

**Décor Group, Inc. and New York New Jersey Regional Joint Board, Workers United, Local 132, SEIU.** Case 22–CA–29379

June 7, 2011

DECISION AND ORDER

BY MEMBERS BECKER, PEARCE, AND HAYES

On December 22, 2010, Administrative Law Judge Steven Davis issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> and to adopt the recommended Order as modified.<sup>3</sup>

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Décor Group, Inc., Englewood, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

<sup>1</sup> The Respondent has implicitly excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> In adopting the judge's finding that the instant 8(a)(5) charge should not be deferred to arbitration, we find it unnecessary to rely on his discussion of *New Mexico Symphony Orchestra*, 335 NLRB 896 (2001).

For the reasons stated by the judge, we reject the Respondent's argument that the complaint must be dismissed because the Stipulation of Voluntary Dismissal by the Trustees of the Laundry & Dry Cleaning Workers and Allied Industries Health Fund (the Fund) and the Respondent, terminating the Fund's ERISA suit, precludes this cause of action against the Respondent for ceasing healthcare contributions when the collective-bargaining agreement expired. Additionally, contrary to the Respondent's argument that the Stipulation constituted a dismissal on the merits, it more likely reflected a lack of jurisdiction. See, e.g., *Laborers Health & Welfare Trust Fund v. Advanced Lightweight Concrete Co.*, 484 U.S. 539, 551–553 (1988) (claim that respondent ceased making fund contributions after expiration of collective-bargaining agreement must be brought before Board). In any event, "the issue before the Board that could not have been raised in the court proceeding initially is whether the Respondent's refusal to make such payments constitutes a violation of Section 8(a)(1) and (5) of the Act." *Raymond Prats Sheet Metal Co.*, 285 NLRB 194, 195–196 (1987).

<sup>3</sup> We have modified the recommended Order and notice to conform to the violation found and to include, in the notice, the description of employee Sec. 7 rights.

For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB 11 (2010), Member Hayes would not require electronic distribution of the notice.

1. Substitute the following for paragraph 1(a) of the Order.

"(a) Failing and refusing to bargain in good faith with the New York New Jersey Regional Joint Board, Workers United, Local 132, SEIU, by unilaterally failing to make contributions to the Trustees of the Laundry & Dry Cleaning Workers and Allied Industries Health Fund on behalf of the employees in the following appropriate unit:

All full-time and regular part-time production workers employed by Respondent at its Englewood, New Jersey facility, excluding all office clerical employees, sales employees, professional employees, guards and supervisors, as defined in the Act.

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT fail or refuse to bargain in good faith with the New York New Jersey Regional Joint Board, Workers United, Locals 132, SEIU, by unilaterally failing to make contributions to the Trustees of the Laundry & Dry Cleaning Workers and Allied Industries Health Fund on behalf of the employees in the following appropriate unit:

All full-time and regular part-time production workers employed by us at our Englewood, New Jersey facility, excluding all office clerical employees, sales employees, professional employees, guards and supervisors, as defined in the Act.

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

WE WILL make whole the Trustees of the Laundry & Dry Cleaning Workers and Allied Industries Health Fund for our failure to make contributions from November 1, 2009, as required by our July 1, 2005, through June 10, 2009 contract, as extended to October 31, 2009.

WE WILL make you whole for any expenses, if any, ensuing from our failure to make the required payments to the Health Fund set forth above.

DÉCOR GROUP, INC.

*Tara Levy, Esq.*, for the General Counsel.

*Richard S. Mazawey, Esq.*, of Clifton, New Jersey, for the Respondent.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Based on a charge filed on April 8, 2010, by New York New Jersey Regional Joint Board, Workers United, Local 132, SEIU (the Union), a complaint was issued on July 30, 2010, against Décor Group, Inc. (Respondent or, the Employer).

The complaint, as amended at the hearing, alleges and the Respondent's answer admits that, following the expiration of its collective-bargaining agreement with the Union, the Respondent ceased making health care contributions on behalf of its unit employees. The complaint further alleges and the Respondent denies that it stopped making the contributions without notice to the Union. The answer also asserted certain affirmative defenses, which will be discussed below.

On October 21, 2010, a hearing was held before me in Newark, New Jersey. 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 Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

The Respondent, a corporation having an office and place of business in Englewood, New Jersey, has been engaged in the business of designing and manufacturing high-end decorative glassware in the tableware, cosmetic, perfume and spirits industries. During the past year, the Respondent derived revenue in excess of \$50,000 from the sale and shipment of goods directly from its Englewood facility to points outside New Jersey. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent also admits, and I find that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Collective-Bargaining Agreement*

The Union has represented the employees of the Respondent for at least 20 years. The Respondent admits that the Union has

been the designated exclusive collective-bargaining representative in the following admitted appropriate bargaining unit:

All full-time and regular part-time production workers employed by Respondent at its Englewood, New Jersey facility, excluding all office clerical employees, sales employees, professional employees, guards and supervisors, as defined in the Act.

The parties' last contract before this dispute ran from July 1, 2005, through June 30, 2009. It provided for the payment, effective December 1, 2008, by the Employer of 14.3 percent of the employees' total gross earnings to the Trustees of the Laundry & Dry Cleaning Workers and Allied Industries Health Fund (Health Fund). The contract also provided for the payment of these amounts monthly, not later than the 10th day of the month following the month in which the amounts accrued.

The contract's expiration date was extended twice, once from June 30 to September 30, 2009, and then to October 31, 2009.

B. *The Bargaining and the Health Fund Contributions*

During negotiations for a successor contract, which began in September or October 2009, the Employer objected to contributing to the Health Fund for every employee as it had in the then current contract. The Respondent and the Union took surveys of the employees and found that a certain percentage of workers did not use the Union's health plan because they had other coverage. The Employer's survey revealed that although the Employer was paying for the use of the Union's health plan by 100 percent of the employees, in fact, only about 27 percent of the employees were actually using that plan.

Union Agent Gomez recommended an "opt-in" program, pursuant to which employees not having outside coverage may enroll in the Union's health plan, and the Employer would pay for only those workers utilizing that plan.

The Respondent admits that beginning on about November 1, 2009, following the expiration of the last contract extension, it ceased making health care contributions on behalf of the unit employees. Union Representative Luis Gomez stated that he received no advance notice that the Respondent would cease making contributions to the Health Fund. In addition, there was no evidence that the Union agreed that the Employer could stop making such contributions.

Amalgamated Life, the organization which provides and administers the Union's Health Fund, sent a series of letters to the Respondent from December 24, 2009, to April 23, 2010, advising it that its contributions to the Health Fund for the period November 2009 through March 2010, were past due. Copies were sent to the Union. Demand was made for immediate payment of all delinquent contributions plus interest and liquidated damages "as required by the collective bargaining agreement and the Fund trust agreement."

After first and second notices of delinquencies were sent to the Respondent, a "third and final notice" was sent to the Employer on January 12, 2010, suspending the health and welfare coverage for its employees based on its failure to pay contributions for November 2010.

Letters were also sent to the unit employees advising them of the Respondent's failure to make the appropriate contributions, and informing them that the Fund would terminate their Health Fund coverage, effective February 1, 2010.

On March 3, 2010, the parties reached agreement on a new collective-bargaining contract, which runs from July 1, 2009, to June 30, 2015. The new contract provides essentially for an "opt-in" program in which payments to the Health Fund are not based on the gross payroll of the entire unit, as was the case with the expired contract. Rather, the new contract provides that employees who do not have outside coverage through Medicare or Medicaid may enroll in the Union's Blue Cross/Blue Shield insurance plan as set forth in its Health & Welfare Plan. The Employer pays a certain percentage of the cost of the plan only for those employees who enroll in the plan. Enrollment in the Union Health & Welfare Plan is optional.

On March 8, 2010, the Trustees of the Amalgamated National Health Fund f/k/a UNITE HERE National Health Fund sued the Employer in Federal court, alleging that contributions to the Health Fund from November 1, 2009, through January 31, 2010, have not been made and are in arrears. The Employer filed an answer, and on July 15, 2010, the parties entered into a "Stipulation of Voluntary Dismissal."

#### Analysis and Discussion

##### I. THE OBLIGATION TO MAKE PAYMENTS TO THE FUNDS AFTER THE CONTRACT'S EXPIRATION

The Respondent argues that it was not obligated to make contributions to the Union's Health Fund because its contract had expired. It further asserts that the Union made no objection to its cessation of payments, and that both parties made "affirmative representations to each other that all rights to performance under the expired contract were waived."

The Board has held that an employer's "obligation to pay benefit fund contributions continues beyond the expiration date of the contract until a successor agreement or lawful impasse is reached." *Made 4 Film, Inc.*, 337 NLRB 1152, 1152 (2002). *Cibao Meat Products, Inc. v. NLRB*, 547 F.3d 336, 339 (2d Cir. 2008); *Derrico v. Sheehan Emergency Hospital*, 844 F.2d 22, 26 (2d Cir. 1988). "Contractual terms, including benefit plans and related reporting requirements, survive contract expiration and cannot be altered without bargaining." *MBC Headwear, Inc.*, 315 NLRB 424, 424 fn. 3 (1994); *Lou's Produce*, 308 NLRB 1194, 1194 (1992).

The Board has also held that "when, as here, parties are engaged in negotiations for a collective-bargaining agreement, an employer's obligation to refrain from unilateral changes extends beyond the mere duty to provide notice and an opportunity to bargain about a particular subject matter; rather it encompasses a duty to refrain from implementation at all, absent overall impasse on bargaining for the agreement as a whole." *RBE Electronics of S.D.*, 320 NLRB 80, 81 (1995).

The Respondent does not claim that it reached an impasse in bargaining with the Union which permitted it to cease paying the Health Fund contributions required in its expired contract, and there is no evidence that it did reach impasse. Rather, the

Respondent just believed that it could stop such payments simply because the contract expired.

As to the Respondent's assertion that the Union did not object to its ceasing making payments to the Health Fund, I credit Union Agent Gomez' testimony that after Amalgamated sent its first notice of fund contributions' delinquency in December 2009, he discussed with the Respondent in a January 2010 bargaining session the fact that the Respondent had not made the required payments. He told President Richard Engel and Vice President Richard Engel Jr., that the Respondent was required to make the contributions, and that Engel Sr. replied that he did not believe that the Employer had to pay into the fund.

Moreover, Amalgamated Life sent the Respondent numerous notices that it was delinquent in its fund contributions, and the Respondent admits receiving those notices.

I accordingly find and conclude that the Respondent violated Section 8(a)(5) of the Act by ceasing to make contributions to the Health Fund from November 1, 2009.

##### II. THE RESPONDENT'S DEFENSES<sup>1</sup>

###### A. Deferral to Arbitration

The Respondent asserts that the charge should have been deferred to the grievance procedure in the parties' collective-bargaining agreement, which was the same in the expired contract and the renewal agreement. The grievance clause provides that the contractual grievance procedure "shall be the exclusive means for the determination of . . . all complaints, disputes, claims or controversies" and that no party or employee "shall institute any action or proceeding against the other in any court of law or equity, state or federal, other than to compel arbitration hereunder. . . . This provision shall be a bona fide defense in any action or proceeding under this Agreement."

Notwithstanding the broad nature of the grievance provision, the Board has held that an employer's failure to make fund payments following the expiration of a contract is not presumptively arbitrable because the union's right to payment did not accrue or vest until after the contract expired. *15th Avenue Iron Works*, 301 NLRB 878, 879 (1991). Deferral is not an appropriate disposition of these allegations because postcontract expiration delinquencies are not susceptible to prospective arbitration. *Indiana & Michigan Electric Co.*, 284 NLRB 53, 60 (1987), citing *Nolde Bros., Inc. v. Bakery Workers*, 430 U.S. 243 (1977).

In this respect, *Nolde & Litton Financial Printing Div. v. NLRB*, 501 U.S. 190 (1991), relied on by the Respondent, are inapposite. In *Nolde*, the Supreme Court found that a claim for severance pay was in effect a dispute over deferred compensation for time already worked under the unexpired contract, and thus the dispute involved rights which "accrued or vested" under the unexpired agreement. In *Litton*, the Court held that a dispute over the layoff of employees after the contract expired

<sup>1</sup> The Respondent's principal defenses are discussed here. Other affirmative defenses, which have not been proven and which have no merit, are accord and satisfaction, judicial determination and award, failure of consideration, want of consideration, fraud in the factum, fraud in the inducement, illegality, laches, payment, statute of frauds, waiver, and entire controversy doctrine.

“did not involve facts and occurrences that arise before expiration.” Here, any grievance the Union may have filed regarding the failure of the Respondent to make contributions to the Health Fund did not “arise under” the expired contract. The grievances were “triggered by events or conduct that occurred after the expiration of the contracts. None of the rights invoked were worked for or accumulated over time, and there is no other indication that the parties contemplated that such rights could ripen or remain enforceable even after the contracts expired.” *Indiana & Michigan*, above at 61.

Moreover, the Supreme Court held in *NLRB v. Strong*, 393 U.S. 357, 360–361 (1969):

Admittedly, the Board has no plenary authority to administer and enforce collective bargaining contracts. Those agreements are normally enforced as agreed upon by the parties, usually through grievance and arbitration procedures, and ultimately by the courts. But the business of the Board, among other things, is to adjudicate and remedy unfair labor practices. Its authority to do so is not affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise [citing Section 10(a) of the Act]. Hence, it has been made clear that in some circumstances the authority of the Board and the law of the contract are overlapping, concurrent regimes, neither pre-empting the other. Arbitrators and courts are still the principal sources of contract interpretation, but the Board may proscribe conduct which is an unfair labor practice even though it is also a breach of contract remediable as such by arbitration and in the courts. It may also, if necessary to adjudicate an unfair labor practice, interpret and give effect to the terms of a collective bargaining agreement.

Similarly, in a case involving the employer’s failure to make full and timely payroll payments, the Board rejected the employer’s request that the matter be deferred to arbitration, holding that although other remedies exist, it is authorized to “remedy conduct . . . that amounts to the repudiation of an obligation under the collective-bargaining relationship.” *New Mexico Symphony Orchestra*, 335 NLRB 896, 898 fn. 8 (2001).

#### B. Utilization Theory

The Respondent also argues that under a “utilization theory,” since only 27 percent of its employees used the contractually provided health benefits because they had other coverage, the Respondent overpaid the Health Fund by paying for coverage for 100 percent of its work force. This overpayment, it argues, comprised a sum sufficient to compensate the Health Fund for the contributions it did not make during the ensuing 16 months. Therefore, according to the Respondent, it has already made the Health Fund contributions it is charged with not paying. I cannot agree.

The Respondent was required to make the fund contributions in the expired contract to which it agreed. It had not made an agreement with the Union that it would have to pay contributions only for those who used the Union’s Health Fund. Rather, it was bound to its contract to make fund payments for its entire payroll.

Accordingly, I cannot find merit in this theory.

#### C. Res Judicata and Collateral Estoppel

As set forth above, Amalgamated Life sued in Federal court, alleging that contributions to the Health Fund from November 1, 2009, through January 31, 2010, had not been made and were in arrears. The Employer filed an answer, and on July 15, 2010, the parties entered into a “Stipulation of Voluntary Dismissal.”

The Respondent argues that, inasmuch as a legal claim has already been made by the Fund’s Trustees in Federal court, the complaint here must be dismissed on the grounds of res judicata, arguing that the same parties and the same claims are involved. The General Counsel argues that the same parties are not involved in both cases since the Trustees of the Funds sued in Federal court, and a different party, the Union is the charging party here. The Respondent, however, asserts that the Trustees and the Union are “one in the same.”

The Union and the Union’s Funds are not “one in the same” as argued by the Respondent. “It is well established that fund trustees and administrators are separate parties from the union and employees who establish the funds.” *Fallon-Williams, Inc.*, 336 NLRB 602, 604 (2001). Accordingly, the Board and the Union were not parties to the court action. “The Board has consistently held that the Government is not precluded from litigating issues of Federal law even though related claims have previously been decided in State or Federal courts in actions to which the Government was not a party.” *Fallon-Williams*, above at 604.

The Respondent further argues that the complaint must be dismissed on the ground of collateral estoppel, asserting that although the Union knew, in November 2009, that the Respondent ceased making contributions to the Health Fund, it did not object to the cessation of those payments and continued bargaining, ultimately reaching agreement on a new contract in March 2010. The Respondent claims that the Union “intentionally and maliciously concealed the fact that it was planning to file a charge alleging the unlawful cessation of Fund contributions notwithstanding that the Union and the Respondent “made affirmative representations to each other that all rights to performance under the old CBA were waived. Décor clearly relied on this information and representation during negotiations in entering into the new CBA with the new Health Plan Contribution clause.”

As set forth above, Gomez told the Respondent during bargaining that it was required to make the Fund payments. In addition, there is no requirement that a prospective charging party union notify an employer that it intends to file a charge. As set forth above, there was no evidence that the Union represented that the Respondent was not obligated to make the Fund payments required under the expired contract.

However, the Respondent argues that it was led to believe that all matters concerning the expired contract were resolved by the execution of the new agreement. That contract states that “all terms of this Agreement become effective as of the date of ratification of this agreement with no retroactive application of any item other than wages described . . . above.” From this, the Respondent argues that the complaint must be dismissed because the Union agreed not to pursue “retroactive” matters. I cannot agree. It is clear that the reference in the new

agreement, executed in March 2010, applies to the terms of *that* agreement. It states that “all terms of *this* agreement” (emphasis applied) may not be applied retroactively. In contrast, the term which is the subject of this proceeding is the Health Fund contributions which were a part of the *expired* agreement. Accordingly, I cannot find that the Union indicated “to the Company that there were no outstanding issues left to resolve.”

Both *res judicata* and collateral estoppel essentially require that the court issue a final judgment on the merits which bars further claims by the parties based on the same cause of action. Here, of course, there was no final judgment on the merits. A Stipulation of Voluntary Dismissal was entered into by the parties, pursuant to which the matter was voluntarily dismissed against the Employer. Accordingly, there was no decision on the merits rendered in the court proceeding which could preclude the Board from proceeding with this complaint.

In *Raymond Prats Sheet Metal Co.*, 285 NLRB 194, 195 (1987), a case similar to this matter, the employer failed to pay fringe benefit contributions to the union’s health and welfare fund. The union’s fund brought an action in Federal court, resulting in an order that the employer pay specific sums of money. Thereafter, a charge was filed by the union and the employer argued that the charges should be dismissed based on the doctrines of *res judicata* and collateral estoppel. The Board held that the *res judicata* and collateral estoppel defenses lack merit because (a) the causes of action and the issues decided by the district court were not the same as those presented for the Board’s resolution (b) the Board and the union charging party were not parties to the Federal court action and (c) the court decided the issue whether the employer was required to make contractual payments to various trust funds, whereas the issue before the Board that could not have been raised in the court proceeding is whether the employer’s refusal to make such payments constituted a violation of Section 8(a)(1) and (5) of the Act.

I accordingly reject the Respondent’s argument that the doctrines of *res judicata* or collateral estoppel bar the instant complaint.

#### D. The Union’s Alleged Unclean Hands

The Respondent further argues that the complaint must be dismissed because of the Union’s “unclean hands.” It argues that the new collective-bargaining agreement requires the Union to offer health insurance to the employees as of March 3, 2010, but the Union did not begin providing such benefits until July 1, and also did not provide employees with a plan benefits book or a list of participating physicians. In addition, the Union allegedly did not honor the request of employee Mireya Hernandez to be removed from the benefits plan as of July 1, 2010, but instead continued to bill the Employer and the Union. Finally, the Union “unilaterally dropped” employee Ecolstico Cedeno from the plan without notice.

Union Agent Gomez testified that discussions were held during negotiations as to when the new “opt-in” contribution system would become effective. The parties expected that it would take 90 days, the period from the March 3 ratification date to June 1, for the complete implementation of the new system, but the program was not begun for another month, on

July 1, 2010. He noted that because the Respondent had stopped payments to the Health Fund, the Fund would not begin coverage immediately until the Respondent paid what it owed under the old contract, or began payments pursuant to the new collective-bargaining agreement. Since the Respondent began such payments only in March 2010, there was a 1 month delay in having the employees covered. Gomez noted that if the Respondent had not ceased its payments under the old contract, the employees would have been covered continuously under the old health plan.

Clearly, based on this, if any party must bear the blame for the delay in the resumption of coverage, it is the Respondent, for unlawfully failing to make contributions from November 1, 2009, to March 1, 2010.

Richard Engle Jr. admitted that Gomez told him that there would be a “gap” in coverage, and told the employees to save their receipts and bills for medical care, and that the Union would reimburse them. Engle also acknowledges that the employees were given their enrollment card containing their identification number, but that the plan benefits book was not provided.

Gomez stated that he distributed books of enrollment and advised the employees as to which physicians they could see. He also told them that Blue Cross/Blue Shield no longer issues books listing the participating physicians, but that they could call a phone number listed in their enrollment booklet, or check on-line and obtain the names of participating physicians.

Accordingly, I find no wrongdoing by the Union in these respects. In addition, the Board has held that the “unclean hands” doctrine of equity does not operate against a charging party because Board proceedings are not conducted for the vindication of private rights, but are brought in the public interest and to effectuate the statutory policy. *California Gas Transport*, 347 NLRB 1314, 1326 fn. 36 (2006).

Finally, the Respondent argues that the Union suffered no damages or financial loss due to its failure to make contributions to the Health Fund. I find and conclude that whether the Union suffered any damages or financial loss is irrelevant to the issues here.

#### CONCLUSIONS OF LAW

1. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production workers employed by Respondent at its Englewood, New Jersey facility, excluding all office clerical employees, sales employees, professional employees, guards and supervisors, as defined in the Act.

2. At all times material herein the Union has been the exclusive collective-bargaining representative of the employees in the above unit.

3. By ceasing to make contributions to the Trustees of the Laundry & Dry Cleaning Workers and Allied Industries Health Fund on behalf of the unit employees on about November 1, 2009, without prior notice to the Union and without affording the Union the opportunity to bargain with the Respondent as to

this conduct and the effects of this conduct, the Respondent violated Section 8(a)(5) and (1) of the Act.

#### REMEDY

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

The Respondent must make whole the Trustees of the Laundry & Dry Cleaning Workers and Allied Industries Health Fund for its failure to make contributions from November 1, 2009 as required by the parties' July 1, 2005, through June 30, 2009 contract, as extended to October 31, 2009, including any additional amounts due to the Fund in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). The Respondent shall also reimburse unit employees for any expenses resulting from its failure to make such required payments or contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). Such amounts are to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6, 9–10 (2010).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

#### ORDER

The Respondent, Décor Group, Inc., Englewood, New Jersey, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to bargain with the Union, by ceasing to make contributions to the Trustees of the Laundry & Dry Cleaning Workers and Allied Industries Health Fund on behalf of the unit employees without prior notice to the Union and without affording the Union the opportunity to bargain with the Respondent as to this conduct and the effects of this conduct. The appropriate collective-bargaining unit is:

All full-time and regular part-time production workers employed by Respondent at its Englewood, New Jersey facility, excluding all office clerical employees, sales employees, professional employees, guards and supervisors, as defined in the Act.

<sup>2</sup> 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) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Make whole the Trustees of the Laundry & Dry Cleaning Workers and Allied Industries Health Fund for its failure to make contributions from November 1, 2009, as required by the parties' July 1, 2005, through June 30, 2009 contract, as extended to October 31, 2009, in the manner set forth in the Remedy section of this decision.

(b) Make whole the employees for any expenses, if any, ensuing from its failure to make the required payments to the Health Fund set forth above.

(c) 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.

(d) Within 14 days after service by the Region, post at its Englewood, New Jersey facility, copies of the attached notice, marked "Appendix"<sup>3</sup>. 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 and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. 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 November 1, 2009.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."