

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

ALL SIGN CORPORATION

and

ALL SIGN CORPORATION AND PRO TYPE GRAPHICS, INC.
as a single employer

and

ALL SIGN CORPORATION, and its alter ego,
ALL AMERICAN SIGN CO., INC., (ASC)

and

Case No. 13-CA-33175

ALL SIGN CORPORATION, ALL AMERICAN SIGN CO., INC., (ASC),
AND PRO TYPE GRAPHICS, INC., as a single employer

and

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION,
LOCAL NO. 73

Librado Arreola, Esq. for the General Counsel
Robert T. Oleszkiewicz, Esq. for the Charging Party
Karen Walin, Esq. for Respondents All American Sign Co., Inc.,
and Pro Type Graphics, Inc.

DECISION

Statement of the Case

MARGARET M. KERN, Administrative Law Judge. This case was tried before me in Chicago, Illinois on April 1 and 2, 1997.¹ The amended complaint, which issued on February 7, 1997, was based upon unfair labor practice charges that were filed on February 15, 1995, June 14, 1995, June 28, 1995 and January 9, 1997 by the Sheet Metal Workers' International Association, Local No. 73 (the Union or Local 73). The original complaint, which issued on June 30, 1995, was against All Sign Corporation (All Sign or Respondent), and against All Sign and Pro Type Graphics, Inc. (Pro Type or Respondent) as a single employer. All Sign and Pro Type filed separate answers to the original complaint. In response to the amended complaint, All

¹ The Charging Party's unopposed motion to correct the transcript is granted.

American Sign Co., Inc. (ASC or All American or Respondent) and Pro Type filed a joint answer, and All Sign did not file an answer. At the hearing, the same attorney appeared on behalf of ASC and Pro Type, and no one appeared on behalf of All Sign.

5 On August 19, 1994, All Sign announced that it was laying off William Nielsen and James Kubajak, sign hangers represented by the Union.² Nielsen was immediately advised that he could continue to work for All Sign, but only on a non-union basis. Nielsen declined and he was terminated that day. Kubajak was also advised on August 19, 1994 that he could continue to work for All Sign, but was not specifically told under what terms or conditions he could
10 continue working. Kubajak worked for three more weeks until September 9, 1994, when he was advised that his continued employment was contingent upon his working non-union. Kubajak refused and he was terminated that day. All Sign has not recognized the Union since August 19, 1994 and has failed to continue in effect the terms and conditions of the collective bargaining agreement.

15 On September 1, ASC began sign manufacturing operations at the same premises as All Sign and is alleged to be the alter ego of All Sign. Pro Type is alleged to be a single employer with All Sign and ASC.

20 Findings of Fact

I. Jurisdiction

25 In its answer to the original complaint, All Sign admitted that it is an Illinois corporation with an office and place of business in Oak Lawn, Illinois, where it has been engaged in the manufacture and installation of commercial signs. All Sign denied all other jurisdictional allegations, including that it is a single employer with Pro Type, and that it is an employer engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act.

30 In its answer to the original complaint, Pro Type admitted that it is an Illinois corporation with an office and place of business in Oak Lawn, Illinois, where it has been engaged in the manufacture of materials used in making signs. Pro Type admitted that in conducting its business operations, it purchased and received at its Oak Lawn facility goods valued in excess of \$50,000 directly from points outside the State of Illinois, and goods valued in excess of
35 \$50,000 from other enterprises located within the State of Illinois, each of which other enterprises had received these goods directly from points outside the State of Illinois. Pro Type denied that it is a single employer with All Sign, and denied that it is an employer engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act.

40 In their jointly filed answer to the amended complaint, ASC and Pro Type admitted that until August 1994, All Sign maintained an office in Oak Lawn, Illinois where it was engaged in the manufacture and installation of commercial signs. ASC and Pro Type denied all other jurisdictional allegations relating to All Sign. Both Respondents admitted that Pro Type is in the business of producing vinyl graphic materials and that it maintains its principal place of
45 business at 5501 W. 109th Street, Oak Lawn, Illinois. Both further admitted that ASC is in the business of manufacturing signs and that it maintains its principal place of business at 5501 W. 109th Street, Oak Lawn, Illinois. Both denied that either Pro Type or ASC meet the direct or indirect inflow standards for jurisdiction, denied that they constitute a single employer, and

² That same day, All Sign also laid off all of its painter employees represented by Local 830 of the Painters Union (Local 830). Those layoffs are not alleged herein as violative of the Act.

denied that either or both are employers engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act.

5 At the hearing, ASC and Pro Type amended the jointly filed answer to admit that All Sign purchased and received at its Oak Lawn facility goods valued in excess of \$50,000 directly from points outside the State of Illinois. They further amended the jointly filed answer to admit that All Sign, Pro Type and ASC, each of them, purchased and received goods valued in excess of \$50,000 from other enterprises located within the State of Illinois, each of which other enterprises had received these goods directly from points outside the State of Illinois. Based on
10 the amended answers of ASC and Pro Type, I find, that ASC and Pro Type are, individually and collectively, employers engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act.

15 Respondent All Sign did not file an answer to the amended complaint, and denied jurisdiction in the original complaint. Based upon my findings that All Sign and ASC are the alter ego of one another, I find that All Sign is an employer engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act.

20 II. Labor Organization Status

Respondents ASC and Pro Type admit that the Union is a labor organization within the meaning of the Act. Respondent All Sign denied the labor organization status of the Union in its answer to the original complaint. Based upon my findings that All Sign and ASC are the alter
25 ego of one another, I find that the admission of labor organization status by ASC is also an admission by All Sign. Further, the Board has previously determined that the Union is a labor organization within the meaning of Section 2(5) of the Act. *See, Thornton Heating Service, Inc.*, 294 NLRB 304 (1989).

30 III. Alleged Unfair Labor Practices

A. Background

35 a. All Sign

John Peterson and his neighborhood friend, Joseph Monahan, began working for All Sign together as young men, and continued their employment with the company for over thirty years. All Sign was originally founded in the 1950's by Peterson's father, and it was
40 incorporated in 1976 in the State of Illinois. The registered agent for the corporation was attorney Dennis J. Krisik. All Sign was originally located on Southwest Highway in the Chicago Ridge section, but was moved in 1985 to 5501 W. 109th Street, Oak Lawn, Illinois (the building). The building was purchased at that time by 5501 W. 109th Street Building Partnership (the building partnership), and the same individuals who are the owners of All Sign are also the
45 partners in the building partnership.

All Sign was engaged in the manufacture and installation of commercial signs, including painted wood signs, electrified signs, neon signs, signs made with pressure sensitive vinyl graphic materials, and billboards. Historically, the manufacture and erection of billboards constituted a large portion of All Sign's business, but by 1990 the billboard business had dropped off considerably and the company concentrated on manufacturing and installing signs. All Sign nevertheless continued to operate both facets of the business until September 1, 1994,

at which time the sign manufacturing side of the business was taken over by ASC, an enterprise which had been formed a few days earlier by Peterson's son-in-law, Richard Santucci. All Sign continues to be engaged in the business of leasing billboards and maintains office space in the building.

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Peterson is president of All Sign and owns 52 percent of the shares in the corporation. Keith Hlad is secretary and owns 8 percent, Melanie Mase is treasurer and owns 8 percent, Joseph Monahan is a director and owns 16 percent, and Richard Ralph is a director and owns 8 percent. Mike Maloney is not an officer or director but owns 8 percent of the shares of the corporation.³

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In August 1994, All Sign employed approximately ten to twelve employees, including five painters represented by Local 830 and two journeyman sign hangers represented by Local 73. According to Nielsen's testimony, the five employees represented by Local 830 were Ray Schmidlin, Frank Wryeco, Debra Cribbs, Donald Nelson and Frank Kolar. The painters designed, fabricated and painted signs in the shop and were supervised by Joseph Monahan who also did painting and lettering work himself. The two sign hangers represented by Local 73 were Nielsen and Kubajak. Sign hanging work involved digging holes, pouring and setting concrete, welding signs onto poles, mounting letters to building fascia, hanging panels on billboards and making electrical connections for electrified signs. Sign hanging work also involved placing pressure sensitive vinyl graphic materials to smooth surfaces, such as windows and doors. Kolar accompanied Nielsen and Kubajak on an almost daily basis and assisted them in installation work.⁴ Prior to 1994, the sign hangers were supervised by Richard Ralph. In the several months prior to August 1994, Joseph Monahan took over supervision of the sign hangers. Each morning he assigned the day's work, and he called the sign hangers throughout the day to inform them of changes in job specifications and changes in schedule. There is some evidence that All Sign subcontracted a portion of its sign installation work to a company called Billboards, Inc. This testimony was adduced through Santucci, who denied knowing what percentage of All Sign's installation work was subcontracted. General Counsel offered no other evidence to establish the amount of installation work which All Sign subcontracted prior to September 1, 1994.

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Also employed by All Sign in August 1994 were Mase, who served as the office secretary, several salesmen, and David and Kevin Monahan, the sons of Joseph Monahan. According to Nielsen, the Monahan sons worked full-time in the shop loading and unloading trucks, hanging panels in the shop to be painted, and performing yard and clean up work. Joseph Monahan testified that Kevin worked for All Sign, but he could not recall if he worked full-time or part-time. Kevin Monahan was not called to testify. David Monahan testified that he only worked three or four hours on Saturdays doing clean up work, and that he was not always paid for his services.

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³ Maloney was not listed as an owner of All Sign in the corporation's 1993 and 1994 State of Illinois Domestic Corporation Annual Reports, nor in its 1991 and 1992 federal tax returns. Maloney is reflected as owning 8 percent of the shares of All Sign in a Debtor's Schedule filed on November 6, 1995 in United States Bankruptcy Court (N.D. Ill.), and Santucci also testified that Maloney is an owner.

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⁴ Although Nielsen described Kolar as a member of Local 830, Respondent argues that Kolar was a member of Local 73. The record is not clear in this regard. The record is clear, however, that regardless of his union membership, Kolar frequently performed sign installation work with Nielsen and Kubajak.

5 In August 1994, All Sign owned a Ford truck with a 65 foot sky-hook crane, a 115 foot sky hook, two to three pick-up trucks and an auger truck used for digging holes. All of these vehicles bore the All Sign name. The 115 foot sky hook and the auger truck were not in use in August 1994 due to mechanical problems. All Sign owned and operated shop equipment including drill presses, sheet metal shears, cut off saws, a forklift, a panel saw, hand tools, power drills, a mechanical punch, spray booths and painting equipment.

10 All Sign and Local 73 have been party to a series of collective bargaining agreements, the most recent of which was effective by its terms from October 1, 1993 to September 30, 1996 and was signed by Joseph Monahan on behalf of All Sign. The Union is recognized as the collective bargaining representative for all journeyman sign hangers and sign hanger trainees.

15 b. Pro Type

15 Pro Type has at all times material herein been engaged in the manufacture of pressure sensitive vinyl graphic materials which are utilized in the sign-making production process. Pro Type was founded in 1982, and was incorporated in the State of Illinois in 1986. The registered agent was attorney Dennis J. Krisik, the same attorney who incorporated All Sign. Pro Type was initially owned one-half by All Sign and one-half by Tim Vernon. Santucci testified that in 20 the late 1980's, Vernon wanted to get out of the business and asked Santucci to buy his one-half share. Santucci testified that he had been running Pro Type up until that time without an ownership interest, and he was interested in acquiring Vernon's shares. However, Santucci could only afford to buy a portion of Vernon's shares equaling one-third of the total business. All 25 Sign bought Vernon's remaining shares, resulting in All Sign owning two-thirds of Pro Type and Santucci owning one-third. The officers and directors of Pro Type after this buyout were Peterson, Santucci, and Hlad, as president, secretary and treasurer, respectively. Prior to 1987, Pro Type was located in the Chicago Ridge section. In 1987, after All Sign made renovations to the building, Pro Type moved in and paid rent. At times the rent checks were made out to the 30 building partnership and at other times they were made out directly to All Sign.

35 Pro Type utilizes computers in its production process and these computers are located in a corner of the shop area in the building, immediately adjacent to the equipment used by All Sign. Kubajak testified that Pro Type employees have, on occasion, used All Sign equipment. Pro Type has never been engaged in sign installation work, and the work of incorporating the vinyl pieces manufactured by Pro type into a finished sign product was performed by the employees of All Sign. According to Santucci, even though All Sign was Pro Type's biggest customer, Pro Type was rarely paid for the work it performed for All Sign. Santucci gave 40 invoices to All Sign, but All Sign paid them only on rare occasion. Santucci testified that he had to "hound" All Sign for money, and the little money Pro Type did receive was never enough to pay its creditors.

45 From May to June 1994, Pro Type paid All Sign's debts, including payments to All Sign's suppliers and paychecks to All Sign's employees. Respondents state in their brief that All Sign used Pro Type's bank accounts during this period to deposit funds to pay certain vendors and employees because All Sign's bank accounts and accounts receivable had been garnished by creditors.

The record is vague as to who was employed by Pro Type prior to August 1, 1994. Nielsen recalled that there were four or five employees, including Santucci, a man named Tony, and Kevin Reich. After August 1, 1994, Santucci testified he had three employees at Pro Type: Tony Quinn, Kevin Reich and Suzanne Neven. Santucci testified that Quinn is the manager who

presently runs the day-to-day operations of Pro Type and who reports to Santucci.

General Counsel introduced as part of General Counsel's Exhibit 8 a Certificate of Dissolution of Domestic Corporation dated May 2, 1994, wherein the Illinois Secretary of State dissolved Pro Type for its failure to file an annual report and to pay an annual franchise tax. General Counsel offered no testimony regarding this document, and did not argue the significance of the document in its brief. The document was similarly ignored in Respondents' brief. The overwhelming evidence of record establishes that Pro Type has operated continuously since 1982. General Counsel was remiss in not explaining the relevance of this document, and I draw no inference against Respondents as a result of its introduction.

B. Santucci's Acquisition of Pro Type

Santucci testified that he was becoming increasingly frustrated with All Sign's failure to pay Pro Type's bills. Pro Type was falling deeper in debt, and Santucci wanted to own Pro Type outright in order to better control Pro Type's financial affairs. He therefore made an offer to buy out All Sign's interest in Pro Type. The offer was crafted around a \$200,000 debt which Santucci estimated that All Sign owed to Pro Type. No documentary evidence was offered to corroborate Santucci's assertion that this debt was owing, and Santucci was directly contradicted on this point by Joseph Monahan who testified that All Sign owed Pro Type several thousand dollars, not several hundred thousand dollars. In any event, Santucci reasoned that since All Sign was two-thirds owner of Pro Type, and since the money that All Sign owed to Pro Type was All Sign's money in the first place, if All Sign paid the money it owed to Pro Type, then Pro Type would have to give back two-thirds of the money, approximately \$130,000 and keep the \$70,000 balance. According to Santucci, because All Sign could not pay the \$200,000 debt, or any portion thereof, he offered to buy All Sign's two-thirds interest in Pro Type by forgiving Pro Type's \$70,000 portion of the debt. A written agreement recording this transaction was introduced into evidence. The agreement was signed by Peterson and Joseph Monahan on behalf of All Sign and by Santucci on behalf of Pro Type. The date August 1, 1994 is handwritten twice on the face of the document and Santucci testified that August 1, 1994 was the date that the agreement was entered into and when he became Pro Type's sole owner, director and president. However, the document bears a notary stamp dated January 1, 1995. Santucci testified that the notary was not present on August 1, 1994, when the agreement was signed, but rather, notarized the document, without witnessing the signatures, on January 2, 1995, even though she incorrectly wrote January 1, 1995 on the document. He explained that he went to a notary at that time because his accountant thought it would be a good idea to have the document notarized.

C. The "Closure" of All Sign

Nielsen testified that the number of employees at All Sign steadily decreased, from twenty when he started working for All Sign in 1985, to ten in August 1994. As indicated previously, billboard work had declined over the years, and assets, including billboards, were sold in 1990, 1991 and 1992 to pay off debts. Kubajak testified that he had been laid off several times in 1993 and in 1994 because work was slow. Joseph Monahan testified that as of August 1994, money was owed to the unions, to vendors and to Republic Bank which held the mortgage on the building. Monahan testified that All Sign was so far in debt by August 1994 that there was no way to catch up. Nielsen testified that about a week before August 19, 1994, Peterson told him that All Sign was having financial difficulties, but that they were going to try to work through them and keep on operating.

When Kubajak arrived at work on the morning of Friday, August 19, 1994, he saw Don Nelson who appeared upset. Nelson told Kubajak that they were all being laid off. Kubajak went to the back of the shop and saw Joseph Monahan, who confirmed that everyone was being laid off, including Kubajak. As Kubajak was leaving the shop, he met Peterson. He asked Peterson if it were true that everyone was being laid off and Peterson said yes. Peterson added, however, that he "had something going" and asked if Kubajak could stay on and continue to work. Kubajak said yes, and worked the rest of the day.

That same day, when Nielsen returned to the shop at the end of his shift, Peterson handed him his check and told him there was a layoff notice in the envelope. The letter, signed by Peterson, read in relevant part:

Due to All-Sign Corporation's inability to negotiate a reasonable agreement with the Union, effective today Friday, August 19, 1994, all employees are laid off until further notice.

According to Nielsen, after he read the letter, Peterson told him that due to the problems with the "other" union, and the lack of money coming in, that he could not afford to keep him anymore. Peterson assured Nielsen that there was work, however, and that Nielsen could report for work on Monday with the understanding that Peterson could not guarantee what he would pay Nielsen or how he would pay him. Nielsen told Peterson he could not work under those circumstances, thanked Peterson for nine years of employment, and left.

On Monday, August 22, 1994, All Sign was still in business. Peterson, Joseph Monahan, Kevin Monahan, Mase and Kubajak worked that day. Joseph Monahan testified that All Sign continued to operate because, "jobs had to be completed." Kubajak continued to work for All Sign for three weeks installing signs in parking garages. Joseph Monahan continued working in the shop with a man named Bob.

Kubajak testified that on Friday, September 9, 1994, he entered the shop and met Santucci who asked him if he wanted to sign up for a new health plan. Kubajak said no, he already had a health plan through the Union. Kubajak testified that Santucci said, "well, we are not going to hire you as a sign hanger through the union, we are not going to have union workers." Santucci's recollection of this conversation is similar to Kubajak's recollection. Santucci testified that a few weeks after August 19, 1994, he spoke with Kubajak and asked him if he would like to work for ASC, a new company which was not going to be union. Kubajak responded that he had too many years vested in the Union. Santucci said he understood, and Kubajak left.

Later that same day, Kubajak spoke with Peterson and asked him if it were true that he was not going to work as a sheet metal worker with the Union. Peterson said, "yes, we are going non-union." He then said that Kubajak could stay if he wanted. Kubajak told Peterson that after 23 years with the Union, he did not want to give up his membership and he did not want to work non-union. September 9 was his last date of employment.

Shortly before All Sign laid off its unionized employees, All Sign hired several new employees. Santucci testified that Rick Kraynack was hired right at the end of All Sign's existence. Although Santucci was not sure, he believed that Bob Ginsmore was also hired by All Sign shortly before the layoffs. This testimony is consistent with Kubajak's testimony that on Monday, August 22, 1994, Joseph Monahan was working in the shop with an employee named Bob. Santucci could not recall whether Al Smith was hired by All Sign right before it ceased sign

manufacturing operations, or whether he was hired by ASC.⁵

5 Lee Esposito, recording secretary and trustee for the Union, testified that at no time prior to August 19, 1994, did anyone from All Sign notify the Union that All Sign was having financial difficulties, or that there was going to be a layoff. At no time did anyone from All Sign indicate that All Sign wanted to be released from the contract with Local 73, or that All Sign was going to subcontract the work performed by Local 73 members. The first time that he became aware of any change in All Sign's operation was in January 1995, when he was looking over a list of delinquent employers who had failed to make contributions to the funds, and he noticed All Sign on the list. He called All Sign and spoke with an individual who identified himself as John Roskovitch, the new comptroller for All Sign. Esposito told this person that the Union had not received any contributions or reports for September, October and November 1994. The man who identified himself as Roskovitch stated that as of August 19, 1994, there were no Local 73 members working at All Sign and the company was contracting the work out. Esposito said that the contract was good until September 31, 1996, and that as far as he was concerned, All Sign was still bound by the collective bargaining agreement. Esposito asked who All Sign was subcontracting the work out to, but the man refused to answer. Esposito told him that the Union would enforce the contract, and the man responded that the owners had made a decision to contract the work out and that the contract with Local 73 did not mean anything to the owners.

D. The Creation of ASC

25 Santucci testified that he first learned of the layoff of All Sign's unionized employees on August 19, 1994, through employee Frank Kolar. Santucci professed to be shocked at the revelation and claimed that for several days he didn't know what he was going to do because All Sign was Pro Type's biggest customer. Santucci testified that several days passed before he even went to speak to his father-in-law. When he finally did so, he asked Peterson what he was going to do with all of the equipment, and Peterson said that he was going to auction it off. Santucci testified that he did not respond to this comment by his father-in-law. Santucci subsequently approached Joseph and David Monahan, and the three of them decided to make Peterson an offer to take over the sign manufacturing side of All Sign's business.⁶ David Monahan drafted a business plan for the new entity, ASC, which stated in part:

35 Business Plan: Sign manufacturer
 Business arrangement with All-Sign Corp
 A. Rental of building at 5501 W. 109th Street, Oak Lawn, IL
 B. Rental of equipment and rolling stock with option to buy
 C. Serve existing customers and complete jobs in progress for
 40 All-Sign Corp
 D. Answer and distribute all phone calls to All-Sign Corp.

ASC began operating on or about September 1, 1994, in the same building as All Sign and using the same shop space and equipment. Santucci testified that there was no hiatus from

45 ⁵ Even though I discredit Santucci's testimony that he could not recall whether or not Al Smith worked for All Sign, there is no other evidence on this point, and I am unable to find that he was an employee of All Sign prior to All Sign becoming ASC.

⁶ Santucci testified that in November 1993, he had approached Frank Nielsen, David and Kevin Monahan, and John Peterson, Jr., his brother-in-law, about the prospect of purchasing All Sign. According to Santucci, these discussions went no further until August 1994.

the cessation of sign manufacturing work by All Sign to the commencement of the same work by ASC. ASC purchased supplies from at least one of All Sign's previous suppliers. The All Sign name remained on the trucks for many months. Santucci testified he wanted ASC to be listed in the phone book using All Sign's old number, but the phone company would not let him change the listing until a \$20,000 bill was paid. Since Santucci refused to pay the bill, All Sign and ASC Sign are listed separately, although both phones ring to the same office and are answered by ASC's secretary. Despite the enormity of the supposed outstanding bill, the phone company has not terminated service to All Sign.

ASC was not incorporated until May 4, 1995. For eight months, Santucci and the Monahans operated the sign manufacturing side of the All Sign business without a formal business structure. Santucci testified that in September 1994 he obtained an employer tax identification number for ASC, and he opened a checking account under the name "ASC, Inc." even though the business was not incorporated at the time.

Despite the fact that ASC had no corporate identity, "ASC, Inc." entered into three agreements. The first agreement was a lease with the building partnership for the use of the entire premises at 5501 W. 109th Street for the period September 1, 1994 to August 31, 1995, and for an annual rent of \$60,000⁷. This lease, which is undated, bears the signatures of Santucci, as lessee, and Peterson as lessor. The second agreement was an equipment lease for rolling equipment (trucks) entered into with All Sign for a 48 month term payable at the rate of \$1,000 per month with an option to buy the equipment, at the end of the 48 months, for \$5,000. This lease, also undated, bears the signatures of Peterson as lessor and Santucci and David Monahan as lessees. The third agreement was an equipment lease for the shop equipment, and this agreement was identical in terms to the rolling equipment lease. It was signed by the same three people and is also undated. Both equipment leases made reference to equipment inventories by attachment, but no attachments were appended to the leases. Santucci testified that the trucks that were leased were a crane truck, a bucket truck and two pick-up trucks, and the shop equipment that was leased were the presses, saws and welders.

Santucci testified that ASC ultimately purchased the leased equipment for \$91,000 and paid \$51,000 on the building lease. No purchase agreements, title certificates, or bills of sale were introduced. General Counsel did introduce seven checks reflecting five payments to All Sign and two payments to the building partnership by "ASC, Inc." Two checks, totaling \$20,000, were dated December 21, 1994, and were payable to All Sign with no notation on the check as to the nature of the transaction. The third check, for \$5,000, was dated January 10, 1995 and was payable to All Sign for "Jan. Rent & Lease." The fourth check, for \$5,000, was dated July 13, 1995, and was payable to the building partnership for "July Rent". Two more checks were written on September 7, 1995. One check, for \$15,000, was payable to All Sign for "Apr. May June Rents", and the second check, for \$12,000, was payable to All Sign for "Apr.-Sept. leases". The final check, for \$5,000, was dated September 14, 1995, and payable to the building partnership for "Sept. Rent".

There is no evidence of rent payments made by ASC after the September 14, 1995 check, and the lease was not renewed. Joseph Monahan testified that at some point the bank took possession of the building because the mortgage was not paid, but he did not testify as to when the foreclosure occurred. Respondents aver in their brief that the building was purchased

⁷ Santucci testified that All Sign continues to maintain an office within the building. There is no evidence to establish whether All Sign pays rent for use of this space. The lease signed by ASC with the building partnership demised the entire building to ASC for the period of the lease.

by Republic Bank in a judicial sale on September 14, 1995, but there is absolutely no evidence of this in the record.⁸ The record is therefore unclear as to who owns the building. Santucci testified that at present, Pro Type pays \$1,000 per month to ASC for rent. ASC, however, does not have a written agreement with any entity to occupy the building, but rather, has a “verbal agreement” with Republic Bank to pay \$5,000 per month.

On September 15, 1995, a Chapter 11 proceeding was commenced against All Sign in the United States Bankruptcy Court, Northern District of Illinois. The attorney representing All Sign was Karen Walin, the same attorney who represents Respondent Pro Type and Respondent ASC in this proceeding. On November 6, 1995, a Debtor’s Schedule was filed by All Sign listing two secured creditors: Republic Bank and the Internal Revenue Service. Numerous unsecured creditors were listed, but Pro Type and ASC were not listed. The Chapter 11 petition was dismissed on January 30, 1996, and All Sign continues as a viable corporate entity.

On November 11, 1996, ASC signed a promissory note for a \$75,000 loan from Archer Bank. Santucci, Joseph Monahan and David Monahan personally guaranteed the loan, which, pursuant to its terms, was for the purpose of purchasing equipment from an unnamed source. The three men and their wives also mortgaged their respective homes to secure the debt. Every document in connection with this loan was executed by Santucci and the Monahans on behalf of ASC, and there was no signature by anyone on behalf of All Sign. Nevertheless, the \$75,000 check was made payable to ASC *and* All Sign. Santucci testified that he endorsed the check and the check was given directly by the bank to his father-in-law without passing through an ASC account. No purchase contract or bill of sale was introduced indicating that equipment was in fact sold by All Sign to ASC.

According to Santucci, he manages and directs both ASC and Pro Type. Santucci spends one third to one half of his day working on ASC matters, and the balance of his day working on Pro Type matters. He walks back and forth all day long between the ASC area of the building and the Pro Type area of the building. At first Santucci testified that he does not do any actual work for ASC other than managing the business. Four transcript pages later, however, Santucci said he directly supervises the employees in the ASC shop. Santucci denied that Joseph Monahan, who spends his entire day in the ASC shop, supervises the shop employees, although he did acknowledge that Monahan is the most experienced person in the shop and the person to whom employees go when they have questions. Monahan testified that no one at ASC has the title of supervisor but that Santucci is the acting shop supervisor. On cross examination, Monahan testified that he works ten to eleven hour days in the shop, that he sees Santucci only a couple of times during the day, and that Santucci does not know how to perform any of the duties in the shop.

When asked how he went about hiring employees for ASC, Santucci stated that he started with the former All Sign employees, because he “didn’t know where else to start.” ASC began operations with Rick Kraynak, Bob Ginsmore, Al Smith, Kevin, David and Joseph Monahan and Santucci. All of these individuals, with the possible exception of Smith, worked

⁸ Counsel for Respondents introduced a Notice of Motion for a Judgment of Foreclosure and Sale, Default Judgment and Summary Judgment filed by Republic Bank on July 10, 1995. Counsel did not, however, introduce the response, if any, filed to the motion, nor did she introduce the decision of the court ruling on the motion. Counsel argued in her opening statement and in the brief that the building was sold at a judicial sale. Her arguments notwithstanding, there is no evidence of this fact, and I make no such finding.

previously for All Sign. At the time of hearing, ASC's employees were Frank Kolar, Al Smith, Joseph, Kevin and David Monahan, a secretary named Danielle and Santucci. Seventy-five to ninety percent of the signs manufactured by ASC are manufactured with Pro Type vinyl graphic materials. Two-thirds of ASC's installation work is performed by ASC employees, and one-third is subcontracted, according to Santucci.

As noted previously, ASC was not incorporated until May 4, 1995, eight months after it began operating. Upon incorporation, Santucci became President and 50 percent owner of ASC, Joseph Monahan became Secretary and 25 percent owner, and David Monahan became vice-president and 25 percent owner.

Joseph Monahan was asked by Respondents' counsel to describe the work he performs for ASC. He responded, "most of the painting, some fabrication, wood signs, sandblasting signs." When asked to describe the work he performed for All Sign, Monahan responded, "pretty much the same." On cross examination, Monahan was consistent in his description of the work he performs:

Q: Now the work that you're performing today, it's with All American Sign Company. Is it similar to the work that you performed when you were employed by All Sign?

A: Yes, it is. Painting is painting.

IV. Analysis

A. Credibility Findings

I thoroughly discredit the testimony of Richard Santucci. Santucci was misleading, evasive and untruthful, and the record is replete with examples of his lack of credibility. When asked why he failed to incorporate ASC for eight months, Santucci claimed that he was inexperienced in such matters and it was only when he was preparing his tax returns in 1995 that his accountants told him he should have incorporated the business. In fact, Santucci was highly experienced in such matters. He managed and directed Pro Type since 1982, purchased a one-third interest in Pro Type in the late 1980's, and purchased the remaining two-thirds interest on August 1, 1994, one month before he began operating ASC. Santucci was familiar with buying, selling, owning and running a corporation, and he was not truthful when he testified otherwise. When asked why he allowed Pro Type to write checks to All Sign's creditors, he said he realized it was a mistake only when his accountants subsequently told him that he should have been more observant of corporate formalities. When asked whether All Sign ever went bankrupt, Santucci testified that he had no idea, but later in his testimony, he stated that he continues to receive All Sign's phone bills which are addressed to "All Sign, Debtor in Possession". One of the clearest examples of Santucci's total lack of credibility was demonstrated when he was asked by counsel for the General Counsel if he performed any work in the shop for ASC and Santucci said he didn't know. When asked the same question the next day by his own counsel, he gave a detailed account of his daily activities.

I am unpersuaded that Santucci did not know that his father-in-law was going to layoff all of All Signs unionized employees. Pro Type could not financially survive without All Sign, and the image of Santucci sulking around the shop for several days before summoning up the courage to speak to his father-in-law about the apparently imminent demise of the family business structure is not believable. This is particularly so in view of the fact that as early as

1993, Santucci was actively considering taking over the All Sign business. Similarly unpersuasive was Santucci's testimony that he never knew that All Sign had a contract with a union, and that it was only when a National Labor Relations Board attorney contacted him was he aware that there was a union contract. Joseph Monahan was Santucci's partner in the ASC venture and Monahan was the signatory to the collective bargaining agreement with the Union on behalf of All Sign in 1993. Even if Santucci was previously unaware of the collective bargaining agreement, which I do not believe, Monahan was aware of it and it is utterly inconceivable that Monahan did not discuss this fact with Santucci prior to their forming ASC.

I credit the testimony of Nielsen and Kubajak. Both men were quiet and thoughtful in their demeanor, and I found them to be entirely credible. Moreover, the testimony regarding their conversations with Peterson was uncontradicted. Far less credible was the testimony of Esposito wherein he asserted that the first he was aware that employees had been terminated and that All Sign had gone non-union was in January 1995 when he noticed that fund payments had not been made. Nielsen and Kubajak had both been unequivocally informed five months before that they were being terminated because of their Union membership and that All Sign was going non-union. It is inconceivable that they did not report these events to the Union at their earliest opportunity, and I must conclude that they did.⁹ Since I find Esposito had to have been aware of the situation at All Sign prior to January 1995, the predicate for his placing the phone call in January 1995 did not exist. I find further reason to discredit Esposito's testimony regarding this telephone conversation in that Esposito had never spoken to the comptroller before. He made no attempt to verify the identity of the person to whom he spoke, and General Counsel offered no corroborating evidence that All Sign or ASC ever employed a comptroller by the name of Roskovitch. Nor did Esposito ever attempt to verify the comptroller's representation that unit work was being subcontracted with Peterson, Joseph Monahan, or anyone else associated with All Sign. Esposito's scenario is that he knew nothing of his members' terminations, placed a phone call to the company five months after the fact, spoke to an individual whom he did not know, accepted this person's representation that unit work had been subcontracted, and made no attempt to verify these facts or to inquire further of company officials. At the time of these events, Esposito had twelve years experience as a Union official, and he knew better. His testimony is patently incredible.

Joseph Monahan was also not an entirely credible witness. An extremely soft-spoken man, he was overly cautious and hesitant in his answers, and looked to Respondents' counsel prior to answering many questions on cross examination. I do not believe that Monahan intentionally fabricated his testimony, but rather, he impressed me as a person who was worried that he would say the wrong thing. Consequently, his voice was barely audible and he was tentative in his responses. I credit Monahan's testimony only where specifically indicated.

B. The Alter Ego Issue

In determining the issue of alter ego, the Board considers a number of factors, no one of which, taken alone, is controlling. Among the factors are common management and ownership, common business purpose, nature of operations and supervision, common premises and equipment, common customers, i.e., whether the employers constitute the same business in the same market, as well as the nature and extent of the negotiations and formalities surrounding the transaction. The Board also considers whether the purpose behind

⁹ Neither Nielsen nor Kubajak were asked by the General Counsel when they first informed the Union of their terminations.

the creation of the alleged alter ego was legitimate or whether, instead, its purpose was to evade responsibilities under the Act. *Fugazy Continental Corp.*, 265 NLRB 1301 (1982). The record in this case convincingly demonstrates that the creation of ASC was a deliberate maneuver to continue All Sign's sign manufacturing operation in a disguised form while avoiding All Sign's obligations and responsibilities under the Act.

a. The Disguised Continuance of All Sign as ASC

There is ample evidence that in August 1994, All Sign was experiencing financial difficulties.¹⁰ There had been a slow erosion of All Sign's business over a period of years, and I accept Respondents' argument that All Sign's creditors, including the two unions representing its employees, were seeking to collect the money owed them. The evidence is also clear, however, that Peterson decided to solve this problem, at least in part, by reducing labor costs and eliminating the expense of the collective bargaining agreement with Local 73. Peterson and Santucci engaged in a series of sham transactions which had the effect of transferring the sign manufacturing operation to a new, non-union enterprise, while leaving All Sign intact as a corporate entity.

The first stage of the transition from All Sign to ASC was the purported sale of All Sign's ownership interest in Pro Type on August 1, 1994. All Sign ostensibly sold its two-thirds interest in Pro Type in exchange for Pro Type's cancellation of a debt. There is no reliable evidence that there ever was a debt, and the stock transfer was accomplished without any money changing hands. There were significant irregularities attending the execution of the written stock purchase agreement, including the facts that the single-paged document refers to two appendices, neither of which are appended, and that the document was notarized five months after its purported execution. The circumstances surrounding this transaction lead me to conclude that it was a charade engaged in by Peterson and Santucci, the purposes of which were to create the appearance of a divestiture of assets by All Sign and to position Santucci for the eventual takeover of his father-in-law's business.

The second stage occurred in mid August to early September 1994, when All Sign hired new, non-union employees and terminated the union employees, Nielsen and Kubajak. Kraynak and Ginsmore were hired by All Sign shortly before the layoff of the union employees. When asked why All Sign would hire new people when it was going out of business, Santucci gave the following unintelligible response: "Because everybody was leaving. All the other people were just leaving. The writing was pretty much on the wall. Everybody knew, I think, that it was coming. Just the shock of it actually happening. It surprised me, too." Peterson distributed a layoff notice stating that due to problems with "the union", All Sign was laying off employees. All

¹⁰ At the close of the hearing Respondent offered voluminous documents relating to the All Sign bankruptcy proceeding as Respondent's Exhibit 8. Counsel was directed to work out a stipulation with counsel for the General Counsel in order to introduce only pertinent information, and the stipulation was to have been filed along with Respondent's brief. Respondent submitted a summary of the documents as Respondent's Exhibit 8 with its brief, but failed to indicate whether the exhibit had been submitted to the General Counsel for review. General Counsel filed a motion opposing the post-hearing introduction of the exhibit on the ground that it had not be stipulated to, and Respondent filed no opposition to the motion. I therefore reject Respondent's Exhibit 8. However, even if I were to consider this exhibit, I would find it cumulative to the evidence already in the record that All Sign was experiencing financial difficulties.

Sign owed money to many creditors at the time of the layoffs, but it is of critical significance that only the "union" debt was singled out for recognition in the layoff notice. At the same time that this notice was distributed, Peterson told Nielsen that he could continue working if he repudiated the union. On September 9, 1994, Peterson told Kubajak "we" are going non-union, and Santucci expressed similar sentiment. It is hard to imagine clearer evidence of anti-union motivation.

The third stage occurred from August 22, 1994 to September 1, 1994 when, following the layoff, All Sign continued operating without a hiatus in the sign manufacturing operation.

The fourth stage occurred on September 1, 1994, when All Sign changed its name to ASC, without any change in ownership. ASC began operating in the same building and using the same equipment. All Sign continued to be listed in the phone book, and the same secretary answered both phones. Joseph Monahan supervised the All Sign shop, and I find that he continues to supervise the ASC shop. I specifically discredit Monahan's and Santucci's testimony that Santucci supervises the ASC shop in view of Monahan's acknowledgment that Santucci knows nothing about shop work. The only significant change effected during this stage was Santucci's replacement of his father-in-law as the overall manager of the sign manufacturing operation.

As was evident during the first stage, irregularities attended the execution of written agreements during the fourth stage. ASC Inc., a phantom entity, entered into three written leases with All Sign, all of which were undated and none of which were notarized. Santucci did not offer an explanation as to why he did not have these leases notarized after the fact as he had in the case of the Pro Type stock purchase agreement. The equipment leases referred to appendices describing the leased equipment which were not, in fact, appended. It is impossible to discern from the terms of the leases what equipment, if any, was leased. The payments made by ASC pursuant to all three leases were at best, erratic. There is no evidence of a written lease for use of the building after September 1995, and no documentary evidence of any rent payments made by ASC after that time. Although ASC took out a bank loan for \$75,000 ostensibly to purchase All Sign's equipment, there is absolutely no evidence that any equipment was in fact purchased.

The fifth, and final stage of the transition from All Sign to ASC occurred in May 1995 when ASC was finally incorporated. Joseph Monahan, remains a 16 percent owner of All Sign, and a 25 percent owner of ASC. Peterson owns 52 percent of All Sign, and his son-in-law, Santucci, owns 50 percent of ASC. Monahan's sons own the remainder of the shares of ASC.

Based on the foregoing, I find that there is substantial evidence that Peterson and Santucci engaged in a series of transactions which resulted in the disguised continuance of All Sign as ASC, the purpose for which was to allow All Sign to repudiate the collective bargaining agreement with Local 73.

b. The Indicia of Alter Ego Status: Business Purpose,
Mode of Operation, Equipment, Customers
Ownership, Management, Supervision
and Customers

The evidence is clear that the sign manufacturing business operated by ASC is substantially identical to the sign manufacturing business operated by All Sign. As previously indicated, both entities have operated from the same location, using the same shop and

equipment, and all but a few of ASC's employees were previously employed by All Sign. All Sign continues to be listed in the telephone book as an ongoing business, and the business plan for ASC states that ASC is to serve existing All Sign customers. While it is true that All Sign retained the billboard leasing side of its business, it appears that this is a very small percentage of All Sign's operation which does not have employees and which does not require more than a single office to conduct business. The essence of All Sign's business was the manufacture and installation of signs, and that business was assumed, in toto, by ASC.¹¹ I therefore find, based on all the evidence, that All Sign and ASC have the substantially identical business purpose, mode of operation, equipment and customers.

The only common owner between All Sign and ASC, as incorporated, is Joseph Monahan who is a minority shareholder in both companies. Monahan, however, is a life-long friend of Peterson's. Peterson is the majority shareholder of All Sign, and his son-in-law is the majority shareholder in ASC. Monahan's son is the remaining shareholder in ASC. The closed nature of both corporations has never diminished, and ownership and control remain firmly ensconced in the Peterson/Santucci/Monahan families. See, *Advance Electric, Inc.*, 268 NLRB 1001 (1984); *Crawford Door Sales Co.*, 226 NLRB 1144 (1976).

c. Conclusion

Based on the foregoing analysis of the factors which the Board relies on to determine alter ego status, I find ASC to be the alter ego of All Sign.

C. The Single Employer Issue

General Counsel alleges that Pro Type has been and continues to be a single employer with All Sign and its alter ego, ASC. The evidence supports a finding of single employer status as of September 1, 1994, but not prior thereto.

"Alter ego" and "single employer" are related, but separate concepts. *Johnstown Corp. and/or Stardyne, Inc.*, 322 NLRB 1 (1997). The Board normally applies the single employer doctrine to situations in which ongoing, nominally distinct businesses are alleged to be one and the same and the evidence reveals: (1) some functional interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control. While none of these factors, separately viewed, has been held controlling, stress has normally been laid upon the first three. *Pulitzer Pub. Co. v. NLRB*, 618 F.2d 1275, 1279 (8th Cir.), cert. denied, 449 U.S. 875 (1980) quoting *Parklane Hosiery Co.*, 203 NLRB 597, 612 (1973). Ultimately, single employer status depends on all the circumstances of the case and is characterized by the absence of an arm's length relationship found among unintegrated companies. *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1122 (3rd Cir. 1982). As is evident, most of the alter ego criteria remain relevant, but motive is normally considered irrelevant, and the consequences of single employer and alter ego status are not necessarily the same. *NLRB v. Hospital San Rafael, Inc.*, 42 F.3d 45 (1st Cir.), cert. denied, 116 S.Ct. 331 (1994).

¹¹ Alter ego status may be found to exist where only a portion of the predecessor's business is transferred to the new operation, provided the test of "substantial identity" is met. See, *Industrial Turnaround Corp.*, 321 NLRB 181 (1996).

a. Functional interrelation of operations

Pro Type's operation has always been functionally integrated with the All Sign/ASC operation. Pro Type employees work side by side with All Sign/ASC employees in the same shop. On occasion, Pro Type employees use All Sign/ASC equipment. Pro Type has never been engaged in sign installation work, and its vinyl graphic materials are incorporated into finished sign products by the employees of All Sign/ASC. Seventy-five to ninety percent of the signs presently manufactured by ASC are manufactured with Pro Type vinyl graphic materials.

b. Centralized Control of Labor Relations

There is a paucity of evidence regarding control of labor relations in the period prior to September 1, 1994. There is no evidence as to who actually negotiated with the Union in collective bargaining on All Sign's behalf. Peterson signed and distributed the layoff notice on August 19, 1994, and made the decision to terminate All Sign's sign hangers. However, there is no evidence that Peterson ever made decisions to hire, fire or discipline Pro Type's employees. The testimony that Peterson "ran" All Sign, and Santucci "ran" Pro Type, prior to September 1, 1994, does not establish, either directly or circumstantially, that each man, in turn, controlled labor relations for their respective enterprises. It is entirely possible, but not proven, that Peterson controlled labor relations for both enterprises. The burden is on General Counsel to establish this fact by a preponderance of the evidence, and the General Counsel has not met that burden. General Counsel argues that the fact that employees of All Sign and Pro Type shared a health insurance plan, and that Pro Type paid All Sign employees for a two month period of time in 1994, is evidence of centralized control over labor relations. I disagree and find that these two isolated facts, without more, are insufficient to establish centralized control of labor relations such that would militate in favor of an affirmative finding of single employer status, prior to September 1, 1994.

Since September 1, 1994, the record is clear that Santucci is in complete control of both All Sign/ASC and Pro Type. He makes all managerial decisions for both companies, which obviously includes labor relations decisions. Indeed, I find that it was Peterson's and Santucci's intent all along to centralize the control of both companies in Santucci and this in fact occurred on September 1, 1994.

c. Common management

Prior to September 1, 1994, the evidence indicates that Peterson managed the business of All Sign/ASC and Santucci managed the business of Pro Type. Although Peterson was the president of Pro Type, there is no evidence that he exercised actual control over the management of Pro Type. Again, while it is entirely conceivable, if not likely, that Santucci had to answer to his father-in-law regarding his stewardship of Pro Type, there is no affirmative evidence of this fact, and I am unable to make such a finding. Therefore, it is only when Santucci took over the management of All Sign/ASC on September 1, 1994 that I find that there was common management of All Sign/ASC and Pro Type.

d. Common ownership or financial control

From Pro Type's inception in 1982 to August 1, 1994, All Sign owned a controlling interest in Pro Type. When that interest was sold on August 1, 1994, the transaction was a sham and part of the larger scheme to discontinue All Sign and to create ASC. For a time, All Sign evaded garnishments on its bank accounts by funneling money through Pro Type accounts to pay All Sign's creditors and employees. All Sign rarely paid Pro Type for the work it

did for All Sign, and according to Santucci, Pro Type could not pay its creditors without Pro Type being paid by All Sign. Obviously, Pro Type has always been financially dependent on All Sign. I therefore find that at all times All Sign/ASC and Pro Type have had common ownership and/or financial control.

5

e. Conclusion

The evidence establishes that All Sign/ASC and Pro Type have always been functionally integrated operations with common ownership and financial control. However, the evidence does not establish centralized control over labor relations or common management prior to September 1, 1994. I therefore find, based on the evidence adduced, that All Sign/ASC and Pro Type were single employers as of September 1, 1994, but not prior thereto. Since Pro Type has never employed sign hangers or sign hanger trainees, none of Pro Type's employees are part of the appropriate bargaining unit in this case, and I find Pro Type is not bound by the terms of the collective bargaining agreement between All Sign and the Union. *Lihli Fashions Corp. v. NLRB*, 80 F.3d 743 (2d Cir. 1996). Pro Type is, however, jointly and severally liable for the debts and obligations of All Sign and its alter ego ASC, including financial obligations under the collective bargaining agreement, arising on or after September 1, 1994.

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D. The Termination of Nielsen and Kubajak

Nielsen and Kubajak were terminated solely because they were members of Local 73 and because they refused to accept continued employment conditioned on their repudiating their rights under the collective bargaining agreement. Both men were given the option to continue their employment provided they agreed to work on a non-union basis, and they justifiably refused. Under these circumstances, they were constructively discharged in violation of Section 8(a)(1) and (3) of the Act. *Industrial Turnaround, supra; Advance Electric, supra*.

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E. The Subcontracting Issue

The evidence shows that All Sign subcontracted a "portion" of its sign installation work and that ASC subcontracted one-third of its sign installation work. General Counsel alleges that the subcontracting by ASC without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and its effects violates the Act. General Counsel also alleges that the decision by ASC to subcontract the work was motivated by anti-union animus. However, I find that there is insufficient evidence to conclude that there was any change in subcontracting practices following the transition from All Sign to ASC.

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There is no evidence in the record that establishes either the dollar value or the percentage of sign installation work subcontracted by All Sign prior to the unlawful transition to ASC. In its brief, General Counsel points to the fact that in loan documents filed in 1996, ASC reported that it paid to "subcontractors" the sum of \$240,750. However, there is no indication whether this figure represents the value of all work that was subcontracted, or only sign installation work. Even assuming that this figure represents the value of ASC's subcontracted sign installation work, since the General Counsel did not establish the correlative subcontracting figures for All Sign, I am unable to conclude whether the ASC figure represents an increase or decrease in the volume of subcontracted work. Similarly, there is no way to determine whether ASC's subcontracting "one-third" of the sign installation work represented a change in All Sign's practice of subcontracting a "portion" of the sign installation work. I also note that three employees, Nielsen, Kubajak and Kolar, did sign installation work for All Sign,

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and, as pointed out in the Charging Party Union's brief, the same number of employees perform sign installation work for ASC.

5 Nor do I rely on the telephone conversation between Esposito and Roskovitch wherein Roskovitch allegedly said that ASC's owners had decided to subcontract the sign installation work. As indicated previously, I discredit Esposito's testimony regarding this conversation. However, even if I were to assume that Esposito accurately relayed the content of this conversation, Roskovitch was not alleged by the General Counsel as an agent of Respondent, and there is no evidence that he had apparent authority to make these statements or to act in
10 this regard on ASC's behalf. *D.G. Real Estate, Inc.*, 312 NLRB 999 (1993).

I therefore find that General Counsel failed to establish by a preponderance of the evidence an unfair labor practice with respect to subcontracting, and I recommend dismissal of this portion of the complaint.
15

Conclusions of Law

20 1. Respondents are, individually and collectively, engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and have engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

25 3. Respondent ASC is the alter ego of Respondent All Sign.

4. Respondent Pro Type has been a single employer with Respondent All Sign and its alter ego Respondent ASC since September 1, 1994, but not prior thereto.

30 5. All journeyman sign hangers and sign hanger trainees employed by Respondent All Sign and its alter ego Respondent ASC constitute a unit appropriate for purpose of collective bargaining within the meaning of Section 9(b) of the Act.

35 6. At all times material herein, the Union has been the exclusive bargaining representative of the employees in the appropriate unit within the meaning of Section 9(a) of the Act.

40 7. Respondent All Sign and its alter ego Respondent ASC violated Section 8(a)(1) and (3) of the Act by constructively discharging William Nielsen on August 19, 1994 and James Kubajak on September 9, 1994, by conditioning their continued employment on forgoing union representation, as well as those wages and benefits specified in the collective bargaining agreement.

45 8. Respondent All Sign and its alter ego Respondent ASC violated Section 8(a)(1) and (5) of the Act by ceasing to recognize the Union as the exclusive bargaining representative of the employees in the appropriate unit, and by failing and to abide by the terms of the collective bargaining agreement with the Union.

Remedy

5 Having found that 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.

10 Respondent All Sign and its alter ego Respondent ASC, having discriminatorily discharged William Nielsen and James Kubajak, must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

15 Respondent All Sign and its alter ego Respondent ASC must recognize the Union as the representative of its journeyman sign hangers and sign hanger trainee employees, and must honor and apply the terms of the collective bargaining agreement. In addition, Respondent All Sign and its alter ego Respondent ASC must make whole its employees by making the contractually established payments to the various trust funds established by the collective bargaining agreement, and by reimbursing employees for any expenses ensuing from their unlawful failure to make such required payments, as provided in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 1 (1980), *enfd.* 661 F.2d 940 (9th Cir. 1981). In addition, Respondent Pro Type shall be jointly and severally liable for the financial obligations of Respondent All Sign and its alter ego Respondent ASC, including financial obligations under the collective bargaining agreement, arising on or after September 1, 1994.

25 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹²

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ORDER

35 Respondent All Sign Corporation and its alter ego Respondent All American Sign Co., Inc. (ASC), and Respondent Pro Type Graphics, Inc., as a single employer, their officers, agents, successors, and assigns, shall

40 1. Cease and desist from

45 (a) Refusing to bargain collectively with the Sheet Metal Workers' International Association, Local No. 73 as the exclusive representative of its journeyman sign hanger and sign hanger trainee employees employed at Respondents facility at 5501 W. 109th Street, Oak Lawn, Illinois.

¹² 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 apply the terms of the collective bargaining agreement.

(c) Constructively discharging employees by conditioning their continued employment on forgoing union representation, as well as those wages and benefits specified in the collective bargaining agreement.

(d) In any like or related manner interfering with, restraining, or coercing its 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) Within 14 days from the date of this Order, offer William Nielsen and James Kubajak full reinstatement to their former jobs or, if those jobs no longer exists, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make William Nielsen and James Kubajak whole for any loss of earnings and other benefits suffered, including but not limited to fringe benefit trust funds, as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Comply with the provisions of the collective bargaining agreement.

(d) Make whole employees who have suffered losses of earnings and other benefits by reason of the Respondents' failure to apply the terms of the collective bargaining agreement, plus interest, in the manner set forth in the remedy section of this decision.

(e) Make whole the appropriate fringe benefit trust funds for losses suffered by reimbursing such funds to the extent that contributions would have been made on behalf of employees, in the manner set forth in the remedy section of this decision.

(f) Make whole those individuals for any losses they may have suffered as a result of the Respondents' failure to make the contributions described in paragraph 2(e) of this Order, plus interest, in the manner set forth in the remedy section of the decision.

(g) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its 5501 W. 109th Street, Oak Lawn, Illinois facility copies of the attached notice marked "Appendix."¹³ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by Respondents' authorized representatives, shall be posted by each of the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places

¹³ 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."

5 where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents 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 Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by any of the Respondents at any time since August 19, 1994.

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

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

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Dated, Washington, D.C.

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Margaret M. Kern
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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to apply the terms of the collective bargaining agreement between us and the Sheet Metal Workers' International Association, Local No. 73.

WE WILL NOT constructively discharge you by conditioning your continued employment on forgoing representation by the Sheet Metal Workers' International Association, Local No. 73, or by conditioning your continued employment on forgoing the wages and benefits due you under to the collective bargaining agreement with the Sheet Metal Workers' International Association, Local No 73.

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

WE WILL comply with the provisions of the collective bargaining agreement between us and the Sheet Metal Workers' International Association, Local No. 73.

WE WILL within 14 days from the date of the Board's Order, offer William Nielsen and James Kubajak full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make William Nielsen and James Kubajak whole for any loss of earnings and other benefits, including but not limited to fringe benefit trust funds, resulting from their discharge, less any net interim earnings, plus interest.

WE WILL make whole any employees who have suffered losses of earnings and other benefits by reason of our failure to apply the terms of the collective bargaining agreement.

WE WILL make whole the appropriate fringe benefit trust funds for losses suffered by reimbursing such funds to the extent that contributions would have been made on behalf of employees were it not for our unlawful conduct.

WE WILL make whole those individuals who have suffered losses as a result of our failure to make the contributions described above.

**ALL SIGN CORPORATION, and its alter ego, ALL
AMERICAN SIGN CO., INC., (ASC) and PRO TYPE
GRAPHICS, INC., as a single employer**

(Employer)

Dated _____ By _____
(Representative) (Title)

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 with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 200 West Adams Street, Suite 800, Chicago, Illinois 60606-5208, Telephone 312-353-7589.