[11] The record does not support Respondents' contention that the Union agreed that the contract between Skil-Set Typographers and the Union would be negotiated directly between Skil-Set and the Union. The record simply shows that a union representative answered "we will see what we can do" when Skil-Set's owner indicated that if the company returned to work under the terms of the old contract it would no longer negotiate through the Association but negotiate by itself. Nor does the record establish, as Respondents claim, that the Union sent Leighton-Wood Typographers a contract proposal which had not been submitted to the Association or that the Union negotiated all of the terms and conditions of employment with Rex Franklin Typographers.

Subsequent to January 5, 1977, Hughes spoke to several employers about the Union's January 5 contract proposal and instructed Charles Garcia, a member of the Union's negotiating team, to engage in similar conversations. Hughes testified he asked the employers to force Sabo to call a meeting of the 17 employers for the purpose of considering the Union's contract proposal and that he also asked employers to contact other employers for this purpose. Hughes in general did not impress me as being a trustworthy witness. This, plus an examination of the portions of the record which set forth the evidence as to what Hughes specifically said on this subject to representatives of Colby Poster Printing, Dunn Bros. Commercial Printers, Guild Printing, and Los Angeles Type Founders, and what Garcia said on this subject to representatives of Inter-State Press and Leighton-Wood Typographers, leads me to conclude that both Hughes and Garcia spoke to the employers whose employees were no longer on strike and, without mentioning Sabo's name or the Association, asked the employers to arrange to have a meeting of the 17 employers for the purpose of considering or voting on the Union's January 5 contract proposal.

B. *Ultimate Findings and Discussion*

1. Respondent Typographic Service's alleged direct dealings with its employees.

On or about November 16, 1976, when Respondent Typographic Service placed into effect the terms of the Association's final contract offer, the company's employees left work and engaged in a strike which is still in progress. One of the strikers is Sammy Howard. It is undisputed that on December 30, 1976, Howard had a conversation with the Company's owners, Les Atkinson and James Johnson. The complaint, referring to this conversation, alleges that "on or about December 30, 1976, Respondent Typographic through Atkinson, bargained directly with its employees . . . in derogation of the Union as the exclusive collective bargaining representative of the employees," in violation of Section 8(a)(5) and (1) of the Act. Howard, Atkinson, and Johnson testified about this conversation. Atkinson and Johnson impressed me as more reliable and credible witnesses than Howard and, to the extent that their version of what occurred is not consistent with Howard's, I have rejected his testimony.[12]

Atkinson and Johnson asked Howard to come into the shop on December 30, 1976, because he had been observed in an emotional state while on the picket line which seemed to be out of character for him. They spoke with him in Atkinson's office. The blocking of vehicles by the pickets and the pickets' use of intemperate language was discussed. All three agreed this type of conduct did nothing to help resolve the labor dispute. Atkinson expressed the view that Howard should not be as emotional while picketing. Howard explained that he was upset because a striker replacement had tried to run down his son and because the striker replacements were taking his job. Atkinson stated that the Company had been forced to hire replacements in order to continue to do business. Howard expressed a desire that the strike should come to an end, so he, and the other strikers, could return to work, but stated that the strikers objected to the terms of the Association's contract offer which the employers had implemented. Howard explained that the Company's employees did not object to that part of the offer which called for a 38-3/4-hour workweek, but objected to other parts of the offer which he did not specify. Atkinson and Johnson stated that the union representatives had told the Association's negotiators that the employees were opposed to the 38-3/4-hour workweek. They told Howard that the Company's employees who were on strike should reduce their objections to the Association's contract proposal into writing and communicate this information to the union representatives as well as to Atkinson and Johnson who would transmit the information to the Association's representatives. In this fashion, Atkinson and Johnson told Howard they might be able to get both of the parties talking so as to break the bargaining deadlock and get the negotiations moving toward a conclusion.

I am of the opinion that Atkinson's and Johnson's suggestion to Howard, that the Company's striking employees inform the representatives of the Union and the Association about the employees' objections to the Association's current contract proposal for the purpose of getting the parties talking so as to break a bargaining impasse, does not rise to the level of individual bargaining as alleged in the complaint. Accordingly, I shall recommend that this portion of the complaint be dismissed.

2. The dissolution of the multiemployer bargaining unit

On January 4, 1977, the Respondent Association formally announced the dissolution of the multiemployer unit and on that date and continuing thereafter refused the Union's demand that bargaining continue in the multiemployer unit. The complaint alleges that the Association's refusal to continue bargaining with the Union in the multiemployer unit, occurring as it did after the start of negotiations, constitutes a refusal to bargain within the meaning of Section 8(a)(5) of the Act.

In *Retail Associates, Inc.*, 120 NLRB 388 (1958), the Board set forth the rules governing the withdrawal of an employer or a union from multiemployer bargaining. An employer may withdraw without the union's consent prior to the start of bargaining by giving unequivocal notice of intent to abandon the multiemployer unit and to pursue negotiations on an individual basis. However, once negotia-

[12] Howard also testified about certain prestrike conversations he had with Atkinson on September 25 and November 15, 1976, and about post-strike conversations he had with Atkinson on November 21 and 28, 1976. In pertinent part, Howard testified in substance that on September 25 and November 15, Atkinson solicited him to remain at work in the event of a strike with the promise that the Company would never sign a contract with the Union which would jeopardize its employees who did not support a strike called by the Union. Likewise, Howard testified that on November 28, Atkinson solicited him to return to work, promising he would never sign a contract with the Union which jeopardized Howard because Howard had not supported the strike by returning to work. Howard also testified that on November 21, Atkinson told him he hoped Howard would get the other strikers together and put pressure upon the Union to get the contract negotiations settled.

I have not considered whether the aforesaid testimony supports a finding of an unfair labor practice encompassed by the allegations of the complaint or was fully litigated, for I reject the testimony of Howard in its entirety because Atkinson in each instance credibly denied making the aforesaid statements Howard attributes to him.

tions have actually begun, withdrawal can only be effectuated on the basis of mutual consent or unusual circumstances. The Board has limited application of the term "unusual circumstances" to those cases in which "the very existence of [the withdrawing employer] as a viable business entity has ceased or is about to cease" (*Hi-Way Billboards, Inc.*, 206 NLRB 22, 23 (1973), enforcement denied 501 F.2d 181 (C.A. 5, 1974)), or the unit has been fragmented or dissipated to the point where the unit is no longer viable.[13] *Connell Typesetting Co.*, 212 NLRB 918 (1974). Also see *N.L.R.B.* v. *Southwestern Colorado Contractors Association, et al.*, 447 F.2d 968, 969 (C.A. 10, 1971). Applying these principles, it is clear that the dissolution of the multiemployer unit was untimely and that the Association's refusal to continue bargaining with the Union in the multiemployer unit was unlawful absent a showing of mutual consent or unusual circumstances. The considerations set forth below persuade me that unusual circumstances justified the dissolution of the multiemployer unit.[14]

The multiemployer bargaining unit has dissipated to the point where only 7 of the 17 employers remain, as a practical matter, as active participants in the bargaining. Thus, prior to the dissolution of the unit on January 4, 1977, the Union notified each employer that it would be legal for the employers to terminate the Union's strike by entering into separate agreements with the Union[15] and 7 of the 17 employers did in fact enter into separate agreements under the terms of which they capitulated as to a major item (the 35-hour workweek) over which the bargaining had deadlocked. Also, following the breakup of the multiemployer unit, three more employers entered into similar agreements with the Union. It is true that 7 of the 10 employers who entered into agreements still remained obligated to abide by any ultimate contract entered into by the Association with the Union and to this extent remained a part of the multiemployer unit.[16] However, having in effect reached agreement with the Union concerning the 35-hour workweek, which was a major issue preventing agreement from being reached in the multiemployer unit, the 10 employers, as a practical matter, are no longer able to contest this issue at the bargaining table. Their strength has been removed from the multiemployer unit and they, in effect, have withdrawn from further multiemployer bargaining. In other words, prior to the formal dissolution of the multiemployer unit, the Union, by bargaining directly with the employers in derogation of the Association's bargaining authority and by securing the agreement of seven employers to discard the Association's bargaining proposal, in particular to discard that part of the proposal which was essential to the Association's bargaining position and over which negotiations were deadlocked, fragmented the multiemployer unit to such an extent that it terminated the unit's viability and seriously impaired the vitality of group bargaining. The integrity of the multiemployer unit was further compromised when, following the formal dissolution of the multiemployer unit, the Union, continuing its policy of dealing directly with the separate employers, in effect consented to the dissolution of the unit by entering into separate agreements with three other employers.

In addition to fragmentizing the multiemployer unit so as to seriously impair its vitality, the Union contemporaneously engaged in a course of conduct in derogation of the Association's bargaining authority. In response to the Association's lawful conduct of refusing to continue bargaining meetings until changed circumstances indicated further meetings would be fruitful to break the bargaining impasse, the Union bypassed the Association and solicited the 17 employers to meet either singly or collectively with the Union's negotiators without the Association's negotiators. On December 15, 1976, the Union told each employer "we stand ready to meet with you, singly or collectively with or without your PIA representative." On December 23, 1976, the Union told each employer that the 17 employers should meet with the Union's negotiating committee, outside of the presence of the Association, for the purpose of "finding an equitable and liveable settlement."[17] And union representatives suggested to the officials of two employers, Rex Franklin Typesetting and Trend Typographers, that the 17 employers either form another association or meet without the Association to negotiate a contract with the Union.

Based on the foregoing, I find that the multiemployer unit involved herein has, with the consent of the Union, been so reduced in size and strength that it would be unfair and harmful to the collective-bargaining process to require the continuation of bargaining on a multiemployer basis. This is especially true where, as here, the Union at the same time it was fragmentizing the unit was also engaged in a campaign designed to bypass the Association in reaching a final contract with the employers.[18]

[13] The Board does not regard a genuine impasse in negotiations between a union and a multiemployer bargaining association to constitute an unusual circumstance to justify the withdrawal of a union or an employer from multiemployer bargaining. *Hi-Way Billboards, Inc., supra.* For this reason, I reject Respondents' contention that the bargaining impasse in the present case permitted it to dissolve the multiemployer unit and refuse to continue bargaining with the Union on a multiemployer basis. I recognize several of the circuits courts have held, contrary to the Board, that a negotiating impasse justifies unilateral withdrawal from a multiemployer bargaining unit. See *N.L.R.B.* v. *Beck Engraving Co.*, 522 F.2d 475 (C.A. 3, 1975), and cases cited therein. However, it is not for me to speculate as to what course the Board should follow where a circuit court has expressed disagreement with its views; rather I have a duty to apply established Board precedent which the Supreme Court or the Board has not reversed. *Charles D. Bonanno Linen Service, Inc.*, 229 NLRB 629 (1977).

[14] In view of this conclusion, I have not considered Respondents' contention that the multiemployer unit was dissolved with the consent of the Union or its further contention that the Union has waived its right to object to the dissolution of the unit and is estopped from raising such an objection.

[15] This was the import of the letter from the Union's attorney distributed to the 17 employers.

[16] The Union told two of the employers, Inter-State Press and Rex Franklin Typesetting, that they could enter into a regular collective-bargaining contract different than the one entered into between the Union and the Association. And a third employer, Colby Poster Printing, entered into a contract with the Union based upon the terms of the Union's January 5 contract proposal.

[17] The December 23 bulletin distributed to the employers did not expressly, *in haec verba*, state that the employers should meet for negotiations without their bargaining representative; however, it is clear from the contents of the bulletin that it was the Union's intent to communicate this meaning to the employers.

[18] Those cases where a union has entered into interim agreements with one or more employers in the context of multiemployer bargaining, yet the Board has refused to allow employers to unilaterally withdraw from the multiemployer unit, are inapposite to the instant case. In those cases there was no showing, as in the instant case, that the unit had been so decimated in size and strength that it would be unfair and harmful to the collective-bargaining process to require the continuation of bargaining on a multiemployer basis.

(Continued)

Accordingly, I find that the Respondents did not violate Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union in the multiemployer unit.

Also, in those cases, the remaining employers were willing to and did continue to bargain with the union on a multiemployer basis. Here, the remaining employers were unwilling to continue negotiations on a multiemployer basis. See *Associated Shower Door Co., Inc.*, 205 NLRB 677 (1973), where the Board, in declaring "[w]e cannot agree . . . that a multiemployer unit may no longer be a valid bargaining unit merely because, after impasse, the Union has secured individual agreements from several of its members," explained "to suggest that withdrawal from the established unit . . . may result in the destruction of the multiemployer unit *where the remaining members and the Union are willing to do and do continue bargaining on that basis* is an entirely novel theory. . . . " (Emphasis supplied.)

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

ORDER[19]

The complaint is dismissed in its entirety.

[19] In the event no exceptions 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.