

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**PARK MAINTENANCE, PALISADES MAINTENANCE
AND PARK VIEW TOWERS, ALTER EGOS**

and

**Cases Nos. 22-CA-26709
22-CA-27008**

**LOCAL 11, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO**

*Jeffrey P. Gardner, Esq., Newark, NJ,
for the General Counsel.*

*Philip Feintuch, Esq. (Feintuch, Porwich & Feintuch, Esqs.),
Jersey City, NJ, for the Respondents.*

*Rey Lopez, Vice President, Teamsters Local 11,
for the Union.*

DECISION

Statement of the Case

STEVEN DAVIS, Administrative Law Judge. Based on a charge, a first amended charge, and a second amended charge filed by Local 11, International Brotherhood of Teamsters, AFL-CIO (Union) in Case No. 22-CA-26709 on December 16, 2004, March 30, 2005, and January 18, 2006, respectively, and based on a charge filed by the Union on July 12, 2005 in Case No. 22-CA-27008, a complaint was issued against Park Maintenance, Palisades Maintenance (Palisades) and Park View Towers, Alter Egos, on January 31, 2006. On March 21, 2006, a hearing was held before me in Newark, New Jersey.

The complaint alleges that Palisades and Park Maintenance, both enterprises engaged in repairing and maintaining an apartment complex owned by Park View Towers, were established by Park View Towers as a subordinate instrument to and a disguised continuation of Park View Towers. Based on those assertions, it is alleged that the three entities are alter egos and a single employer.

It is alternatively alleged that in January, 2005, Park Maintenance acquired the business of Palisades and has operated the business in unchanged form and has employed a majority of its employees who were previously employees of Palisades. Based on those assertions, it is alleged that Park Maintenance is a successor to Palisades.

The complaint alleges that on April 27, 2004, the Union and Palisades reached an agreement on a successor collective-bargaining agreement covering the building service employees working at Park View Towers. The complaint also alleges that since about May, 2004, the Union requested Palisades to sign the contract, and that since August 6, 2004, Palisades refused to do so.

The complaint further alleges, and the answer admits, that since September, 2004, Palisades transferred unit employees from its health plan to the health plan maintained by Park

View Towers without the Union's consent. The complaint finally alleges, and the Respondents deny, that on about June 16, 2005, Park View Towers and Park Maintenance withdrew their recognition of the Union.

5 The answer asserts certain affirmative defenses including that neither Park View Towers
 nor Park Maintenance recognized the Union at any time, and that the Union was not the
 bargaining agent of the employees for either entity. The answer further asserts that the Union
 abandoned its representation of the employees and failed to cover them with medical insurance.
 10 At hearing, the Respondents argued that the initial charge was not timely filed under Section
 10(b) of the Act.¹

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

15

Findings of Fact

I. Jurisdiction

20 Respondent Park View Towers, having its office and place of business in West New
 York, New Jersey, has been engaged in the operation of a residential apartment complex. The
 complaint alleges and the answer admits that during the past year, Respondents Park View
 Towers and Park Maintenance derived gross revenues in excess of \$500,000 from their
 operations. Based upon these admissions, I find that the Respondents have been employers
 25 engaged in commerce within the meaning of Section 2(2), (6) and (7) of the act. The
 Respondents admit that the Union is a labor organization within the meaning of Section 2(5) of
 the Act.

II. Alleged Unfair Labor Practices

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A. The Facts

1. Park View Towers and Palisades Maintenance

35 James M. Canino, Sr. (Canino Sr.) is the general partner of Park View Towers, a two-
 building, 24 floor apartment complex with 684 units and a 350 car parking lot.

40 Palisades Maintenance was formed in order to provide cleaning and maintenance
 services for Park View Towers, its sole customer. James R. Canino, Jr. (Canino Jr.) and Lisa
 D'Alesandro, the children of Canino Sr., each owned 50% of Palisades. Canino Jr. was its
 president, and Lisa D'Alesandro was its secretary-treasurer. In addition, in 2002, Maria Oliva,
 the niece of Canino Sr., became the corporate secretary of Palisades, which had its office in the
 premises of Park View Towers. Park View Towers purchases all equipment and supplies used
 by Palisades, and bills Palisades for the amount of the purchases.

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¹ I reject the Respondents' 10(b) argument. Palisades did not "clearly and unambiguously"
 refuse to execute the successor collective-bargaining agreement until August 6, 2004.
 50 Inasmuch as the charge alleging such refusal was filed on December 20, 2004, the charge was
 timely filed within the six-month Section 10(b) period. *Liberty Ashes, Inc.*, 314 NLRB 277, 279
 (1994).

Canino Jr., Canino Sr., and Oliva were responsible for hiring the Palisades maintenance employees. The day-to-day frontline supervisor of the porters was Carlos Rodriguez, who was an employee of Park View Towers, and has not been employed separately by Palisades. From January 1, 2004 to December 31, 2004, there were 13 unit employees employed by Palisades in classifications including porter, landscaper, and painter. Of those, 7 left their employ for various reasons including retirement or discharge. Three new workers were hired in 2004, but all three were no longer employed there by July, 2004. Accordingly, on December 31, 2004, only three workers remained employed by Palisades: Porter Rafael Molina, landscaper Claudio Andia, and part-time employee Donatila Andia.

Canino Sr. testified that Palisades' employees did all the janitorial work at Park View Towers, and worked only at that building. Such work included cleaning, portering, washing the lobby floor, vacuuming the upper floors, removing litter from the parking lot, taking out the garbage and separating the recyclable items. The employees had no repair duties to perform in the apartments. When a vacancy arose, other workers, mainly carpenters but not the unit employees made repairs and prepared the apartment for re-renting.

Canino Sr. further testified that Park View Towers funds Palisades, and as the general partner of Park View Towers, if he believes that the contract between Palisades and the Union is too expensive, he would cancel Palisades' funding and "fire" Palisades.

2. The Bargaining

The admitted collective-bargaining unit is as follows:

All full-time and regular part-time building service employees employed in the building known as Park View Towers, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Respondents admit that the Union has been the designated exclusive collective-bargaining representative of the unit as represented by successive collective-bargaining agreements, and until June 16, 2005, had been recognized as such by the Respondents.

Since 1996, Rey Lopez, the Union's vice-president and business agent, had been representing the employees of Palisades who work at Park View Towers. He stated that the only official he had dealt with since that time was Canino Jr., with whom he negotiated the last contract which was signed by them in June, 2001. Although Lopez had met Canino Sr. briefly before 2004, Canino Sr. had never been involved with negotiations for a new contract. Canino Sr. stated that he "oversaw" the agreements negotiated with the Union in the past, and he had "input" in all the prior contracts. He further stated that he had been present at the 2001 negotiation, but did not know why he did not sign that contract, perhaps, he believed, because he wanted his son and daughter to "take over," and he "wanted to give him that authority so as to get used to how to handle it."

On February 23, 2004, Lopez sent a letter to Canino Jr, asking to meet to begin negotiations for a successor collective-bargaining agreement to replace the contract which was due to expire on May 31, 2004. Simultaneously, letters were sent to federal and state mediation agencies. Lopez stated that sometime after the letters were sent, Canino Jr. called and said that he was ready to negotiate. Lopez told him that he did not yet have proposals to present.

On March 24, Lopez met with four employees to discuss the Union's contract proposals.

They agreed that continued health benefits was a priority, and that since the cost of such benefits had risen considerably, they would not make extreme demands in other areas.

On March 31, Lopez sent the Union's contract proposals to Canino Jr., and asked him to call to arrange a date to begin negotiations. Thereafter, Canino Jr. called and requested a meeting date of April 27 because he and Lopez would be meeting the following day to conclude negotiations for Overlook Terrace, another building in which Canino Sr. was a part owner, and Canino Jr. wanted the contracts to run "side by side" to "mirror each other."

a. The April 27 Negotiations

At the meeting on April 27 at the Palisades office which is situated at the Park View Towers facility, Lopez and shop steward Rafael Molina met with Canino Jr., who signed the attendance sheet as president of Palisades Maintenance.² During the one hour meeting, the parties discussed the Union's proposals, Palisades not having presented its own list of demands. Canino Sr. stated he could not be present at the meeting because he was with his ill wife in Florida.

Lopez testified that he and Canino Jr. discussed each of the Union's proposals. Canino Jr. either agreed to each one or disagreed, and if he disagreed the Union withdrew it. Lopez' notations on his proposal, written at the meeting, support his testimony. He stated that at the end of the negotiations that day they reached agreement and shook hands, as follows:

b. The Union's Proposals and Canino Jr.'s Responses

The following narrative is based on Lopez' testimony and the documentary evidence.³ The Union proposed and Canino Jr. agreed to (a) a change in the contract to set forth the Union's new address (b) supply safety belts and winter jackets for the workers and (c) a term of three years for the new contract which would run from June 1, 2004 to May 31, 2007. However, at the end of the meeting or the next day, Canino Jr. asked that the expiration date be changed to December 31, 2007 – the same date the Overlook Terrace contract was due to expire, and Lopez agreed.

The Union proposed a \$1.00 per hour wage increase in each of the three years of the contract. Canino Jr. agreed to a 25 cents per hour wage increase in each of the three years of the contract, and Lopez accepted that sum.

Canino Jr. refused to agree to the Union's proposals for (a) a five cents per hour longevity increase for each year of service in the first year of the contract (b) the addition of two paid floating holidays (c) an increase in the number of vacation days for employees employed from 11 to 15 years (d) a union-sponsored pension fund and (e) a 401(k) plan.

With respect to Article 13, the Union proposed and Canino Jr. agreed to change the title of that Article from "Welfare" to "Health Benefits."

² The General Counsel and the Respondent each request that I draw an adverse inference from the other party's failure to call Molina to testify as to what was said at that meeting. The negotiations were conducted in English and according to the General Counsel's brief, Molina does not speak and may not understand English. Accordingly, his testimony as to what was said at the session would have no value.

³ Canino Jr. died in September, 2004.

The Union proposed that the health benefit rate be:

- 5 (a) \$637.00 per employee per month effective June 1, 2004, which constituted an increase of \$217.00 per month per employee from the expiring contract;
 (b) \$733.00 effective June 1, 2005 - an increase of \$96.00 over the prior year; and
 (c) \$843.00 effective June 1, 2006 – an increase of \$110.00 over the prior year.

10 When these rates were presented, Canino Jr. told Lopez that “you are out of your mind.” Lopez responded that since benefits were increased, the premiums for the benefits were also raised, and that the health benefit rates are “non-negotiable.”

15 At hearing, Lopez explained that if an employer did not want to pay the rates presented, Lopez would suggest an alternative plan with less coverage and benefits and lower premiums. However, in this negotiation, Canino Jr. did not make such a request and there was no discussion concerning alternate coverage or rates. In addition, Canino Jr. did not say that Palisades could not pay or could not afford those new rates. Rather, Canino Jr. agreed to these terms but wanted the employees to pay \$10.00 per week as an employee contribution (called a “co-pay”) toward the increased cost of the health benefits. The co-pay rate in the expiring contract was \$5.00 per week. The co-pay did not relate to the amount of money paid for a doctor visit. Rather, it was the amount the employee contributed so that the actual amount of money paid by Palisades would be reduced by \$40.00 per month. Lopez agreed to that amount which was proposed by Canino Jr.

25 Lopez also proposed and Canino Jr. agreed that employees hired on or after June 1, 2004 receive a starting hourly wage of \$9.00; those hired on June 1, 2005 receive \$9.50, and those hired on June 1, 2006 receive \$10.00. In addition, Canino Jr. told Lopez that he had a problem retaining new employees and wanted to provide a merit raise to encourage retention. Lopez agreed to include merit increase language in the agreement.

30 At the end of the negotiations that day, Lopez and Canino Jr. said “this is the agreement” and shook hands. Lopez testified that they reached “total agreement” that day, and that the only oral agreement made was to change the expiration date so that this contract and the Overlook Terrace agreement would expire on the same day. Lopez said that he would send a Memorandum of Agreement (MOA). Lopez conceded that Canino Jr. did not sign or initial the written Union proposal that they worked from that day, but Lopez made notations on his copy of the Union’s proposals as to what was agreed. Those notations conform to the MOA sent to Palisades for signature.

40 c. The April 28 Meeting

45 On April 28, Lopez and Overlook Terrace shop steward Mario Allegro met with Merci Orbe-Henao, the property manager for Overlook Terrace, Anthony Palmeri, the managing agent of Overlook, Jim Conforti, a co-owner of Overlook with Canino Sr., and Maria Oliva who is the controller for Park View Management Corporation which manages Palisades and Park Maintenance. Also present was Canino Jr. who was listed as “agent” on the Overlook attendance sheet. Lopez testified that he had never before negotiated with Canino Jr. for Overlook Terrace. They met at the Overlook Terrace building.

50 According to Lopez, the purpose of the meeting was to negotiate the terms of a new collective-bargaining agreement with Overlook Terrace and not with Palisades. The attendance sheet is entitled “contract negotiations with Overlook.”

5 Lopez denied that the prior day's negotiations with Palisades continued on April 28 or that these were Palisades' negotiations at all. However, he stated that at the end of the negotiations with Overlook, Canino Jr. requested, and he agreed that the Palisades agreement be modified to reflect the agreement reached that day with Overlook in three respects: (a) wage
10 increases of 15 cents, 25 cents and 25 cents in each of the three years of the contract instead of 25 cents each year as agreed the day before (b) employee weekly co-payment of health benefits of \$10.00, \$10.00 and \$15.00 in each of the three years of the contract instead of \$10.00 for each of the three years agreed the day before⁴ and (c) the expiration date was changed to be the same as the Overlook contract.

15 Lopez stated that he agreed to Canino Jr.'s requests to modify the Palisades agreement because at that point the Union's members had not ratified the agreement reached and he had not prepared the MOA. He incorporated these changes in the MOA he sent to Canino Jr., as set forth below.

20 Lopez stated that at the end of the negotiations with Overlook that day, he shook hands with the participants and told them that he would put the agreements with Palisades and Overlook in writing and send them for signature. No further negotiations were discussed or scheduled.

25 Oliva testified that the negotiations which took place that day were for both Overlook and Palisades inasmuch as the Union represented both companies, and it "made sense" to negotiate collectively because they were both "interested parties" and there was a "shared ownership" (Canino Sr.) between the two entities. She was unaware that Canino Jr. had met with Lopez the previous day.

30 Oliva stated that the participants "went through" the proposals for both Overlook and Palisades, including, according to her belief, an "astronomical 100% increase" in health benefits. She stated that Lopez did not suggest that other health options could be selected to reduce the cost. Rather, he said that "there was nothing we could do about it.... His instructions to us were these are the rates and that is that. He never offered any alternative, there was a huge discussion because you can see from the numbers, the jumps were enormous." Although Lopez did not make a formal counteroffer, she considered his suggestion that new hires start at \$9.00 as a counteroffer.

35 Oliva recalled agreeing to a 25 cent per hour raise, which is not accurate since the agreed upon raise was 15 cents, 25 and 25 cents over three years. She also recalled that there would be no holidays or longevity increases. With respect to employee contributions to health benefits, she noted that at the time, Palisades's employees paid \$5.00 per week but Overlook's
40 workers paid nothing. They discussed making the contributions similar. She further stated that Lopez demanded safety belts, but that such items were already provided to the workers. They also discussed winter jackets, which were provided to Overlook's workers but not to Palisades'. Regarding the Union's demand for a 401(k) plan, Palisades would not agree to such a plan unless it received a letter from the Union stating that it would not cost it any money, and the
45 Employer's bookkeeping expenses were "not insurmountable." Oliva conceded receiving a letter

50 ⁴ In this respect, Lopez' initial testimony was confused. He stated that both Overlook and Canino Jr. demanded and he agreed that the employee co-pay would be \$10.00, \$15.00 and \$20.00 per week in each of the three years of the new contract. However, the signed MOA with Overlook confirms that the amounts agreed to are \$10.00, \$10.00 and \$15.00, as set forth above. In addition, Lopez' later testimony corrected those amounts.

from Lopez that no costs would be involved in such a plan, but was expecting more information which was not forthcoming from Lopez. I accordingly find that following Oliva's receipt of the letter that Palisades would incur no costs from the 401(k) plan, that such plan was acceptable to Palisades.

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Oliva also stated that the participants discussed the mediation and arbitration clauses which were "very strong" for the Union and Palisades sought to change such language, but apparently no substantive discussions were held because, according to her, "it was one of those things ... that fell off the table."

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Oliva stated that at the end of the meeting, Lopez announced that "this is it, okay," and she, Canino Jr. and perhaps Palmeri responded that "all these agreements or proposals need to be reviewed by James M. Canino" (Canino Sr.), and were "subject to Mr. Canino Sr.'s approval." Canino Sr. testified that his son had no authority to agree to a final contract.

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Lopez denied being told at either of the meetings that the agreements were subject to Canino Sr.'s review. However, he conceded that he was aware that although Canino Jr. negotiated the contract as Palisades' representative, he knew that "somebody else is pulling the shot behind this person." He stated that although he represents the Union, he also represents the Union's members, and must obtain ratification of the contract. "When I have my final product, I will present it to them for ratification which just means approval. Without the approval I cannot go ahead and sign the agreement. The same way with the companies." However, Lopez denied having any discussion with Canino Jr. concerning his authority to agree to a contract with or without the employees' ratification.

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Canino Sr. testified that only two or three days after the April 27 meeting, his son told him "what the Union wanted in their agreement." Canino Sr. "made a few remarks" and then his son immediately called Lopez and told him that "we have a problem with this agreement. We have to sit down with my father." Canino Sr. stated that thereafter when he "never heard from" Lopez he called him in early May and complained that he had not yet heard from or met with him, and that he wanted to meet with him to "go over this contract." According to Canino Sr., Lopez said "look, that's only my wish list." A meeting was arranged for August 6.

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d. The Union Sends the MOA

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The MOA for Palisades as prepared by Lopez essentially included the following terms:

1. The address of the Union was changed to reflect its new address.
2. A probationary period of 180 days for new employees.
3. Wage raises of 15 cents, 25 cents and 25 cents in each of the three years of the contract, and merit wage increases at the employer's discretion.
4. Health benefits increases of \$637.00, 733.00, and 843.00 per month per employee in each of the three years of the contract, with employee weekly contributions of \$10.00, \$10.00 and \$15.00 for each of the three years of the contract.
- 45 5. Summer and winter uniforms, consisting of a jacket and parka to be provided by Palisades.
6. Palisades will reimburse each employee up to \$50.00 for safety shoes.
7. Palisades agrees to participate in the Teamsters National 401(k) plan on behalf of all unit employees.

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Both the Palisades and the Overlook agreements were identical in every respect, except that the Palisades MOA included a provision that Palisades supply uniforms to its employees.

Each agreement was ratified unanimously by its respective employee unit.

On May 24, 2004, Lopez sent a letter to Canino Jr. in which he enclosed four signed and dated copies of the Palisades MOA, and asked him to sign all copies and return two to him.⁵
 5 The letter further requested that if he had any questions regarding the MOA, he should call. Lopez testified that the MOA accurately reflected the agreement between the parties and included the changes made on April 28. The MOA stated that it represented the “changes negotiated and agreed to between the parties” from the prior agreement.

10 Although Lopez stated that every item in the Palisades MOA was discussed during negotiations, he conceded that Article 17 – Uniforms, was not discussed at the sessions. That Article provides that summer and winter uniforms, including a jacket and parka, will be supplied by Palisades. Lopez’ explanation was that although that provision was in the prior contract,
 15 Palisades had not supplied uniforms in the past three years, and he believed that it was appropriate that it be included in the MOA and need not have been discussed. That explanation is valid. The MOA just dealt with the changes to be made to the expiring contract. There was no harm in the inclusion of the uniform provision in the MOA, apparently for emphasis, even though it was already included in the past contract. Oliva testified that the parties discussed the issue of shoes but she was not certain if they reached an agreement on that item. She noted that
 20 Overlook wanted the shoes provision but Palisades had never provided shoes to its employees.

At the same time, Lopez sent the same letter to Overlook with copies of its MOA. Lopez received a copy of the Overlook contract signed by manager Orbe-Henao and dated May 27. He received no reply or response from Palisades, and in early July, he called Canino Jr. who
 25 said that there was a problem with the health insurance rates, and that Lopez would have to meet with Canino Sr., who wanted a different set of proposals concerning that term. A meeting was arranged for August 6.

e. The August 6 Meeting and Subsequent Events

30 Present at the meeting were Lopez, Canino Jr., Canino Sr., and Oliva. Canino Sr. testified that he told Lopez that his son “agreed to something that he was not supposed to” because he was having certain personal problems and he “didn’t have his mind into it.” Lopez testified that Canino Sr. “totally disagreed” with all the agreed-upon terms set forth in the MOA.
 35 Lopez stated that he told Canino Sr. that if his son did not agree with the rates and prices agreed to on April 27, he should have said something the following day.

At the conclusion of the meeting, Lopez told Canino Sr: “You know what, this is the memorandum [of agreement], I thought I had a deal, whatever proposal you suggest ... what
 40 you think you can agree on ... just put it in writing ... just the same way I did my proposal ... and let me take a look at it.”

About two weeks later, on August 19, Lopez received a letter from Canino Sr. which was entitled “Memorandum of Agreement Palisades Maintenance Corp. & Overlook Terrace.” It
 45 stated “as per our conversation of August 6, 2004, we have reviewed your ‘wish list.’” Canino Sr. agreed to (a) the change of address of the Union (b) the probationary period clause for new employees and (c) wage raises of 15, 25 and 25 cents in each of the three years of the new contract, and that Palisades may grant merit raises in its discretion.

50 _____
⁵ Canino Sr. testified that he received it on the day it was sent, May 24.

However, the letter also stated that Palisades could not agree to the health benefits increases set forth in the Union's MOA. Rather, the letter stated that it would only agree to health benefits of \$433.00, 446.00 and 459.00 in each of the three years. The letter also stated that jackets and parkas were not required, Palisades refused to reimburse porters for the cost of their shoes, and stated that it did not wish to participate in the 401(k) plan.

The letter ended as follows:

In conclusion, let me outline our economic position. Our only income is predicated on an allowance based on rent increases granted by the New Jersey Mortgage and Housing Finance Agency. Over the past several years, that rental increase is minimal, and has been actually less than the C.P.I., with the exception of 2004 when the increase was 4%. We had requested 10% but were denied. We have commenced litigation to have this decision reversed and hopefully we will prevail in our litigation and be awarded the additional 6% rent increase.

I am at your convenience for any further talks with you concerning this matter.

Lopez did not respond to the letter and did not contact Palisades thereafter because he believed that it was "crazy" – a "joke" - in that Palisades was "naming its own price" as to the health benefits, and that Palisades' proposal amounted to only a 3% increase from the prior contract, far below the 20 to 35% increase in rates applicable at the time. Lopez did not believe that he was obligated to make a counteroffer to Canino Sr. Rather, he believed that it was Palisades' obligation, if it could not afford the package offered, to request a different benefits package and lower rates.

Lopez did not interpret Canino Sr.'s letter as a counterproposal or a request to renegotiate the MOA. According to Lopez, Canino Sr. simply set forth his demands in the August letter, which was untimely because they should have been presented before April 27. Lopez stated that where an employer "picks and chooses" which terms it will agree to following an agreement, he would prefer to renegotiate the entire agreement because his members would be confused as to what was agreed to and not agreed to. However, Lopez did not renegotiate this agreement because he had already reached a full agreement with Canino Jr., and because Canino Sr. (a) did not request a re-negotiation and (b) the letter simply set forth Palisades' demands which were unreasonable. Lopez concluded that he and Canino Jr. had made a "sealed agreement" which he decided to adhere to.

Canino Sr. testified that when he received the MOA on May 24, he read it and called Lopez, telling him that the document was "ridiculous."⁶ According to Canino Sr., Lopez again said that it was only his "wish list, and told him to send his "comments" to him. Although Canino Sr. said he "immediately" sent his written comments to Lopez, the letter, discussed above, was not sent until after the August 6 meeting, three months later.

Canino Sr. testified that at the August 6 meeting, they discussed the contract's terms, and Canino Sr. told Lopez "what I was willing to pay," making "counterproposals" to the MOA.

⁶ Oliva testified that she reviewed the MOA with Canino Sr. who "hit the roof" when he saw the health benefits charges, and said that he would tell Lopez that he could not afford those rates.

3. The Health Benefit Plan

5 Lopez testified that when he received Canino Sr.'s August letter, he believed that the parties would not agree to a renewal contract at least for the immediate future, so he advised the Union's Benefit Plan that Palisades refused to sign the MOA, and that the fund's benefits should be stopped immediately.

10 Accordingly, on September 9, 2004, the Northern New Jersey Teamsters Benefit Plan sent a letter to Palisades advising that its contract with the Union expired on May 31, 2004, and that the Plan would not be able to provide health coverage for participants employed by Palisades at the old contribution rate. The letter informed Palisades that coverage under the Plan would terminate the following day. A letter was also sent that day to the employees of Palisades, advising that their health coverage would be terminated the following day because 15 Palisades "renewed on its commitment to pay the increased contributions," and that "without an agreement providing for the higher rate the Plan cannot continue your coverage."

20 Shortly thereafter, Canino Sr. was told that the employees' claims for hospital and prescription drug benefits were rejected by the Union's Plan since they were no longer covered by that Plan. He then placed them on the Park View Towers benefit plan which billed Palisades for the premiums.

25 According to affidavits given to the Board agent by employees Rufino (Claudio) Andia and Rafael Molina, Lopez told them in September, 2004 that the Union would no longer represent them because Palisades would not sign the contract and there were only two employees left in the unit. Lopez testified that he told them that their health benefits would cease because Palisades refused to sign the MOA, but denied telling them that he would no longer represent them. This case is evidence that the Union continues to represent and have an interest in the employees of Palisades. 30

4. The Dissolution of Palisades and the Establishment of Park Maintenance

35 Canino Jr. died on September 24, 2004. Palisades' last day of operation was on December 31, 2004. Park Maintenance was established and began operations the following day, January 1, 2005.

40 Upon the dissolution of Palisades, Canino Sr.'s accountant determined that the value of that company was \$76,000. Canino Sr. personally purchased the value of Palisades, and inasmuch as Canino Jr. was a 50% owner with his sister D'Alesandro, Canino Sr. personally paid \$38,000 to his son's estate and \$38,000 to his daughter, who did not make any financial contribution to this transaction simply because she was his daughter.

45 Canino Sr. and D'Alesandro became the new 50% owners of Park Maintenance upon its establishment. Its officers are president Canino Sr., treasurer D'Alesandro, and secretary Oliva. It was stipulated that Oliva is an employee of Park View Management Corp., and has not been employed separately by either Palisades or Park Maintenance. Palisades operated from Canino Jr.'s desk at Park View Towers, which desk later became the office of Park Maintenance.

50 In about September, 2004, there were only three employees of Palisades: Rafael Molina, Claudio Andia, and Donatila Andia. In that month, they ceased to be employed by that company and Canino Sr. placed them on the payroll of Park View Towers. Thereafter, on

January 1, 2005, Canino Sr. put them on the payroll of Park Maintenance.

5 Canino Sr. and Oliva are responsible for hiring the building service employees of Park Maintenance. The day-to-day frontline supervisor of the porters is Carlos Rodriguez, who was an employee of Park View Towers, and has not been employed separately by Park Maintenance.

10 The payroll record of Park Maintenance establishes that on January 1, 2005, the date that Park was established, it employed six persons other than office workers: Claudio Andia, porter, Donatila Andia, part-time cleaner, Rafael Molina, porter, Nelson Dominguez, porter, Rafael Merchan, painter, and supervisor George Grafstein. Other unit employees, porter Jose Delcid and painter Michael Muniz were hired in September and October, 2005, respectively.

15 Accordingly, as of January 1, 2005, of the five unit employees of Park, three had been employed by Palisades on December 31, 2004: Claudio Andia, Donatila Andia and Rafael Molina.

20 The classifications of the eight employees employed by Park from January 1, 2005 to February 9, 2006, show that they worked at duties substantially similar, if not identical to those performed by Palisades' employees: part-time cleaning, porter and painter. Rafael Molina continued work as a porter, Claudio Andia's new classification was porter, and part-time employee Donatila Andia continued as a cleaner.

25 Canino Sr. stated that he hires employees who work for Park Maintenance who perform major renovation work in the apartments which are about 30 years old. For example, in installing new kitchens and bathrooms they perform substantial alteration work including plumbing, tile work, carpentry, heating, rebuilding walls and welding. However, the payroll records confirm that employees of Park performed work in classifications which indicate that they did not perform major alteration and renovation work at Park View Towers: part-time cleaning, porter, 30 supervisor, and painter. Park Maintenance performs work for companies other than Park View Towers, but Park View Towers is the biggest customer of Park Maintenance.

35 The equipment used by the Park Maintenance porters including, but not limited to mops, brooms, shovels, plows, and supplies is the same equipment as was used by Palisades' porters, and such equipment was purchased by, and is owned by Park View Towers.

Analysis and Discussion

I. Authority to Reach Agreement

40 The duty to bargain carries an obligation to appoint a negotiator with genuine authority to carry on meaningful bargaining regarding fundamental issues. *Schmitz Food*, 313 NLRB 554, 560 (1993). An agent assigned to negotiate a collective-bargaining agreement is clothed with apparent authority to bind the principal in the absence of clear notice to the contrary. If the agent 45 does not have authority to bind his principal, notice of that must be clearly and unambiguously given. If the employer's agent does not clearly communicate in advance the existing condition precedent of his principal's approval of any agreement, the employer's refusal to sign the agreement is unlawful. *Mid-Wilshire Health Care Center*, 337 NLRB 72, 80 (2001).

50 "Apparent authority results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe that the principal has authorized the alleged agent to perform the acts in question." *Sanitation Salvage Corp.*, 342 NLRB No. 41, slip op. at 1

(2004).

5 It is clear that Canino Jr. had apparent authority to bind Palisades to the agreement he reached with Lopez. Canino Jr. was the president and half owner of Palisades. Lopez had always dealt with him in matters relating to the Union and the contract. Such contact had been ongoing since 1996, a period of eight years prior to the current negotiations. Lopez and Canino Jr. had negotiated and signed the last contract. Canino Sr. said that his son signed that agreement because he wanted him to “take over” and he wanted to “give him that authority so as to get used to how to handle it.” In this respect, Palisades held Canino Jr. out as its primary representative in dealings with the Union generally, and in negotiating and signing contracts specifically, which caused Lopez to reasonably believe that Canino Jr. continued to have the authority to enter into a collective-bargaining agreement on its behalf. *Sanitation Salvage*, above, slip op. at 3.

15 As to the 2004 negotiation, Lopez’ letter requesting bargaining was sent to Canino Jr. who called, requesting an early start to negotiations, Lopez’ demands were sent to Canino Jr. In this regard, I note that Canino Sr. did not claim that he personally received the Union’s demands. Accordingly, Canino Jr. received and reviewed those demands on his own, and then bargained with Lopez based on those demands. If Canino Sr. was “overseeing” the negotiations as he claimed, he would have reviewed the Union’s initial demands and immediately objected to them. Clearly, Canino Sr. was not involved in the negotiations until the MOA was sent for Palisades’ signature.

25 Canino Jr. was the only representative for Palisades at the April 27 negotiation session. He negotiated freely, agreeing and refusing to agree to the Union’s demands. Following the bargaining, Lopez sent the MOA to him.

30 Canino Sr.’s testimony is significant. He stated, as set forth above, that he told Lopez at their August 6 meeting that his son “agreed to something that he was not supposed to” because he was having personal problems which resulted in a lack of concentration. Thus, Canino Sr. admitted that his son agreed to the terms of a contract, but sought to negate such agreement by saying that his son was distracted. Canino Sr. testified that his son told Lopez that “we have a problem with this agreement.” As set forth above, Canino Sr. apparently believed that agreement had been reached between his son and Lopez, but that he later had a “problem with this agreement” in that Canino Jr. should not have agreed to the terms set forth therein.

40 I credit Lopez’ testimony that he was never told that the MOA was subject to Canino’s review or approval. Oliva’s testimony that she and Palmeri advised Lopez that Canino Sr. had to approve the contract cannot be credited. First, Palmeri did not testify. In addition, Oliva had limited knowledge of the negotiations itself. For example, she did not know that substantial negotiations had occurred on April 27 between Canino Jr. and Lopez. Second, it appears that changes in the Palisades’ agreement would not have taken place on April 28 but for the fact that the Overlook contract was negotiated that day, and Canino Jr. wanted certain terms to be identical. Accordingly, the evidence establishes that agreement was reached as to all terms on April 27 when Oliva was not present, and that agreed-upon changes – to the wages, amount of the employees’ contribution to their health benefits, and the expiration date were made the following day.

50 I accordingly find that at no time was any notice given to the Union of any limitation of the authority of Canino Jr. to reach final and binding agreement on the terms of a collective-bargaining agreement. Palisades bears the consequences of the failure to timely advise the Union that Canino Jr. lacked that authority. I therefore conclude that Canino Jr. had apparent

authority to negotiate and agree to the contract which he reached with Lopez.

II. The Refusal to Execute the Contract

5 Section 8(d) of the Act requires the parties to a collective-bargaining relationship, once they have reached agreement on the terms of a collective-bargaining agreement, to execute that agreement at the request of either party. *H.J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941). The question to be decided is whether the parties reached complete and final agreement on all material terms of the tentative agreement. If they did, Palisades' refusal to execute a contract is a violation of the Act as an unlawful refusal to bargain. If there was no agreement or "meeting of the minds," then it is not unlawful for an employer to refuse to execute the written contract it received as the Board has no authority to order an employer to execute an agreement it has not accepted. *H.K. Porter Co. v. NLRB*, 397 U.S. 99 (1970). The General Counsel has the burden of proving that an agreement has been reached. *Crittenton Hospital*, 343 NLRB No. 81, slip op. at 2 (2004). See *Intermountain Rural Electric Assn.*, 309 NLRB 1189, 1192 (1992). Whether the parties have reached a "meeting of the minds" is determined "not by parties' subjective inclinations, but by their intent as objectively manifested in what they said to each other." *MK-Ferguson Co.*, 296 NLRB 776 fn. 2 (1988).

20 I have found above that Canino Jr. had full authority to reach agreement on the terms of a successor contract with Lopez. I also find that a full agreement was reached on April 27 which was modified and agreed upon on April 28. Thus, I credit Lopez' testimony that at the conclusion of both days' sessions, he shook hands with Palisades' representatives who acknowledged that they had reached agreement. "Such conduct is a hallmark indication that a binding agreement has been reached at the end of negotiations." *Winward Teachers Association*, 346 NLRB No. 99, slip op. at 3 (2006).

30 The MOA as presented by Lopez to Palisades by letter of May 24 represented the entire agreement of the parties. I find particularly relevant the facts that (a) the Palisades agreement, especially the health benefits, was identical to that of Overlook (b) that Canino Jr. was present during the negotiation of and agreement to the Overlook agreement (c) the Overlook agreement was signed immediately by that company and (d) that Canino Sr. is a part-owner of Overlook. These facts present a strong argument that the Palisades' terms, which are the same as Overlook's were finally agreed to by Canino Jr. on April 28.

35 As set forth above, I cannot credit Oliva's testimony that she told Lopez that any agreement reached was subject to the approval of Canino Sr.

40 I cannot credit Canino Sr.'s testimony that Lopez told him in late May that the MOA he sent was only his "wish list." First, Lopez denied saying that. In addition, Lopez had already sent his "wish list" – in the form of his demands – two months earlier, on March 31. This "wish list" was later the subject of bargaining and agreement. I cannot accept Canino Sr.'s testimony that Lopez would call the MOA that had been the culmination of two-days of bargaining a "wish list" nearly 2½ months after Lopez sent the MOA to Canino Jr. for signature.

45 I further discredit Canino Sr.'s testimony for the following reasons. Canino Sr. testified that his son called Lopez two or three days after the April 27 meeting, and told him that he had to meet with his father. Incredibly, Canino Sr. testified that not having heard from or met with Lopez thereafter, he called Lopez in early May and asked to meet, and they arranged a meeting for August 6. Clearly, if Canino Jr. called Lopez on April 29 or April 30, how could Canino Sr. legitimately complain to Lopez when he called in early May that he never called or came to see him. According to Canino Sr.'s testimony, his son had just made the call to Lopez.

5 It is more logical, as Lopez testified, that not having heard from Palisades after the MOA was sent in late May, he called Canino Jr. in July, and a meeting was arranged for August 6. It is not realistic that Canino Sr. would have called in early May and that a meeting would not be scheduled for three months, particularly since the contract was due to expire on May 31. Thus, consistent with the evidence, I find that Palisades did not object to the MOA until Lopez called in July, contradicting Canino Sr.'s testimony that he immediately challenged it in early May.

10 Further, Canino Sr. testified that he sent a letter to Lopez immediately after speaking to him in early May, but the letter outlining his disagreement with the MOA was not sent until he met with Lopez on August 6, three months later. He could not have sent the letter in response to Lopez' alleged "wish list," but instead it was sent as an outright rejection of the MOA.

15 I accordingly find and conclude that Palisades and the Union reached a full and complete agreement on all material terms of a successor agreement on April 27 and 28, and that Palisades failed and refused to execute the agreement when it was tendered in late May. Such a refusal violated the Act.

20 **III. The Alleged Unilateral Change**

The complaint alleges and the answer admits that since September, 2004, Palisades transferred unit employees from its health plan to the health plan maintained by Park View Towers, a mandatory subject of bargaining, without the Union's consent.

25 As set forth above, upon the failure of Palisades to execute the successor agreement, the Union's Benefit Plan terminated its coverage of Palisades' two employees. Canino Sr. then placed them on the Park View Towers' benefit plan.

30 An employer is required to bargain with a union which represents its employees regarding a change in health care plans. If it does not do so, the employer violates Section 8(a)(5) of the Act. *Larry Geweke Ford*, 344 NLRB No. 78, slip op. at 1 (2005).

35 The Respondents defend their actions by arguing that (a) they sought to provide the employees with coverage since the Union's Plan terminated them and (b) they had no obligation to bargain with the Union since the Union allegedly refused to represent the employees.

40 First, the effort of Park View Towers in transferring Palisades' employees to its benefit plan was laudable, but nevertheless unlawful. It could have offered to bargain with the Union concerning this change and explained its reasoning in doing so. This was not done. Second, as set forth above, the affidavits of employees Claudio Andia and Rafael Molina stated that Lopez told them that the Union would no longer represent them because Palisades would not sign the contract and there were only two employees left in the unit. Lopez denied saying that. I credit the testimony of Lopez, who stated that the Union represents shops having one or two employees. In addition, the affidavits were given only after Palisades unlawfully refused to execute the successor contract as set forth below. Palisades therefore could not lawfully refuse to bargain with the Union even assuming the two employees no longer desired its representation.

50 In addition, the transfer would not have been necessary if Palisades had executed the MOA instead of unlawfully refusing to do so.

I accordingly find and conclude that by transferring unit employees from the health plan

maintained between Palisades and the Union's Benefit Plan to the plan maintained by Park View Towers without offering to bargain with the Union and without the Union's consent, Palisades violated Section 8(a)(5) of the Act.

5 **IV. The Withdrawal of Recognition from the Union**

10 The complaint alleges that Park View Towers and Park Maintenance unlawfully withdrew recognition of the Union as the exclusive collective-bargaining representative of the unit employees. The answer acknowledges that those entities never recognized the Union as the representative for their employees, and defends their actions by asserting that the Union abandoned its representation of the employees. The answer also asserts that the employees filed a petition for a decertification election because the Union failed to cover them with medical insurance, and that they notified the Respondents that they no longer wish to be represented by the Union.

15 It is well established that "an employer may not withdraw recognition from a union while there are unremedied unfair labor practices tending to cause employees to become disaffected from the union." *Penn Tank Lines, Inc.*, 336 NLRB 1066, 1067 (2001). The Respondents may not avoid their duty to bargain where their own violations of the Act caused the union's loss of majority support. See, e.g., *NLRB v. Williams Enterprises*, 50 F.3rd 1280, 1288 (4th Cir. 1995).

25 The following factors are considered in determining whether the Respondents' unfair labor practices caused the loss of support among the unit employees: (a) the length of time between the unfair labor practices and the withdrawal of recognition (b) the nature of the violations, including the possibility of a detrimental or lasting effect on employees (c) the tendency of the violation to cause employee disaffection and (d) the effect of the unlawful conduct on employees' morale, organizational activities and membership in the union. *Master Slack Corp.*, 271 NLRB 78, 84 (1984).

30 Here, there is a direct causal relationship between the Respondents' unfair labor practices and the expression of employee dissatisfaction with the Union which apparently caused the Respondents to withdraw recognition.

35 With regard to the first factor, Palisades' unlawful refusal to sign the MOA resulted in the Union's Fund terminating benefits to the unit employees and rejecting their hospital and drug claims. The employees then became disinterested in the Union and filed a decertification petition, and the Respondents refused to recognize the Union. There is no evidence of employee dissatisfaction with the Union prior to Palisades' refusal to sign the MOA. One event followed another in short order. Regarding the remaining three factors, the refusal to sign the MOA which resulted in the termination of health benefits is of great concern to employees as exhibited here when employees' benefits claims were rejected. The Respondents' unlawful conduct undoubtedly caused employee dissatisfaction with the Union as their bargaining representative, and led to a loss of support among the employees which caused the Respondents to withdraw recognition from it.

45 I accordingly find that the Respondents were not entitled to withdraw recognition from the Union because it was their unremedied unfair labor practices which caused the unit employees to become disaffected from the union. *Broadway Volkswagen*, 342 NLRB No. 128, slip op. at 4, 5 (2004).

50 **V. Alter Ego, Successor and Single Employer Status of the Respondents**

The complaint alleges that Park Maintenance is a successor to Palisades Maintenance, and that both enterprises were established by Park View Towers as a subordinate instrument to and a disguised continuation of Park View Towers, and that all three are alter egos and a single employer.

A. Alter Ego Status of Palisades and Park Maintenance

In *Advance Electric*, 268 NLRB 1001, 1002 (1984), the Board set forth the standards to be applied in determining whether two presumably separate employers are alter egos: (a) the two enterprises have “substantially identical” management, business purpose, operation, equipment, customers, supervision and ownership. The most important factor is centralized control of labor relations. *Superior Export Packing Co.*, 284 NLRB 1169, 1175 (1987); *J.M. Tanaka Construction v. NLRB*, 675 F.2d 1029, 1034 (9th Cir. 1982).

Here, the evidence compels the conclusion that Park Maintenance is the alter ego of Palisades. The management of both companies was substantially identical. D’Alesandro, the brother of Canino Jr. and daughter of Canino Sr. was the treasurer of both companies. Oliva, the cousin of D’Alesandro, was the corporate secretary of both, and was employed by Park View Management Corp. She had not been employed separately by either Palisades or Park Maintenance. Canino Jr. was the president of Palisades, and upon his death, his father, Canino Sr. became the president of Park, and co-owner of that company with D’Alesandro. Although Canino Sr. had no named position in Palisades, he testified that he formed Palisades in part to give his son “something to do,” and as co-owner of Park View Towers, he could “fire” Palisades if its contracts were too expensive.

Notwithstanding that Park View Towers was not the sole customer of Park View Towers as Palisades was, nevertheless Park View Towers was Park’s biggest customer. Despite this difference, the business purpose of both Palisades and Park Maintenance was identical – the performance of cleaning and maintenance services at the Park View Towers apartment complex. *A & P Brush Mfg. Corp.*, 323 NLRB 303, 308 (1997). The employees of both companies performed such duties. Although the Respondents argue that Park Maintenance performs renovation projects in the apartments which work Palisades did not do, it appears that the classifications of the employees employed by Park remain the same as those who worked for Palisades – porters, cleaners, painter, and that they perform the same type of work for Park as they had for Palisades.

The day-to-day frontline supervisor of the cleaning personnel at Palisades and at Park was Carlos Rodriguez who was employed by Park View Towers, and was not employed separately by Palisades or Park Maintenance. The equipment used by Park Maintenance is the same equipment formerly used by Palisades Maintenance employees, and such equipment was purchased and is owned by Park View Towers.

Regarding ownership, D’Alesandro owned 50% of Palisades and Park Maintenance. Canino Jr. owned 50% of Palisades with his sister, and when Park Maintenance was formed, D’Alesandro became the 50% owner with her father, Canino, Sr. The Board has held that “where members of the same family are the owners of two nominally distinct entities, which are otherwise substantially the same, ownership and control of both of the entities is considered substantially identical” and that such ownership militates in favor of a finding of alter ego status. *Cofab, Inc.*, 322 NLRB 162, 163 (1996).

Regarding the centralized control of labor relations, the hire of Palisades’ employees

was done by Canino Jr., Canino Sr., and Oliva. The hire of Park Maintenance's employees was done by Canino Sr. and Oliva. Rodriguez was the supervisor of the employees of both companies. In addition, Canino Sr. testified that upon the dissolution of Palisades, he placed its employees on the payroll and benefits plan of Park View Towers, and thereafter, he put them on the payroll of Park Maintenance.

An intent to evade responsibilities under the Act is an additional factor that must be considered, but a finding of antiunion animus is not required in order to find an alter ego relationship. *SRC Painting, LLC*, 346 NLRB No. 67, slip op. at 14 (2006). Here, it is clear that Palisades was dissolved upon the death of Canino Jr. in order to settle his estate, and that Park Maintenance was formed in order to continue to provide maintenance services for Park View Towers. Accordingly, I cannot find that the purpose behind the *formation* of Park Maintenance was to evade its responsibilities under the Act. Nevertheless, it is clear that Park seized upon this opportunity to refuse to recognize its obligations as an alter ego, successor and single employer. *A & P Brush*, above, at 309; *Martin Bush Iron & Metal*, 329 NLRB 124, 125 (1999). Thus, from its inception, Park was intended to and did operate as a nonunion company. Accordingly, although there is no evidence to find that Park Maintenance was created to evade its responsibilities under the Act, I do find that its desire to operate nonunion was coextensive with its establishment. Even if Park had not been formed for the purpose of avoiding its bargaining obligation with the Union, that factor is not determinative in making a finding that Park is the alter ego of Palisades. *Fallon-Williams, Inc.*, 336 NLRB 602, 603 (2001).

The above evidence strongly supports a finding that Palisades and Park Maintenance are alter egos, and I so find. As the alter ego of Palisades, Park Maintenance must execute the memorandum of agreement reached between Palisades Maintenance and the Union.

B. Single Employer Status of Palisades, Park Maintenance and Park View Towers

The criteria for determining single employer status are similar to those for alter ego status, set forth above. A single employer relationship exists when two or more employing entities are in reality a single-integrated enterprise. Four criteria determine the existence of single employer status: common ownership, common management, functional interrelationship of operations and centralized control of labor relations. Not all of those criteria need to be present to establish single employer status, and such status depends on all the circumstance of the case and is characterized by the absence of an "arm's-length relationship among unintegrated companies." The most important factor is centralized control over labor relations. *Mercy Hospital of Buffalo*, 336 NLRB 1282, 1284 (2001).

Nothing more need be added to the above facts to find that the three entities, Palisades, Park Maintenance and Park View Towers constitute a single employer. Specifically, Canino Sr., a general partner of Park View Towers, formed and funded Palisades and then dissolved it, and became the president and 50% owner with his daughter in Park Maintenance. Both Palisades and Park Maintenance had their office on the premises of Park View Towers. *Cannelton Industries*, 339 NLRB 124, 125 (2003). Park View Towers was the sole customer of Palisades, and the major customer of Park Maintenance. The equipment used by Palisades and Park Maintenance was the same, and was purchased and is owned by Park View Towers.

Centralized control of labor relations is seen in the fact that Carlos Rodriguez was the supervisor of the employees of Palisades and Park Maintenance, and was employed by Park View Towers. Further, Canino Sr. was actively involved in key labor relations decisions. He transferred all the employees of Palisades to the payroll of Park View Towers, and then to the

payroll of Park Maintenance, and placed them on the benefits plan of the latter two companies. One employee of Park View Towers, Rafael Merchan, was transferred from the payroll of Park View Towers to that of Park Maintenance. In addition, Canino Sr., Canino Jr., and Oliva hired Palisades' employees, and Canino Sr. and Oliva hired the employees of Park Maintenance.

5

Significant evidence of the centralized control of labor relations between the three companies is seen by the events immediately prior to and at the August 6 meeting. Canino Sr. "hit the roof" at the health benefits amounts agreed to by his son, telling Oliva that "he" could not afford those rates. Although not having an ownership interest or official position in Palisades, Canino Sr. sought to renegotiate the MOA which had already been negotiated and agreed to by his son. Canino Sr. "totally disagreed" with the terms of the MOA, and later signed a letter headed "Palisades Maintenance" setting forth what Palisades would agree to. Thus, Canino Sr. attempted to abrogate the agreement that was already made, and indeed it was his intervention which caused Palisades not to sign the MOA. Accordingly, Canino Sr.'s actions controlled the terms under which Palisades' employees would work.

10

15

In addition, there is a distinct absence of an arm's length relationship among the three entities based on the above evidence above and because all three are family operations. I accordingly find and conclude that Park View Towers is and has been a single employer with Palisades and Park Maintenance.

20

As a single employer, Respondents Park Maintenance and Park View Towers will be held equally responsible for any unfair labor practices found to have been committed in this proceeding and will be held jointly and severally liable to remedy those violations. *Wyandanch Engine Rebuilders, Inc.*, 328 NLRB 866, 867 (1999).

25

C. Park Maintenance is the Successor of Palisades

The complaint alleges that Park Maintenance is the successor of Palisades. The test for determining successorship under *NLRB v. Burns Security Services*, 406 U.S. 272 (1972) is well established, and set forth in *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 41-43 (1987):

30

An employer, generally, succeeds to the collective-bargaining obligation of a predecessor if a majority of its employees, consisting of a "substantial and representative complement," in an appropriate bargaining unit are former employees of the predecessor and if the similarities between the two operations manifest a substantial continuity between the enterprises.

35

Three employees were employed by Palisades when it ceased operating on December 31, 2004. They were Claudio Andia, landscaper, Donatila Andia, part-time cleaner, and Rafael Molina, porter.

40

The payroll record of Park Maintenance establishes that on January 1, 2005, the date that Park was established, it employed five unit employees: Claudio Andia, porter, Donatila Andia, part-time cleaner, Rafael Molina, porter, Nelson Dominguez, porter, and Rafael Merchan, a painter who had been on the payroll of Park View Towers before being transferred to Park.

45

The payroll record also lists "supervisor" George Grafstein, who had been employed since August, 1997, and is listed as a salaried employee. I have excluded Grafstein from inclusion in the unit as a supervisor.

50

Accordingly, as of January 1, 2005, of the five unit employees of Park, three had been employed by Palisades on December 31, 2004: Claudio Andia, Donatila Andia and Rafael Molina.

5 The classifications of the employees employed by Park from January 1, 2005 to February 9, 2006, show that they worked at duties substantially similar to those performed by Palisades' employees: part-time cleaning, porter and painter. Claudio Andia's new classification was porter, part-time employee Donatila Andia continued as a cleaner, and Rafael Molina continued work as a porter.

10 In addition, two other employees were hired nine months after Park was established. They are Jose Delcid, porter, hired on September 19, 2005 and Michael Muniz, porter, who was hired on October 19, 2005 and quit eight days later.

15 As set forth above, the equipment used by the Park Maintenance porters including, but not limited to mops, brooms, shovels, plows, and supplies is the same equipment as was used by Palisades' porters, and such equipment was purchased by, and is owned by Park View Towers. Park Maintenance operates out of the same location as did Palisades.

20 Although Canino Sr. testified that he hired employees who work for Park Maintenance in performing major renovation work in the apartments which are about 30 years old, it does not appear that the five unit employees set forth above did that work. Their job classifications establish that they did only traditional cleaning and portering work, and that they, and others with similar job descriptions who were hired later, were the only workers employed for the first
25 year of Park's existence.⁷

 This analysis with respect to substantial continuity must be taken from the perspective of the employees – whether the employees who have been retained will understandably view their job situations as essentially unaltered. *Tree-Free Fiber Co.*, 328 NLRB 389 (1999). From the
30 perspective of the three Palisades employees who became employed by Park Maintenance on January 1, 2005, it is apparent that they performed the same cleaning duties at the same location using the same equipment and cleaning supplies. In addition, their immediate supervisor, Rodriguez remained the same, and there was no hiatus in their employment. The totality of the circumstances establishes that Park Maintenance's operation was substantially
35 similar to that of Palisades, and that from the point of view of the unit employees, there was substantial continuity in the employing entity.

 Accordingly, inasmuch as a majority of employees in the unit had previously been employed by Palisades, I find that the Union has been the exclusive collective-bargaining
40 representative of those employees. By refusing to recognize the Union, Park Maintenance violated Section 8(a)(1) and (5) of the Act. *North Hills Office Services*, 342 NLRB No. 25, slip op. at 8 (2004).

 As the alter ego of and single employer with Palisades, Park Maintenance is bound by
45 the collective-bargaining agreement entered into between Palisades and the Union. *Cornerstone Masonry Constructors, LLC*, 343 NLRB No. 106, slip op. at 3 (2004); *Advance Electric*, 268 NLRB 1001, 1004 (1984).

50 ⁷ The payroll record of Park Maintenance received in evidence covered the period January 1, 2005 to February 9, 2006. GC Exhibit 21.

Conclusions of Law

1. Respondents Palisades Maintenance, Park Maintenance and Park View Towers are employers within the meaning of Section 2(2), (6) and (7) of the Act.

5

2. Respondent Park Maintenance is the alter ego and successor of Respondent Palisades Maintenance.

3. Respondents Park View Towers, Park Maintenance and Palisades Maintenance constitute a single employer.

10

4. Local 11, International Brotherhood of Teamsters, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, the Union has been, and is, the exclusive representative of the employees in the following appropriate collective-bargaining unit within the meaning of Section 9(a) of the Act:

15

All full-time and regular part-time building service employees employed in the building known as Park View Towers, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

20

6. By failing and refusing to recognize Local 11 since August 6, 2004, the Respondents have violated Section 8(a)(1) and (5) of the Act.

25

7. By failing and refusing to sign the memorandum of agreement which is effective from June 1, 2004 to December 31, 2007, the Respondents have violated Section 8(a)(1) and (5) of the Act.

30

8. By failing and refusing to apply the terms of the contract set forth above to the unit employees, the Respondents have violated Section 8(a)(1) and (5) of the Act.

9. By transferring unit employees from the health plan maintained between Palisades and the Union's Benefit Plan to the plan maintained by Park View Towers without offering to bargain with the Union and without the Union's consent, the Respondents violated Section 8(a)(5) of the Act.

35

10. By unlawfully withdrawing recognition from the Union, the Respondents have violated Section 8(a)(1) and (5) of the Act.

40

11. The unfair labor practices set forth above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

45

The Remedy

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

50

Inasmuch as I have found that the Respondents have unlawfully withdrawn recognition from the Union, and that Park Maintenance is the alter ego of Palisades Maintenance, the new

entity, Park Maintenance is required to honor the memorandum of agreement reached between Palisades and the Union. *Martin Bush Iron & Metal*, 329 NLRB 124, 125 (1999). Accordingly, Respondent Park Maintenance must, upon request by the Union, execute the memorandum of agreement agreed upon on April 28, 2004, and abide by and give full force and effect to the memorandum of agreement which runs from June 1, 2004 to December 31, 2007.

Respondents Park View Towers and Park Maintenance must jointly and severally make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondents' failure to comply with the above agreement since June 1, 2004, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondents shall make all contractually-required contributions to the Union's funds that they have failed to make since June 1, 2004 including any additional amounts due to the funds on behalf of the unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213 (1979). The Respondents shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, above, with interest as prescribed in *New Horizons for the Retarded*, above.

With regard to the Respondents' unilateral change in transferring the unit employees from the Northern New Jersey Teamsters Benefit Plan to the Respondents' Plan, the Respondents shall be ordered to rescind that unilateral change, and upon the execution of the memorandum of agreement, the unit employees shall be returned to the Northern New Jersey Teamsters Benefit Plan.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁸

ORDER

The Respondents, Park Maintenance, Palisades Maintenance, and Park View Towers, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Continuing to withhold recognition from, and failing and refusing to bargain with Local 11, International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of employees in the following unit:

All full-time and regular part-time building service employees employed in the building known as Park View Towers, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Refusing to execute the memorandum of agreement which is effective from June 1, 2004 to December 31, 2007.

5 (c) Refusing to give effect to and applying the terms of the memorandum of agreement referred to above.

(d) Transferring unit employees from the health plan maintained between Palisades Maintenance and the Union's Benefit Plan to the plan maintained by Park View Towers without offering to bargain with the Union and without the Union's consent.

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

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

(a) Recognize Local 11, International Brotherhood of Teamsters, AFL-CIO and execute the memorandum of agreement which is effective from June 1, 2004 to December 31, 2007.

20 (b) Honor the memorandum of agreement referred to above for employees in the unit.

(c) Jointly and severally make all contractually required payments to the health benefit funds, and make the unit employees whole in the manner set forth in the remedy section of this decision.

25 (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

30 (e) Within 14 days after service by the Region, post at its facility in West New York, New Jersey, copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 6, 2004.

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50 ⁹ If this Order is enforced by a Judgment of the 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."

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

5 Dated, Washington, D.C., May 18, 2006.

Steven Davis
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT continue to withhold recognition from, or fail and refuse to bargain with Local 11, International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of employees in the following unit:

All full-time and regular part-time building service employees employed in the building known as Park View Towers, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to execute the memorandum of agreement which is effective from June 1, 2004 to December 31, 2007.

WE WILL NOT refuse to give effect to and apply the terms of the memorandum of agreement referred to above.

WE WILL NOT transfer unit employees from the health plan maintained between Palisades Maintenance and the Union's Benefit Plan to the plan maintained by Park View Towers without offering to bargain with the Union and without the Union's consent.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize Local 11, International Brotherhood of Teamsters, AFL-CIO and execute the memorandum of agreement which is effective from June 1, 2004 to December 31, 2007.

WE WILL honor the memorandum of agreement referred to above for employees in the unit.

WE WILL rescind our transfer of unit employees from the Northern New Jersey Teamsters Benefit Plan to our Plan, and upon our execution of the memorandum of agreement, the unit employees shall be returned to the Northern New Jersey Teamsters Benefit Plan.

WE WILL jointly and severally make all contractually required payments to the health benefit funds, and make whole all employees and Union funds, with interest on amounts owing for our failure to have done so.

PARK MAINTENANCE, PALISADES
MAINTENANCE AND PARK VIEW TOWERS,
SINGLE EMPLOYER

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

20 Washington Place, 5th Floor
Newark, New Jersey 07102-3110
Hours: 8:30 a.m. to 5 p.m.
973-645-2100.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 973-645-3784.