

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

COOL HEAT, LLC d/b/a
FORREST SHEET METAL, INC.,
INVESTMENT PROPERTIES ASSOCIATES, LLC,
and MEELP, INC., Alter Egos

and

Case No. 4-CA-37553
4-CA-37757

SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, LOCAL UNION NO. 19

Noelle M. Reese, Esq., for the General Counsel.
J. Bruce McKissock, Esq., for the Respondent.
Bruce Endy, Esq., for the Charging Party.

DECISION

Statement of the Case

GEORGE ALEMÁN, Administrative Law Judge. This case was tried in Philadelphia, PA, on various dates between February 1, and March 10, 2011. An initial Complaint was issued in this case against Cool Heat LLC d/b/a Forrest Sheet Metal, Inc. (herein Cool Heat) on August 10, 2010,¹ by the acting Regional Director for Region 4 of the National Labor Relations Board (the Board), based on a charge filed by Sheet Metal Workers' International Association, Local Union No. 19 (the Union) on June 30, and amended on August 10. An answer to said complaint was required to be filed by Cool Heat on or before August 24.

A Consolidated Complaint thereafter issued on December 28, following the filing of another charge by the Union on October 22.² The Consolidated Complaint, which was amended at the hearing,³ alleges that Cool Heat, LLC d/b/a Forrest Sheet Metal, Inc., Investment Properties Associates, LLC, and MEELP, Inc., as alter egos, (collectively referred to

¹ All dates herein are in 2010, unless otherwise indicated.

² For ease of reference, testimonial evidence cited herein will be referred to as "TR" (Transcript) followed by the page number(s); documentary evidence is referred to either as "GC Exh." for a General Counsel exhibit, "R. Exh." for a Respondent exhibit, or "CP Exh." for a Charging Party exhibit, followed by the exhibit number(s); reference to the parties' post-trial briefs shall be "GC Br." for the General Counsel's brief, "R. Br." for the Respondent's brief, and "CP Br" for the Charging Party's brief, followed by the applicable page numbers.

³ The Consolidated Complaint was amended at the hearing to include Investment Properties Associates, LLC, (IPA) as a named Respondent, and to allege, inter alia, that Cool Heat, MEELP, and IPA constitute a single integrated business enterprise and are a single employer within the meaning of the Act. (See GC Exh. 47; Tr. 347; 353). The amendment alleges that Ernest J. Carilli serves as IPA's president, William F. Forrest, Jr., as its vice-president, and John O' Connor as its treasurer.

herein as Respondents) had violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act).

5 Specifically, the Consolidated Complaint, as amended at the hearing, alleges that Respondents Cool Heat and MEELP are alter egos within the meaning of the Act, that they violated Section 8(a)(1) by telling employees they were going non-union when the collective bargaining agreement with the Union expired, and that, as Union members, employees would no longer be able to work for the Respondents. It also alleges that the Respondents violated Section 8(a)(3) and (1) by laying off employees Michael Bellafore, Roy Downward, Christopher 10 Dunning, Sr., Francis Forrest, and Andrew Smith in order to discourage membership in the Union. Finally, the Respondents are alleged to have violated Section 8(a)(5) and (1) by: (1) refusing to bargain over the decision to lay off the five above-named discriminatees, (2) failing and refusing, to bargain with the Union over the terms of a successor collective bargaining agreement, (3) failing and refusing to comply with the Union's request for relevant and 15 necessary information, and (4) failing and refusing, since on or around July 1, and when performing work within the Union's geographic jurisdiction, to hire workers referred from the Union's hiring hall, failing and refusing to maintain the wages of unit employees, and failing to make benefit contributions to the funds described in the parties' collective bargaining agreement. An Answer to the Consolidated Complaint responding to the allegations contained 20 therein was required to be filed on or before January 11, 2011.

25 Either on or before January 11, 2011, an unsigned, undated document, captioned "Re: Response to charges" containing Respondent MEELP's name, address, and phone number, was filed with the Region (GC Exh. 1[q]).⁴ The document contains denials of certain allegations. The following day, January 13, 2011, MEELP, through its president, John O'Connor, filed, via facsimile to the Region, a detailed Answer to the Consolidated Complaint.⁵ (GC Exh.1[r]).

30 At the start of the hearing, Counsel for the General Counsel moved for default judgment against Respondents Cool Heat and MEELP for failing to file timely and proper answers to the complaints as required under Section 102.20 of the Board's Rules and Regulations. The Charging Party similarly moved for default judgment against Respondents on grounds that it was never served with any answer, and because the answers are untimely and insufficient as a matter of law.

35 The Respondents, through counsel, opposed the motions for default judgment, arguing that they were not, prior to the hearing, represented by legal counsel when their answers were filed and presumably, therefore, unfamiliar with the Board's filing requirements. They claim that they were representing themselves prior to the hearing because they were, at the time, unable to afford legal counsel (TR. 12). The Respondents further claim that the shortcomings in the 40 initial September 1, answer to the consolidated complaint were, in any event, mere "technical defects," and that the parties herein, presumably meaning the General Counsel and the Charging Party, were not prejudiced "by the fact that one of the responses was unsigned or another response was two days late." (TR. 11).

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⁴ Counsel for the General Counsel admits that MEELP's Answer was received by the Region on or before January 11, 2011 (TR. 9).

50 ⁵ MEELP's January 13, 2011, answer is undated. Although the fax cover page which accompanied this answer has a "1/12/11" date handwritten at the top, the bottom of the fax cover page contains the notation, "Jan 13 2011 12:50," reflecting that it was faxed shortly after noon time on January 13, 2011.

Counsel for the General Counsel, the Union, the Respondents have filed post-trial briefs setting forth their respective positions on the motions for Default Judgment and regarding issues raised in this matter.⁶ For the reasons discussed below, I find that the Respondents Cool Heat and MEELP have not established good cause for their failure to file timely and legally sufficient answers to the Consolidated Complaint, and that Cool Heat has likewise not shown good cause for its failure to file a timely and legally sufficient answer to the initial August 10, complaint.

Ruling on Motions for Default Judgment⁷

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. It further states that the answer should "specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case it shall so state." Section 102.21 of the Board's Rules states that "an answer of a party represented by counsel or non-attorney representative shall be signed by at least one such attorney or non-attorney representative of record in his/her individual name, whose address shall be stated. A party who is not represented by an attorney or non-attorney representative shall sign his/her answer and state his/her address." It also requires the respondent to file a copy of its answer on the other parties.

As noted, an initial complaint issued in this case on August 10, against Cool Heat LLC d/b/a Forrest Sheet Metal, Inc. alleging it had engaged in certain unfair labor practices, and notifying it that, pursuant to the above-mentioned Board Rules, it was required to file an answer to the complaint by on or before August 24. (GC Exh.1[e]). Cool Heat failed to file an answer by the August 24 due date. Not having received an answer to the complaint by the due date, the Region, by letter dated August 25, notified Cool Heat of its failure to file an answer, and advised it that, unless an Answer was filed by August 31, a Motion for Default Judgment would be filed with the Board pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, a copy of which was attached to the Region's letter. (GC Exh.13).

Cool Heat again failed to file an answer by the newly imposed August 31, due date. However, the following day, September 1, the Region received a document purporting to be Cool Heat's answer, entitled "Answers to complaint and notice of hearing." Not only was Cool Heat's answer untimely filed, it also was not signed, is undated, and was never served on the Charging Party Union, as required by the Board's Rules.

On September 2, a response to the August 10, complaint was filed by Forrest Sheet Metal, Inc. through its president, William F. Forrest, Jr.⁸ While the answer contains William

⁶ Attached to counsel for the General Counsel's post-trial brief is a Motion to correct certain typographical and transcription errors in the record, and to correct the record to include pages 201-252 of GC Exh. 46 which were inadvertently omitted from the exhibit. No objection having been filed by any party to this proceeding regarding the corrections to the record proposed by counsel for the General Counsel, her motion to correct the transcript and GC Exhibit 46 is hereby granted.

⁷ My ruling on the Motions for Summary Judgment does not apply to IPA which, as noted, was added as a Respondent to the Consolidated Complaint during the hearing. Findings regarding the allegations involving IPA are discussed below.

⁸ Forrest Sheet Metal, Inc. is not named as a Respondent in this proceeding and is simply the predecessor of Cool Heat. Thus, its answer has no relevance here. It was, moreover, untimely filed.

Forrest's name and the name of the Company, like Cool Heat's belated answer, Forrest Sheet Metal's September 2, answer was untimely filed, is unsigned, and was not served on the Charging Party Union.

5 As to the December 24, Consolidated Complaint, an answer thereto, as noted, needed
to be filed by January 11, 2011. Cool Heat, however, did not file an answer to the December
24, Consolidated Complaint. The only response received prior to January 11, 2011, was a
document submitted by MEELP denying certain allegations. This submission by MEELP
10 contains the latter's corporate name, address, and phone number, but does not identify, or
contain the name or signature of, the MEELP representative who submitted it. While Counsel
for the General Counsel concedes that MEELP's document was received prior to January 11,
2011, the MEELP document is nevertheless not dated, nor was it served on the Charging Party,
as required under Section 102.21 of Board's Rules. Nor does the MEELP document specifically
15 admit, deny, or explain each of the facts alleged in the Consolidated Complaint, as required by
Section 102.20 of the Board Rules. The four denials in MEELP's answer, identified therein as
responding to "charge 1, charge 2, charge 3, and charge 4" do not correspond, or in any way
relate to or answer, the allegations contained in paragraphs 1-4 of the Consolidated Complaint.⁹

20 The Respondents seek to have their noncompliance with the Board's filing requirements
excused because they were not represented by counsel during the pre-hearing phase of the
proceeding and, thus, were unfamiliar with Section 102.20's filing requirements. When
determining whether to grant motions for default judgment, the Board has demonstrated some
leniency toward respondents who proceed without benefit of counsel. *Patrician Assisted Living*
Facility, 339 NLRB 1153 (2003); also, *Clearwater Sprinkler System*, 340 NLRB 435 (2003);
25 *Country Lane Construction*, 339 NLRB 1321 (2003); *Lockhart Concrete*, 336 NLRB 956, 957
(2001). Generally, the Board will not preclude a determination on the merits of a complaint if it
finds that a pro se respondent has filed a timely answer which can reasonably be construed as
denying the substance of the complaint allegations. *Id.* Similarly, where a pro se respondent
fails to file a timely answer, but provides a "good cause" explanation for such failure, summary
30 judgment will not be entered against it on procedural grounds. *Id.* The Board, however, has
made equally clear that merely being unrepresented by legal counsel does not establish a good
cause explanation for failing to file a timely answer. *Patrician Assisted Living Facility*, *supra*;
Lockhart Concrete, *supra*.

35 Regarding Respondent Cool Heat's untimely-filed and legally deficient September 1,
answer to the August 10, complaint, Cool Heat's sole explanation for not filing it on time, i.e.,
because it was unrepresented by counsel, does not, as noted above, constitute good cause for
failing to comply with Section 102.20's requirement regarding the timely filing of an answer. Nor
40 does it serve to justify or excuse Cool Heat's failure to also comply with Section 102.21's
requirements that the answer be signed by a party, even when not represented by counsel, and
served on all other parties. Respondent Cool Heat did neither, despite being afforded a second
opportunity to submit a timely and properly filed answer, and being provided by the Region with
a copy of the applicable Board Rules and Regulations setting forth the requirements for the filing

45 ⁹ The denials in the document submitted by MEELP appear to be responses to allegations
contained in the October 21, unfair labor practice charge filed by the Union, suggesting the
likelihood that MEELP's answer was intended as a response to the Union's charge, not to the
allegations in the Consolidated Complaint. (See, GC Exhs. 1[i] and 1[q]). The fax submission by
MEELP on January 13, 2011 of an answer, specifically responding to each and every allegation
50 in the Consolidated Complaint, lends credence to the belief that this document, not MEELP's
January 11, submission, was intended to serve as its answer to the Consolidated Complaint.

of a proper and timely answer.

Regarding the December 24, Consolidated Complaint, Cool Heat, as noted, did not file an answer, or respond in any way, to this complaint. Cool Heat does not deny being served with or receiving, a copy of the Consolidated Complaint. The record, in any event, contains proof of service of the Consolidated Complaint on Cool Heat via certified mail. (GC Exh. 1[p]). There is no indication, and Cool Heat does not claim, that it requested additional time in which to file its answer. Nor has Cool Heat offered any explanation for failing to file an answer to the Consolidated Complaint. Although it may still have been unrepresented by counsel when served with the Consolidated Complaint, as it was when it received the earlier August 10, complaint, its apparent lack of counsel does not, as indicated, constitute a justifiable explanation or defense to its failure to respond. Clearly, by the time Cool Heat received the December 24, Consolidated Complaint, it must have known, based on its earlier experience of having filed an (albeit untimely) answer to the August 10, complaint, and having been provided with a copy of the applicable Board Rules and Regulations, that an answer to the Consolidated Complaint was required. Therefore, any claim by Cool Heat that it was somehow ignorant of the Board's procedures or, more specifically, of its obligation to file an answer to the Consolidated Complaint is clearly without merit. Nor, in any event, would such ignorance constitute good cause for failing to file an answer. *Country Lane Construction*, supra. In light of these circumstances, a grant of default judgment against Respondent Cool Heat is fully warranted and proper here. See, *Calyer Architectural Woodworking Corp.*, 338 NLRB 315 (2002).

A grant of Default Judgment against Respondent MEELP is also fully warranted and proper here. Thus, MEELP's January 11, 2011, submission, as noted, does not satisfy the answer requirements of Section 102.20 and 102.21 of the Board's Rules and Regulations, as it is not signed by a representative, was not served on the Union, and does not "specifically admit, deny, or explain each of the facts alleged in the complaint." Indeed, I am convinced that MEELP's submission was proffered in response to one of the charges filed by the Union in this matter, and not intended as an answer to the specific allegations in the Consolidated Complaint. Notably, no attempt was made by the Respondents at the hearing to clarify or explain what precisely MEELP was responding to in its January 11, 2011 submission.

Although MEELP did file an answer to the Consolidated Complaint two days later, on January 13, 2011, responding to each and every allegation in said complaint, this answer was also legally insufficient under Section 102.20 and 102.21, as it was untimely filed (two days after its due date), and not served on the Union. Further, the January 13, 2011, answer was submitted to the Region by facsimile and, thus, improperly filed under Section 102.114(g) of the Board's Rules, which does not allow answers to complaints to be filed via facsimile. See, *Moo & Oink, Inc.*, 356 NLRB No. 156 (2011).

As the Respondents Cool Heat and MEELP have not shown good cause for their failure to file a timely and/or legally sufficient answer, I grant counsel for the General Counsel's and the Union's Motions for Default Judgment. All of the allegations in the Consolidated Complaint are therefore deemed, and hereby found to be, admitted to be true pursuant to Section 102.20 of the Board's Rules and Regulations.

Accordingly, on the entire record in this proceeding, I make the following

Findings of Fact

I. Jurisdiction

5 The Respondent Cool Heat is a Delaware corporation with an office at 2314 Pyle Ave.,
 Wilmington, Delaware. Prior to May, 2010, Cool Heat maintained a shop at the above facility
 where it engaged in the fabrication and installation of commercial duct work. After May 2010,
 Cool Heat maintained its shop in Elkton, Maryland. During the past calendar year, Cool Heat,
 10 in the conduct of its above-described business operations, performed services valued in excess
 of \$50,000 outside the State of Delaware.

 The Respondent MEELP, a Delaware corporation, maintained an office at 428 E. Ayre
 St., Wilmington, Delaware until October, after which it had its office and a shop in Elkton,
 Maryland where it is engaged in providing HVAC services and fabricating and installing
 15 commercial duct work. During the past calendar year, MEELP, in the conduct of its above-
 described business operations, shipped goods valued in excess of \$50,000 directly to points
 outside the State of Delaware, and performed services valued in excess of \$50,000 outside the
 State of Delaware.

20 At all material times herein, the Respondents Cool Heat and MEELP have been
 employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and
 the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

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A. The Alter Ego issue
 & Union's representative status

30 The record reflects that, on or about May 1, MEELP was established by Respondents as
 a disguised continuation of Cool Heat, with the same business purposes, operating in the same
 market area, having common management, supervision, and ownership, and using the same
 equipment and suppliers previously used by Cool Heat. On these undenied facts, I find that
 Cool Heat and MEELP have been, at all material times, alter egos within the meaning of the Act.

35 At all material times, Ernest J. Carilli has been president of Cool Heat and part owner of
 Forrest Sheet Metal, Inc; William F. Forrest, Jr. has been manager and estimator of Cool Heat
 and MEELP as well as part owner of Forrest Sheet Metal; and John O'Connor has been Chief
 Financial Officer of Cool Heat and Owner of MEELP.¹⁰ Carilli, Forrest, Jr., and O'Connor have
 40 at all material times been supervisors and agents of the Respondents within the meaning of
 Section 2(11) and 2(13) of the Act.

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

45 All full time and regular part time sheet metal workers, apprentices and
 limited apprentices; but excluding all other employees, office clericals,
 guards, and supervisors as defined in the Act.

50 Since on or about July 11, 2005, the Union has been the designated exclusive collective

¹⁰ The record reflects that Carilli is O'Connor's brother-in-law.

bargaining representative of the unit, and has been recognized as such by Cool Heat. This recognition has been embodied in collective bargaining agreements, the most recent of which was effective by its terms from July 1, 2007 through June 30, 2010. At all times since at least July 1, 2007, the Union has been the exclusive bargaining representative of the unit employees based on Section 9(a) of the Act.

B. The refusals to bargain allegations

By letter dated May 7, a copy of which was attached to the Consolidated Complaint served on the Respondents, the Union requested that Respondent Cool Heat meet with it to negotiate the terms of a new collective bargaining agreement to replace the one that was to expire on June 30. The Union also requested in its May 7, letter that Respondent Cool Heat provide it with the following information which was necessary for and relevant to the Union's performance of its duties as collective bargaining representative of the Unit employees:

1. The current corporate/business structures of Forrest Sheet Metal, Inc., Forrest Cool Heat and MEELP.
2. The names of the owners of each of the above named entities, and any familial or business relationships between any of those persons.
3. The names of the managers of each of the above named entities.
4. The business purpose of each of the above named entities.
5. The address of each office, shop or other place of business of each of the above named entities.
6. The names of those persons who supervise the members of the bargaining unit represented by Sheet Metal Workers Local 19 and the name of their employer.
7. The names and addresses of the customers of Forrest Sheet Metal, Forrest Cool Heat and MEELP for the previous six months.
8. The names of those persons employed by Forrest Sheet Metal, Forrest Cool Heat and MEELP for the previous six months.
9. Whether there has been a transfer of real or personal property from Forrest Sheet Metal to either Forrest Cool Heat or MEELP and, if so, the identity of that property.

The Consolidated Complaint alleges, and it is deemed admitted by the Respondents and found to be true, that, since on or about May 7, the Respondents have failed and refused to provide the Union with the above-requested information, and has further failed and refused to bargain with the Union for a new collective bargaining agreement.

The bargaining relationship between the Respondents and the Union was, as noted, established pursuant to Section 9(a) of the Act. Thus, absent a loss of majority support among unit employees, a claim neither made or established here, the Union, following the June 30, expiration of the parties' agreement, retained its representative status, and the Respondents remained obligated to bargain, on request, with the Union over the terms of a successor collective bargaining agreement, or over changes to be made in its employees' terms and conditions of employment. See, *HTH Corporation*, 356 NLRB No. 182 (2011), citing *Levitz Furniture Company*, 333 NLRB 717 (2001); also, *J.T. Thorpe and Son, Inc.*, 356 NLRB No. 112 (2011). Here, however, the Respondents, as found above, have failed and refused to bargain with the Union since the latter requested such bargaining in its May 7, letter, and has offered no valid justification or explanation for its conduct. Accordingly, I find that the Respondents' failure and refusal to bargain with the Union since May 7, over the terms of a successor agreement was unlawful and violated Section 8(a)(5) and (1) of the Act, as alleged.

The Respondents' failure and refusal to comply with the Union's May 7, request for the

above-described information was also unlawful, for an employer's duty to bargain is not limited only to contract negotiations, but rather includes an obligation to provide its employees' bargaining representative with relevant information needed for it to properly carry out its statutory duties and responsibilities as representative. *Peterbilt Motors Company*, 357 NLRB No. 13, slip op. at p. 9 (2011); *American Benefit Corporation*, 354 NLRB No. 129, slip op. at p.12 (2010).

As found above, the complaint allegation that the Union requested certain information from the Respondents in its May 7, 2010, letter demanding bargaining, is found to have been admitted by the Respondents, as is the allegation that the information requested is both relevant and necessary to the Union in carrying out its statutory duties and responsibilities as the exclusive bargaining representative of the Respondents' employees. The Respondents' admitted failure to comply with the Union's information request, therefore, amounted to a refusal to bargain and violated Section 8(a)(5) and (1) of the Act, as alleged.

Lastly, the Respondents have not denied, and are deemed to have admitted, the allegation in the Consolidated Complaint that it has, since, July 1, ceased abiding by the terms of its collective bargaining agreement with the Union by: failing and refusing to hire workers from the Union's hiring hall when performing work within the Union's geographical jurisdiction, failing and refusing to maintain the wages of unit employees, and failing and refusing to make contributions to the benefit funds, as called for under Articles VI and VII of the parties' agreement. (See GC Exh. 4).

It is well-settled that upon expiration of a collective bargaining agreement, an employer is required to continue in effect the terms and conditions of employment contained therein, and that it commits an unfair labor practice if, without bargaining to impasse, it effects a unilateral change of an existing term or condition of employment. See, *Litton Business Systems, Inc. v. NLRB*, 501 U.S. 190, 198 (1991), citing *NLRB v. Katz*, 369 U.S. 736 (1962); also, *Allied Signal Aerospace*, 330 NLRB 1216, 1227 (2000). The Respondents have offered no explanation for, or defense to, its admitted failure and refusal to continue following the hiring procedures set forth in the agreement, its failure and refusal to maintain in effect the unit employees' wages, and its failure and refusal to continue making the benefit funds contributions set forth in the parties' agreement. Accordingly, its failure and refusal to do so constituted further violations of Section 8(a)(5) and (1) of the Act, as alleged.

C. The coercive unlawful statements directed at employees

It is alleged in the Consolidated Complaint, and deemed admitted and found to be true, that, in late April or early May, William Forrest, Jr. told employees that Cool Heat was going non-union when its collective bargaining agreement with the Union expired, and that unit employees would no longer be able to work for Cool Heat or the Respondents because they were members of the Union. Unit employee Francis Forrest, brother of William Forrest, Jr. testified without contradiction that this statement was made to him at the Respondents' Pyle Ave. facility. (see TR:250). The Board has found such remarks to be unlawful as they tend to interfere with and coerce employees in the exercise of their statutorily protected Section 7 right to engage in union activity and to be represented by a union. *Pacific Custom Material, Inc.*, 327 NLRB 25 (1998); *Wehr Constructors*, 315 NLRB 867, 877 (1994). Accordingly, I find that William Forrest, Jr.'s remarks to Francis Forrest were unlawful and a violation of Section 8(a)(1) of the Act.

D. The unlawful layoffs

It is alleged in the Consolidated Complaint and deemed admitted and found to be true, that, on or about June 30, the Respondents laid off employees Michael Bellafore, Roy
 5 Downward, Christopher Dunning, Sr., Francis Forrest, and Andrew Smith because of their membership in the Union.¹¹ It did so in furtherance of its previously stated intent to employees that it would be operating non-union, and because these employees refused to relinquish their Union membership. Further, the layoffs were implemented without the Union having been given
 10 prior notice, or an opportunity to bargain over, that decision.

Section 8(a)(3) of the Act makes it unlawful for an employer to lay off, terminate, or otherwise discriminate against employees because of their membership in, or involvement with, a union. Under *Wright Line*, 251 NLRB 1083, 1089 (1980), enf.d. 662 F.2d 899 (1st Cir. 1981),
 15 cert. denied 455 U.S. 989 (1982), the burden of showing that the alleged unlawful conduct in question, here the layoff of the five named discriminatees, was motivated by antiunion considerations, rests with the General Counsel. That burden has clearly been met here, for the Respondents, as found above, have admitted that these five individuals were laid off because of their membership in the Union. Given this admission, I find that the lay off of employees
 20 Bellafore, Downward, Dunning, Francis Forrest, and Andrew Smith was discriminatorily motivated by antiunion considerations and, thus, violated Section 8(a)(3) and (1) of the Act.

Further, the failure to give the Union prior notice or an opportunity to bargain over that decision was also unlawful under Section 8(a)(5) and (1) of the Act. Thus, an employer must give a union representing its employees notice of a change in conditions of employment
 25 sufficiently in advance of actual implementation to allow a reasonable opportunity to bargain. *Times Union*, 356 NLRB No. 169, slip op. at p.13 (2011). As noted by the Board in *Times Union*, supra, the failure to bargain over layoff decisions causes damage to the union's status as the bargaining representative. The Consolidated Complaint alleges, and it is deemed admitted and found to be true, that the Respondents failed to give the Union advance notice of its
 30 decision to lay off the five named discriminatees, or an opportunity to bargain over that decision. The Respondent at the hearing provided no credible explanation or justification for not notifying or bargaining with the Union regarding the layoffs. Accordingly, its failure to do so was, as stated, unlawful and a violation of Section 8(a)(5) and (1) of the Act.

E. IPA's status

The Consolidated Complaint, as stated, was amended at the hearing to allege that Cool Heat, MEELP, and IPA constitute a single integrated business enterprise and are a single
 40 employer within the meaning of the Act. In determining whether separate entities constitute a single employer, the Board considers four factors: common control over labor relations, common management, common ownership, and interrelation of operations. While the Board considers common control of labor relations a significant indication of single-employer status,

¹¹ At the hearing, O'Connor claimed that these five individuals were not laid off but simply failed to report for work, having been pulled off the job by the Union (TR: 557-558). However, as the Respondents failed to timely and properly deny the allegation in the Consolidated Complaint, that the five individuals were laid off, the allegation that a layoff in fact took place on
 50 or about June 30, is deemed admitted and found to be true. O'Connor's claim at the hearing, therefore, that the five employees simply did not report for work and were not laid off is rejected as not credible.

no single factor in the single-employer analysis is deemed to be controlling. Nor do all four factors have to be present for a single employer finding to be made. *Covanta Energy Corporation*, 356 NLRB No. 98, slip op. at 22 (2011); *Carnival Carting, Inc.*, 355 NLRB No. 51, slip op. at 4 (2010); *Bolivar-Tees, Inc.*, 349 NLRB 720, 722 (2007) Rather, as made clear by the Board, “the hallmark of a single employer is the absence of an arm’s-length relationship among seemingly independent companies.” *Id.*

Testimonial and documentary evidence produced at the hearing make patently clear that Respondents Cool Heat, MEELP, and IPA function as a single business enterprise are indeed a single employer. Thus, there is common ownership of the three business entities. Created in 1987 for the purpose of buying, selling, and renting residential and commercial real estate,¹² IPA is jointly owned by William Forrest, Jr., O’Connor, and Carilli, who similarly own Cool Heat and MEELP. All three companies also share common management. O’Connor serves as IPA’s treasurer and Chief Financial Officer, and handles all of its finances, the same duties and functions he performs for both Cool Heat and MEELP. Carilli serves as IPA’s president, and William Forrest, Jr. as its vice-president.

The record reflects that the three business entities maintain centralized control over their labor relations. Thus, O’Connor and William Forrest, Jr. both are responsible for the hiring and layoff of employees for MEELP and Cool Heat. Further, following MEELP’s creation, employees of IPA d/b/a EVCO became employees of MEELP, subject to MEELP’s control, and paid under MEELP’s payroll. Under MEELP, employees received the same benefits whether they worked for MEELP, EVCO, or Forrest Sheet Metal.

Further, and no less important, there is a strong interrelation between the business operations of all three entities. Thus, the record shows that all three enterprises have shared employees, facilities, phone numbers, equipment, and assets. To illustrate, Anne Wright, whose testimony was unchallenged and whom I find to be credible, was hired by William Forrest in January 2008, for Forrest Sheet Metal, Inc., Cool Heat’s predecessor, as a clerical employee to do general office duties, including some bookkeeping. She testified that when Cool Heat was formed, she continued performing the same duties for Cool Heat, and, in 2009, also began performing the identical duties for IPA d/b/a EVCO, which was at the same 2314 Pyle St. location. She further testified that when MEELP was created in May, 2010, she continued doing the same work for MEELP as she had been doing for Cool Heat, and IPA d/b/a EVCO at the exact same location. (TR: 82-83).

Finally, the extensive financial involvement among these three entities leaves no room to doubt that Cool Heat, MEELP, and IPA operate as a single employer. Thus, the record shows that O’Connor, William Forrest, Jr. and Carilli regularly transferred funds among the three enterprises for various reasons. In 2010, for example, some 14 transfer of funds occurred between IPA and Cool Heat. O’Connor explained that most of these were loans borrowed from the personal accounts of the three owners, and from the business accounts of Cool Heat and IPA. Thus, he testified that IPA loaned Cool Heat monies as startup capital to help get the business off the ground, and that Cool Heat, likewise, on occasion, loaned IPA monies to help the latter pay for its obligations. According to O’Connor, “funds were going back and forth” in

¹² In March 2009, IPA, also referred to at the hearing as IPA d/b/a EVCO, purchased the assets of EVCO, a plumbing company in Wilmington, Delaware. Carilli had been employed as a plumber with EVCO prior to the purchase. William Forrest, Jr. explained that the motivation for buying EVCO was to pay back Carilli, whom he and O’Connor had known for some time, for all the years Carilli had worked with EVCO for very little pay.

what he described as a “loan account,” but acknowledged that there was no specific written obligation for the loans made to be repaid. (TR: 530).

5 Indeed, as aptly described by Counsel for the General Counsel on brief (GC Brief: 28),
 “these transactions lack any characteristic commonly associated with loans: the parties never
 drafted or signed any document reflecting terms of the purported loan, the transferred money
 never accrued interest, and no repayment plan was created or adhered to.” In short, these were
 not loans made at arms length by entities operating separately and independently of each other.
 10 Rather, they reflect nothing more than the transfer of funds between close friends and family
 members (e.g., Carilli and O’Connor) operating three entities as a single integrated business
 enterprise.

15 Accordingly, the record evidence convinces me, and I so find, that IPA, Cool Heat, and
 MEELP operate as a single integrated business enterprise and constitute a single employer
 within the meaning of the Act. As such, I find that IPA is jointly and severally liable with Cool
 Heat and MEELP for remedying the unfair labor practices found herein.

Conclusions of Law

20 1. The Respondents, Cool Heat, LLC d/b/a Forrest Sheet Metal, Inc., Investment
 Properties Associates, LLC, and MEELP, Inc. are a single integrated business enterprise and a
 single employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

25 2. The Union, Sheet Metal Workers’ International Association, Local Union No. 19, is a
 labor organization within the meaning of Section 2(5) of the Act, and the exclusive collective
 bargaining representative of the Respondents’ employees in the following appropriate
 bargaining unit:

30 All full time and regular part time sheet metal workers, apprentices and
 limited apprentices; but excluding all other employees, office clericals,
 guards, and supervisors as defined in the Act.

35 3. By telling employees that they would be going nonunion once its contract with the
 Union expired, and that employees could no longer work for them because of their membership
 in the Union, the Respondents violated Section 8(a)(1) of the Act.

40 4. By laying off employees Michael Bellafore, Roy Downward, Christopher Dunning, Sr.,
 Francis Forrest, and Andrew Smith because of their membership in the Union, the Respondents
 violated Section 8(a)(3) and (1) of the Act.

45 5. By failing and refusing, since May 7, 2010, to bargain with the Union over the terms of
 a new collective bargaining agreement, and by failing and refusing to comply with the Union’s
 May 7, 2010 request for certain relevant and necessary information, the Respondents have
 violated Section 8(a)(5) and (1) of the Act.

50 6. By failing and refusing since July 1, 2010 to abide by the terms of its collective
 bargaining agreement by failing and refusing to hire workers referred to them through the
 Union’s hiring hall, failing and refusing to maintain the wages of unit employees, and failing and
 refusing to make contributions on behalf of unit employees to the benefit funds, the

Respondents have violated Section 8(a)(5) and (1) of the Act.¹³

7. The Respondents' above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

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Remedy

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

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The Respondents shall be required to bargain, on request, with the Union over the terms of a successor collective bargaining agreement, and to continue in effect the terms and conditions of employment contained in their prior agreement with the Union until such time as either a new agreement, or a valid impasse in negotiations, is reached. The Respondents shall also be required to furnish the Union with the relevant and necessary information requested in its May 7, 2010, letter.

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Regarding the discriminatory layoff of employees Michael Bellafore, Roy Downward, Christopher Dunning, Sr., Francis Forrest, and Andrew Smith, the Respondents will be required to offer them 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. The Respondent shall also make whole these employees for any loss of earnings and other benefits, they may have suffered by reason of their unlawful layoffs. Back pay shall be computed in a manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Such interest will be compounded on a daily basis in accordance with *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). This make-whole remedy includes any and all contributions that the Respondents were required, but failed, to make on behalf of these employees to benefit funds established under the parties' agreement, as set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). See, e.g., *Triple A Fire Protection, Inc.*, 357 NLRB No. 68 (2011).

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The Respondents will be required to remove from its files any reference to the unlawful layoff of Michael Bellafore, Roy Downward, Christopher Dunning, Sr., Francis Forrest, and Andrew Smith, and to notify them in writing that it has done so. Finally, they shall be required to post a notice to employees.

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¹³ While the Respondents have admitted the allegations that it failed and refused to maintain in effect the wages of employees as required under the contract, Counsel for the General has not identified, nor is there any record evidence to show, which, if any, of the Respondents' unit employees may have been adversely affected by the Respondents' unlawful conduct in this regard. Nor is it clear from the record who, if anyone, may have been adversely affected by the Respondents' admitted failure to abide by the contract's hiring hall procedures. Accordingly, I find that the question of which, if any, employees may have been adversely affected by the Respondents failure to maintain in effect the wages of employees, and which, if any, employees were adversely affected by Respondents' failure to abide by the hiring hall procedures in the contract, is best left to the compliance stage of this proceeding.

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On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁴

ORDER

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The Respondents, Cool Heat, LLC d/b/a Forrest Sheet Metal, Inc., Investment Properties Associates, LLC, and MEELP, INC., Wilmington, Delaware, their officers, agents, successors, and assigns, shall

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1. Cease and desist from

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(a) Failing and refusing to meet and bargain with Sheet Metal Workers' International Association, Local Union No. 19, which is the exclusive collective bargaining representative of the Respondents' employees in the bargaining unit described below, for the purpose of negotiating a successor collective bargaining agreement. The bargaining unit includes:

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All full time and regular part time sheet metal workers, apprentices and limited apprentices; but excluding all other employees, office clericals, guards, and supervisors as defined in the Act.

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(b) Failing and refusing to abide by the terms of its prior agreement with the Union by failing and refusing to hire workers from the Union's hiring hall when performing work within the Union's geographical jurisdiction, failing and refusing to maintain the wages of unit employees, and failing and refusing to make contributions to the benefit funds as required by the agreement.

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(c) Failing and refusing to provide the Union with the information requested in its May 10, 2010, which is necessary and relevant for the Union to perform its statutory duties as the exclusive collective bargaining representative of the unit employees.

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(d) Coercing employees in the exercise of their right to join, assist, or support Sheet Metal Workers' International Association, Local Union No. 19, by informing them it will be operating non-union once its contract with the Union expires, and that they will not be allowed to work for Respondents because of their membership in the Union.

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(e) Laying off or otherwise discriminating against any employee for supporting Sheet Metal Workers' International Association, Local Union No. 19, or any other union.

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(f) 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) Maintain in effect the terms conditions of employment contained in the predecessor agreement and, on request, bargain with the Union until a new agreement or impasse is reached.

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¹⁴ 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) Provide the Union with the relevant and necessary information requested in its May 10, 2010, letter.

5 (c) Make whole employees who may have been adversely affected by the Respondents' refusal and failure to abide by its agreement through its failure and refusal to hire employees through the Union's hiring hall when performing work within the Union's geographical jurisdiction, and its failure and refusal to maintain the wages of unit employee.

10 (d) Within 14 days from the date of the Board's Order, offer Michael Bellafore, Roy Downward, Christopher Dunning, Sr., Francis Forrest, and Andrew Smith 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.

15 (e) Make Michael Bellafore, Roy Downward, Christopher Dunning, Sr., Francis Forrest, and Andrew Smith whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

20 (f) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful layoff of Michael Bellafore, Roy Downward, Christopher Dunning, Sr., Francis Forrest, and Andrew Smith, and within 3 days thereafter notify them, in writing, that this has been done, and that the layoffs will not be used against them in any way.

25 (g) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful layoffs, and within 3 days thereafter notify the employees, in writing, that this has been done and that the layoffs will not be used against them in any way.

30 (h) 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.

35 (i) Within 14 days after service by the Region, post at its facility in Wilmington, Delaware, copies of the attached notice marked "Appendix."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondents' authorized representative, shall be posted by the Respondents 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 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 the Respondents at any time since May 7, 45 2010.

50 ¹⁵ 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."

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

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Dated, Washington, D.C. September 8, 2011

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George Alemán
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT fail or refuse to bargain with Sheet Metal Workers' International Association, Local Union No. 19, which is the exclusive collective bargaining representative of our employees in the following bargaining unit:

All full time and regular part time sheet metal workers, apprentices and limited apprentices; but excluding all other employees, office clericals, guards, and supervisors as defined in the Act.

WE WILL NOT fail or refuse to abide by the terms of our prior agreement with the Union by failing and refusing to hire workers from the Union's hiring hall when performing work within the Union's geographical jurisdiction, failing and refusing to maintain the wages of unit employees, and failing and refusing to make contributions to the benefit funds as required by the agreement.

WE WILL NOT refuse or fail to provide the Union with requested information that is relevant and necessary for it to perform its statutory duties as exclusive bargaining representative of our unit employees.

WE WILL NOT coerce our employees in the exercise of their right to join, assist, or support the Union by telling them we are going to be a nonunion operation and that they will not be able to work for us because of their Union membership.

WE WILL NOT lay off or otherwise discriminate against any of you for supporting Sheet Metal Workers' International Association, Local Union No. 19, or any other union.

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, on request, bargain with the Union over the terms of a successor agreement and **WE WILL** continue in effect the terms and conditions of employment contained in our expired agreement until such time as either a new agreement, or a valid impasse in bargaining, has been reached.

WE WILL make whole any employees for our failure and refusal to abide by the terms of our prior agreement with the Union by our failure and refusal to hire employees through the Union's hiring hall when performing work within the Union's geographical jurisdiction, and by our failure and refusal to maintain the wages of unit employees, and **WE WILL** make contributions on behalf of our unit employees to the benefits funds.

WE WILL, within 14 days from the date of this Order, offer Michael Bellafore, Roy Downward, Christopher Dunning, Sr., Francis Forrest, and Andrew Smith 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 Michael Bellafore, Roy Downward, Christopher Dunning, Sr., Francis Forrest, and Andrew Smith whole for any loss of earnings and other benefits resulting from their unlawful layoffs, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful layoff of Michael Bellafore, Roy Downward, Christopher Dunning, Sr., Francis Forrest, and Andrew Smith, and **WE WILL**, within 3 days thereafter, notify each of them, in writing, that this has been done and that the layoffs will not be used against them in any way.

**COOL HEAT, LLC d/b/a FORREST SHEET
METAL, INC., INVESTMENT PROPERTIES
ASSOCIATES, LLC, and MEELP, INC.**

(Employer)

Dated _____ By _____
(Representative) (Title)

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

615 Chestnut Street, One Independence Mall, 7th Floor
Philadelphia, Pennsylvania 19106-4404
Hours: 8:30 a.m. to 5 p.m.
215-597-7601.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 215-597-7643.